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*Plenary sitting*

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**A8-0395/2017**

8.12.2017

**\*\*\*I**  
**REPORT**

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))

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT 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  
(COM(2016)0822 – C8-0012/2017 – 2016/0404(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0822),
  - having regard to Article 294(2) and Articles 46, 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0012/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundestag, the German Bundesrat, the French National Assembly, the French Senate and the Austrian Federal Council, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 31 May 2017<sup>1</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0395/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 288, 31.8.2017, p. 43.

## Amendment 1

### Proposal for a directive Recital 5

*Text proposed by the Commission*

(5) 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.

*Amendment*

(5) The results of the mutual evaluation process revealed a lack of clarity as regards the criteria to be used by ***Member States*** 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, ***there should be*** a common approach at Union level, preventing disproportionate measures from being adopted.

*Justification*

*In order to avoid contradiction with the terms "competent authority" in Directive 2005/36/EC, it is appropriate to allow Member States to determine themselves the competent authorities.*

## Amendment 2

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6 a) This Directive aims to establish rules for conducting proportionality assessments before introducing professional regulations in order to ensure the proper functioning of the internal market while guaranteeing transparency, the high quality of professional services provided and a high level of consumer protection. This Directive should 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.*

### Amendment 3

#### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. This Directive should apply in addition to Directive 2005/36/EC and without prejudice to other provisions laid down in a separate Union act concerning access to, and the exercise of a given regulated profession.

*Amendment*

(7) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. ***The Directive should apply to requirements restricting access to, or the pursuit of, existing regulated professions or professions that Member States are considering whether to regulate.*** This Directive should apply in addition to Directive 2005/36/EC and without prejudice to other provisions laid down in a separate Union act concerning access to, and the exercise of a given regulated profession. ***In particular, where the requirements on the access to a given profession or its pursuit are harmonised at Union level, Member States should avoid extending the scope of Union legal acts unnecessarily or introducing an excess of norms, administrative procedures, fees or penalties, especially when they apply at national, regional and local level, which go beyond what is necessary to attain the objective pursued.***

### Amendment 4

#### Proposal for a directive Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7 a) This Directive is without prejudice to the competence of Member States to define the organisation and the content of***

*their systems of education and professional training, in particular as regards the possibility for them to delegate to professional organisations the power to organise or supervise professional education and training. However, where the period of professional education or training consists of activities which are remunerated, the freedom of establishment and the freedom to provide services should be guaranteed.*

## Amendment 5

### Proposal for a directive

#### Recital 8

*Text proposed by the Commission*

(8) Member States should be able to rely on a common regulatory framework based on clearly defined legal concepts concerning the different ways to regulate a profession across the Union. There are several ways to regulate a profession, for instance by reserving access to or the pursuit of a particular activity to holders of a professional qualification. **National provisions may also** regulate one of the modes of pursuit of a profession **in** laying down conditions for the use of professional titles.

*Amendment*

(8) Member States should be able to rely on a common regulatory framework based on clearly defined legal concepts concerning the different ways to regulate a profession across the Union. There are several ways to regulate a profession, for instance by reserving access to or the pursuit of a particular activity to holders of a professional qualification. **Member States should also be able to adopt requirements that** regulate one of the modes of pursuit of a profession **by** laying down conditions for the use of professional titles **or by imposing qualification requirements only on self-employed, on salaried professionals, on managers or legal representatives of undertakings, especially where the activity is pursued by a legal person in the form of a professional company.**

## Amendment 6

### Proposal for a directive

#### Recital 8 a (new)



***(8 a) Before introducing new or amending existing legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, Member States should assess the non-discrimination and proportionality of such provisions. The extent of the assessment should be proportionate to the nature, the content and the impact of the provision being introduced, taking into account the regulatory context for a given regulated profession. Provisions which do not restrict access to or pursuit of regulated professions, such as editorial amendments, should not be subject to assessment.***

## Amendment 7

### Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) The burden of proof of justification and proportionality lies on the Member States. The reasons for regulation invoked by a Member State by way of justification should thus be accompanied by an analysis of the ***appropriateness*** and proportionality of the ***measure*** adopted by that State and by specific evidence substantiating its arguments.

(9) The burden of proof of justification, ***non-discrimination*** and proportionality lies on the Member States. The reasons for regulation invoked by a Member State by way of justification should thus be accompanied by an analysis of the ***non-discrimination*** and proportionality of the ***provision*** adopted by that ***Member*** State and by specific evidence substantiating its arguments. ***Although a Member State does not necessarily have to be able to produce a specific study or a specific form of evidence or materials establishing the proportionality of such provision prior to its adoption, it should carry out an objective and detailed analysis, taking into account the specific circumstances of that Member State, capable of demonstrating, on the basis of consistent evidence, that***

*there are genuine risks for the achievement of public interest objectives.*

## Amendment 8

### Proposal for a directive

#### Recital 10

*Text proposed by the Commission*

(10) It is appropriate to monitor the proportionality of the **provisions** restricting access to or pursuit of regulated professions **on a regular basis and** with a frequency appropriate to the regulation concerned. A review of the proportionality of restrictive national legislation in the area of regulated professions should be based not only on the objective of that legislation at the time of its adoption, but also on the effects of the legislation, assessed after its adoption. The assessment of the proportionality of the national legislation should be based on developments found to have occurred in the area since the legislation was adopted.

*Amendment*

(10) It is appropriate to monitor the proportionality of the **requirements** restricting access to or pursuit of regulated professions **after adoption** with a frequency appropriate to the regulation concerned. A review of the proportionality of restrictive national legislation in the area of regulated professions should be based not only on the objective of that legislation at the time of its adoption, but also on the effects of the legislation, assessed after its adoption. The assessment of the proportionality of the national legislation should be based on developments found to have occurred in the area **of regulated professions** since the legislation was adopted.

## Amendment 9

### Proposal for a directive

#### Recital 11

*Text proposed by the Commission*

(11) Member States should carry out proportionality assessments in an objective and independent manner, including where a profession is regulated indirectly, by giving a particular professional body the power to do so. In particular, while the assessment of the local authorities, regulatory bodies or professional organisations, whose greater proximity to local conditions and specialised knowledge

*Amendment*

(11) Member States should carry out proportionality assessments in an objective and independent manner, including where a profession is regulated indirectly by giving a particular professional body the power to do so. ***The assessment may include an opinion obtained from an independent body entrusted by the Member States concerned with the task of providing such opinion.*** In particular,

could in certain cases make them better placed to identify the best way of meeting the public interest objectives, there is particular reason for concern in cases where the policy choice made by those authorities or bodies provides benefits to established operators at the expense of new market entrants.

while the assessment of the local authorities, regulatory bodies or professional organisations, whose greater proximity to local conditions and specialised knowledge could in certain cases make them better placed to identify the best way of meeting the public interest objectives, there is particular reason for concern in cases where the policy choice made by those authorities or bodies provides benefits to established operators at the expense of new market entrants.

## **Amendment 10**

### **Proposal for a directive Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11 a) As confirmed by settled case-law, any discrimination on grounds of nationality or residence resulting from national legislation restricting the freedom of establishment is prohibited. When introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions or amending existing ones, Member States should guarantee that such provisions are based on non-discriminatory and objective criteria which are known in advance.***

*Justification*

*Non-discrimination should also be taken into account, as already required by well-established case law and Article 59 of Directive 2005/36/EC.*

## **Amendment 11**

### **Proposal for a directive Recital 12**

(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 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

(12) Where the taking-up and pursuit of employed or self-employed activities are conditional on complying with certain ***requirements*** relating to specific professional qualifications, laid down directly or indirectly by the Member States, it is necessary to ensure that such ***requirements*** 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 also necessary to clarify that ***the following are*** among the overriding reasons of general interest, recognised by the Court of Justice: preserving the financial equilibrium of the social security system; the protection of consumers, ***of the*** recipients of services and ***of*** workers; safeguarding the proper administration of justice; ***ensuring the*** fairness of trade transactions; ***the*** combating ***of*** fraud and ***the*** prevention of tax evasion and avoidance, ***and effectiveness of fiscal supervision; transport*** safety; ***guaranteeing the quality of craft work; the promotion of research and development;*** the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives. According to settled ***case law***, purely economic reasons, ***such as promoting the national economy to the detriment of the fundamental freedoms***, as well as purely administrative reasons, such as carrying out controls or gathering statistics, cannot constitute an overriding reason of general interest.

general interest.

## **Amendment 12**

### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) It is important to ensure that public interest objectives are adequately identified in order to determine, in the absence of harmonisation, the appropriate level of regulation, within the limits of proportionality. For example, where the risks to the public interest objective increase, Member States should have a reasonable margin of appreciation within which they are able to determine the level of protection which they wish to afford, and if necessary, to strengthen the regulation in place. The fact that one Member State imposes less strict rules than another Member State does not mean that the latter Member State's rules are disproportionate and therefore incompatible with Union law. While the regulation of professions is of the utmost importance in protecting public interest objectives and ensuring high quality products and services, it should, inter alia, contribute to the promotion of a high level of employment and a high level of education and training.***

## **Amendment 13**

### **Proposal for a directive Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12 b) With regard to protection of public health, according to Article 168(1) of the Treaty on the Functioning of the European Union (TFEU), a high level of human health protection is to be ensured***

*in the definition and implementation of all Union policies and activities. This implies that a high level of human health protection is to be ensured also when the Union adopts acts pursuant to other Treaty provisions and in particular concerning the regulation of healthcare professions, given the particular nature of healthcare services and the fact that patients are different from other service recipients.*

## Amendment 14

### Proposal for a directive

#### Recital 13

*Text proposed by the Commission*

(13) Where a Member State intends to regulate a profession or to amend existing rules, account should be taken of the nature of the risks related to the public interest objectives pursued, in particular the risks to consumers, to professionals or third parties. It should also be borne in mind that, in the field of professional services, there is usually an asymmetry of information between consumers and professionals. Professionals display a high level of technical knowledge which consumers may not have *and consumers therefore find it difficult to judge the quality of the services provided to them.*

*Amendment*

(13) *In order to ensure that the provisions that they introduce, and that the amendments that they make to existing provisions, are proportionate, Member States should consider the criteria which are relevant for the regulated profession being analysed.* Where a Member State intends to regulate a profession or to amend existing rules, account should be taken of the nature of the risks related to the public interest objectives pursued, in particular the risks to *service recipients, including* consumers, to professionals or third parties. It should also be borne in mind that, in the field of professional services, there is usually an asymmetry of information between consumers and professionals, *given that* professionals display a high level of technical knowledge which consumers may not have.

## Amendment 15

### Proposal for a directive

#### Recital 14

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*Text proposed by the Commission*

(14) To meet the requirement of proportionality, the measure should be suitable for securing the attainment of the objective pursued. A measure should **only** be considered suitable for securing the attainment of the objective pursued, if it genuinely reflects a concern to attain that objective in a consistent and systematic manner, for instance where similar risks related to certain activities are addressed in a comparable way and where any exceptions to the restrictions involved are applied in line with the stated objective. Furthermore, the national measure should contribute to achieving the objective pursued and therefore, where it has no effect on the ground for justification, it should not be considered as suitable.

*Amendment*

(14) To meet the requirement of proportionality, the measure should be suitable for securing the attainment of the objective pursued. A measure should be considered suitable for securing the attainment of the objective pursued **only** if it genuinely reflects a concern to attain that objective in a consistent and systematic manner, for instance where similar risks related to certain activities are addressed in a comparable way and where any exceptions to the restrictions involved are applied in line with the stated objective. Furthermore, the national measure should **effectively** contribute to achieving the objective pursued and therefore, where it has no effect on the ground for justification, it should not be considered as suitable.

## **Amendment 16**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

(15) Requirements linked to professional qualifications should be considered as necessary only where existing measures, such as consumer protection law, cannot be regarded as being suitable or genuinely effective to achieve the aim pursued.

*Amendment*

(15) Requirements linked to professional qualifications should be considered as necessary only where existing measures, such as **product safety law or** consumer protection law, cannot be regarded as being suitable or genuinely effective to achieve the aim pursued.

## **Amendment 17**

### **Proposal for a directive Recital 16**

*Text proposed by the Commission*

(16) **Among the elements to be taken** into account **by national authorities**, the

*Amendment*

(16) **Member States should also take** into account the following **elements**: the

following *are of most relevance*: the link between the scope of professional activities covered by a profession and the professional qualification required; the complexity of the tasks in particular as regards the level, the nature and the duration of the training or experience required; the existence of different routes to obtain the professional qualification; *the scope of the professional activities, reserved to holders of a particular professional qualification, and in particular* whether the activities reserved to certain professionals can be shared with other professionals; the degree of autonomy in exercising a regulated profession in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional.

link between the scope of professional activities covered by a profession and the professional qualification required; the complexity of the tasks in particular as regards the level, the nature and the duration of the training or experience required; the existence of different routes to obtain the professional qualification; whether the activities reserved to certain professionals can be shared with other professionals; the degree of autonomy in exercising a regulated profession in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional.

## Amendment 18

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(17) Where a Member State regulates a profession, account should be taken of the fact that technological developments may reduce the asymmetry of information between consumers and professionals. In view of the speed of technological change and scientific progress, up-dates in access requirements may be of particular importance for a number of professions.

#### *Amendment*

(17) ***This Directive promotes scientific and technological progress, which has to be duly taken into account, for example where the service is provided by electronic means.*** Where a Member State regulates a profession, account should be taken of the fact that ***scientific and*** technological developments may reduce ***or increase*** the asymmetry of information between consumers and professionals. In view of the speed of technological change and scientific progress, up-dates in access requirements may be of particular importance for a number of professions. ***Where the scientific and technological developments carry a high risk to the public interest objectives, it is for the Member States, where necessary, to***



*encourage professionals to keep up with those developments.*

## **Amendment 19**

### **Proposal for a directive Recital 18**

*Text proposed by the Commission*

(18) The *economic* impact of the measure, *including a cost-benefit analysis with particular regard to the degree of competition in the market and the quality of the service provided, as well as the impact on the right to work and* on the free movement of persons and services within the Union should be duly taken into account by the *competent authorities*. *Based on this analysis*, Member States should ascertain, in particular, whether the extent of the restriction *of* access to or pursuit of regulated professions within the Union is proportionate to the importance of the objectives pursued and the expected gains.

*Amendment*

(18) The impact of the measure on the free movement of persons and services within the Union, *on consumer choice and on the quality of the service provided* should be duly taken into account by the *Member States*. *On that basis*, Member States should ascertain, in particular, whether the extent of the restriction *to* access to or pursuit of regulated professions within the Union is proportionate to the importance of the objectives pursued and the expected gains.

## **Amendment 20**

### **Proposal for a directive Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

*(18 a) Where Member States consider that a particular criterion is not relevant for the assessment, they should duly justify their decision when notifying the Commission in accordance with this Directive.*

## Amendment 21

### Proposal for a directive Recital 19

*Text proposed by the Commission*

(19) Member States should carry out a comparison between the national measure at issue and the alternative and less restrictive solutions that would allow the same objective to be attained but would impose fewer restrictions. Where the measures are justified by consumer protection and where the risks identified are limited to the relationship between the professional and the consumer without negatively affecting third parties, the objective *could* be attained by less restrictive means than reserving activities to professionals, such as protection of the professional title or enrolment on a professional register. Regulation by way of reserved activities should be *used only in cases* where the measures aim at preventing a risk of serious harm to public interest objectives.

*Amendment*

(19) Member States should carry out a comparison between the national measure at issue and the alternative and less restrictive solutions that would allow the same objective to be attained but would impose fewer restrictions. Where the measures are justified by consumer protection and where the risks identified are limited to the relationship between the professional and the consumer without negatively affecting third parties, the objective *should* be attained by less restrictive means than reserving activities to professionals. *For instance, where consumers can reasonably make a choice between using the services of qualified professionals or not, less restrictive means*, such as protection of the professional title or enrolment on a professional register, *should be used*. Regulation by way of reserved activities *and protected professional title* should be *considered* where the measures aim at preventing a risk of serious harm to public interest objectives, *such as public health*.

## Amendment 22

### Proposal for a directive Recital 20

*Text proposed by the Commission*

(20) *The national authorities* should carry out a *global* assessment of the circumstances in which the *restrictive* measure is adopted and implemented and examine in particular the *cumulative* effect of *imposing several* requirements *in addition to the specific professional*

*Amendment*

(20) *Member States* should carry out a *comprehensive* assessment of the circumstances in which the measure is adopted and implemented and examine in particular the *combined* effect of *the new or amended provisions when combined with other* requirements *restricting access*

**qualification.** The taking-up and pursuit of certain activities may be conditional on complying with **certain provisions** such as rules relating to the organisation of the profession, compulsory membership of a professional body, professional ethics, supervision and liability. Therefore, when assessing the **cumulative** effect of the measures, **the competent authorities** should **also** take into account **other** existing requirements, **such as** continuous professional development, compulsory chamber membership, registration or authorisation schemes, quantitative restrictions, specific legal form requirements and shareholding requirements, territorial restrictions, multidisciplinary restrictions and incompatibility rules, requirements concerning insurance cover as well as language knowledge requirements, to the extent necessary to practise the profession. **A measure introduced by a Member State cannot be regarded as necessary to achieve the objective pursued if it essentially duplicates requirements which have already been introduced in the context of other rules or procedures.**

## Amendment 23

### Proposal for a directive Recital 20 a (new)

*Text proposed by the Commission*

**to, or the pursuit of, the profession.** The taking-up and pursuit of certain activities may be conditional on complying with **several requirements** such as rules relating to the organisation of the profession, compulsory membership of a professional body, professional ethics, supervision and liability. Therefore, when assessing the effect of the measures, **Member States** should take into account **the** existing requirements, **including** continuous professional development, compulsory chamber membership, registration or authorisation schemes, quantitative restrictions, specific legal form requirements and shareholding requirements, territorial restrictions, multidisciplinary restrictions and incompatibility rules, requirements concerning insurance cover, **fixed minimum and/or maximum tariff requirements, requirements on advertising,** as well as language knowledge requirements, to the extent necessary to practise the profession.

*Amendment*

**(20 a) The introduction of additional requirements might be suitable to attain the public interest objectives. The mere fact that their individual or combined effect should be assessed does not mean that those requirements are prima facie disproportionate. For example, the obligation to undergo continuous professional development might be suitable to ensure that professionals keep abreast of developments in their respective**

*areas, as long as it does not lay down discriminatory and disproportionate conditions to the detriment of new entrants. Likewise, compulsory membership of a professional organisation might be considered appropriate where professional organisations are entrusted by the State with safeguarding the relevant public interest objectives, for example in supervising the legitimate practice of the profession, or organising or supervising continuous professional training. Where the independence of a profession cannot be adequately guaranteed by other means, Member States could consider the application of safeguards, such as limiting the shareholding of persons outside the profession or providing that the majority of the voting rights are to be held by persons practising the profession, as long as such safeguards do not go beyond what is necessary in order to protect the public interest objective. To ensure the safeguarding of public interest objectives and the quality of the service provided, Member States could consider establishing fixed minimum and/or maximum tariff requirements with which the service providers must comply, especially for services where this is necessary for the effective application of the principle of reimbursing costs, as long as such restriction is proportionate and, where necessary, derogations from the minimum and/or maximum tariffs are foreseen. Where the introduction of additional requirements duplicates requirements which have already been introduced by a Member State in the context of other rules or procedures, such requirements cannot be regarded as proportionate to achieve the objective pursued.*

**Amendment 24**

**Proposal for a directive**

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## Recital 20 b (new)

*Text proposed by the Commission*

*Amendment*

***(20 b) As confirmed by settled case-law, health and life of humans rank foremost among the interests protected by the Treaty. Consequently, Member States should duly 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 geographical distribution or the organisation of the profession, professional ethics and supervision, while respecting the minimum training conditions, laid down in Directive 2005/36/EC. Member States should in particular ensure that the regulation of healthcare professions, having public health and patient safety implications, is proportionate and contributes to the guaranteeing of access to healthcare, recognised as fundamental right in the Charter of Fundamental Rights of the European Union, as well as to safe, high quality, and efficient healthcare to citizens on their territory. In establishing policies for healthcare services, account should be taken of population density, geographical characteristics and the distribution of inhabitants, with a view to ensuring accessibility and high quality of service, as well as the adequate and safe supply of medicinal products, in accordance with the public health needs in the territory of the Member State concerned. Account should also be taken of the need to ensure the professional independence of healthcare professionals. Furthermore, as set out in Directive 2005/36/EC, Member States should be able to refuse partial access for healthcare professions, having public health or patient safety implications, if such rejection is justified by the objective of ensuring a high level of***

*human health protection and is suitable for securing the attainment of that objective. Where the precautionary principle applies, Member States may not be required to provide specific evidence to justify the need for regulation.*

## **Amendment 25**

### **Proposal for a directive Recital 20 c (new)**

*Text proposed by the Commission*

*Amendment*

*(20 c) According to Title II of Directive 2005/36/EC, Member States cannot impose on service providers established in another Member State providing professional services on a temporary and occasional basis requirements or restrictions prohibited in that Directive, such as authorisation by, registration with or membership of a professional organisation or body or having representatives on the territory of the host Member State. Member States may, where necessary, require service providers wishing to provide services on a temporary basis, to provide a certain amount of information by a written declaration to be made in advance of the first service provision and to renew this declaration on a yearly basis. Therefore, in order to facilitate the provision of professional services, it is necessary to reiterate, taking into account the temporary or occasional nature of the service, that 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, should be proportionate. These requirements should not lead to a disproportionate burden on service*

*providers nor hinder or render less attractive the exercise of the freedom to provide services. Member States should, in particular, assess whether the requirement to provide certain information and documents in accordance with Directive 2005/36/EC and the possibility of obtaining further details by way of administrative cooperation between Member States through the IMI system are proportionate and are sufficient to prevent a serious risk of circumvention of the applicable rules by service providers. This Directive should however not apply to measures designed to ensure the respect of the applicable employment terms and conditions.*

## **Amendment 26**

### **Proposal for a directive**

#### **Recital 21**

*Text proposed by the Commission*

(21) It is essential for the proper functioning of the internal market to ensure that Member States provide information to citizens, representative associations or other relevant stakeholders before introducing new *measures* restricting access to or pursuit of regulated professions **and give** them the opportunity to make known their views.

*Amendment*

(21) It is essential for the proper functioning of the internal market to ensure that Member States provide information to citizens, representative associations or other relevant stakeholders before introducing new **or amending existing requirements** restricting access to, or pursuit of regulated professions . **Member States should carry out wider public consultation involving all parties concerned and giving** them the opportunity to make known their views **in order to gather adequate evidence necessary for designing reforms of professional services, especially in cases of reforms with a greater impact.**

## **Amendment 27**

### **Proposal for a directive**

#### **Recital 21 a (new)**

***(21a) Additionally, when making their assessments of non-discrimination, justification and proportionality Member States should also, give full consideration to citizens' rights of access to justice, as guaranteed pursuant to Article 47 of the Charter of Fundamental Rights of the European Union. Pursuant to the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, Member States are to ensure effective legal protection in the fields covered by Union law. It follows that national courts should 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. It is for the national courts to determine whether the restrictions go beyond what is necessary to attain the objectives pursued, having regard to all regulation in place and the reasons for regulation invoked by a Member State.***

*Justification*

*Judicial review is fundamental to the functioning of the proportionality test, allowing citizens and companies to fully benefit from their rights, especially in view of the excessive overall duration of infringement proceedings.*

**Amendment 28**

**Proposal for a directive  
Recital 22**

*Text proposed by the Commission*

*Amendment*

***(22) To facilitate the exchange of best practices, each Member State should encourage the relevant competent***

***(22) For the purposes of exchanging best practices, Member States should take the necessary measures to encourage***



**authorities to share** adequate and regularly updated information with other Member States on the regulation of professions.

**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 should facilitate that exchange of best practices among Member States.**

## Amendment 29

### Proposal for a directive Recital 23

*Text proposed by the Commission*

(23) In order to increase transparency and promote proportionality assessments based on comparable criteria, **it is important that the information submitted by Member States** be easily accessible in the database of regulated professions to allow all interested parties to submit comments.

*Amendment*

(23) In order to increase transparency and promote proportionality assessments based on comparable criteria, **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, produced in accordance with Directive 2005/36/EC.**

## Amendment 30

### Proposal for a directive Recital 24

*Text proposed by the Commission*

(24) Since the objectives of this Directive, namely the removal of disproportionate restrictions on access to or pursuit of regulated professions cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of

*Amendment*

(24) Since the objectives of this Directive, namely the removal of disproportionate restrictions on access to or pursuit of regulated professions, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of

subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of ***non-discrimination, and with the principle of*** proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

## **Amendment 31**

### **Proposal for a directive Article 1**

*Text proposed by the Commission*

#### Article 1

##### Subject matter

This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ***or amending existing ones***, with a view to ensuring the proper functioning of the internal market.

*Amendment*

#### Article 1

##### Subject matter

This Directive lays 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.***

## **Amendment 32**

### **Proposal for a directive Article 2**

*Text proposed by the Commission*

#### Article 2

##### Scope

1. This Directive shall apply to requirements under the legal systems of the Member States restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional

*Amendment*

#### Article 2

##### Scope

1. This Directive shall apply to requirements under the legal systems of the Member States restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional

activities allowed under such title, falling within the scope of Directive 2005/36/EC.

2. Where specific *arrangements* concerning the regulation of a given profession are established in a separate Union act, the corresponding provisions of this Directive shall not apply.

activities allowed under such title, falling within the scope of Directive 2005/36/EC.

2. Where specific *requirements* concerning the regulation of a given profession are established in a separate Union *legal* act, the corresponding provisions of this Directive shall not apply.

## Amendment 33

### Proposal for a directive

#### Article 3

##### *Text proposed by the Commission*

#### Article 3

##### Definitions

For the purpose of this Directive, the definitions of Directive 2005/36/EC shall apply. In addition, the following definitions shall apply:

(a) "protected professional title" means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject to a particular professional qualification in the relevant field by virtue of legislative, regulatory or administrative provisions, either directly, or indirectly, and where the improper use of this title is subject to *sanctions* or other measures.

(b) "reserved activities" means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession, including where the activity is shared with other regulated professions.

##### *Amendment*

#### Article 3

##### Definitions

For the purpose of this Directive, the definitions of Directive 2005/36/EC shall apply. In addition, the following definitions shall apply:

(a) "protected professional title" means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject to a particular professional qualification in the relevant field by virtue of legislative, regulatory or administrative provisions, either directly, or indirectly, and where the improper use of this title is subject to *penalties* or other measures.

(b) "reserved activities" means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession, *holding a particular professional qualification*, including where the activity is shared with other regulated professions.

## Amendment 34

### Proposal for a directive Article 4

*Text proposed by the Commission*

#### Article 4

Ex ante assessment of new measures

1. Member States shall ***ensure that*** before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ***or amending existing ones, the relevant competent authorities undertake an assessment of their proportionality in accordance with the rules laid down in this Directive.***

2. Any provision referred to in paragraph 1 shall be accompanied by a detailed statement making it possible to appraise compliance with the ***principle of proportionality.***

3. The reasons for considering that a provision is justified, ***necessary*** and proportionate shall be substantiated by qualitative and, wherever possible, quantitative evidence.

4. Member States shall monitor the ***proportionality*** of legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions ***on a regular basis and with a frequency***

*Amendment*

#### Article 4

Ex ante assessment of new measures ***and monitoring***

1. Member States shall ***undertake an assessment in accordance with the rules laid down in this Directive*** before introducing new, ***or amending existing,*** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions.

***1 a. The extent of the assessment referred to in paragraph 1 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.***

2. Any provision referred to in paragraph 1 shall be accompanied by a detailed statement making it possible to appraise compliance with the ***principles of non-discrimination and proportionality.***

3. The reasons for considering that a provision is ***non-discriminatory,*** justified, and proportionate shall be substantiated by qualitative and, wherever possible, quantitative evidence.

***3 a. Member States shall take the necessary measures to ensure that the assessment referred to in paragraph 1 is carried out in an objective and independent manner.***

4. Member States shall, ***with a frequency appropriate to the regulation concerned,*** monitor the ***compliance*** of legislative, regulatory or administrative provisions restricting access to, or pursuit

*appropriate to the regulation concerned*, having due regard to any developments that have occurred since the *measure* concerned *was* adopted.

5. Member States shall *take the necessary measures to ensure that the assessment of proportionality referred to in paragraph 1 is carried out in an objective and independent manner including through involvement of independent scrutiny bodies*.

of, regulated professions *with the principles of non-discrimination and proportionality*, having due regard to any developments that have occurred since the *provisions* concerned *were* adopted.

5. *With regard to the regulation of healthcare professions, having health and patient safety implications*, Member States shall *be granted a margin of discretion that is sufficient to ensure a high level of human health protection. To that end, Member States shall take into consideration the acquis communautaire, in particular with regard to the specific nature of the professions providing healthcare services, as recognised by the European legislator and case-law of the Court of Justice*.

## **Amendment 35**

### **Proposal for a directive Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 4 a*

#### *Non-discrimination*

*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.*

#### *Justification*

*In line with Case C-55/94 Gebhard, the first step when assessing a national measure is to check whether it is non-discriminatory. This obligation is also reflected in Article 59 (3) of Directive 2005/36/EC.*

## **Amendment 36**

### **Proposal for a directive**

## Article 5

### *Text proposed by the Commission*

#### Article 5

Justification on grounds of public interest objectives

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they intend to introduce and amendments they ***intend to*** make to existing provisions are justified by public interest objectives.

2. ***The relevant competent authorities*** shall consider in particular whether those provisions are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as 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 national historic and artistic heritage, social policy objectives and cultural policy objectives.

3. Grounds of a purely economic nature ***having essentially protectionist aim or effects*** or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to or pursuit of regulated professions.

### *Amendment*

#### Article 5

Justification on grounds of public interest objectives

1. Member States shall ensure that ***the*** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions ***that*** they intend to introduce and ***that the*** amendments ***that*** they make to existing provisions are justified by public interest objectives.

2. ***Member States*** shall consider in particular whether those provisions are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as, ***for example***, preserving the financial equilibrium of the social security system; the protection of consumers, ***of the*** recipients of services and ***of*** workers; the safeguarding of the proper administration of justice; ***ensuring the*** fairness of trade transactions; ***the*** combating ***of*** fraud and ***the*** prevention of tax evasion and avoidance, ***and the safe guarding of the effectiveness of fiscal supervision; transport safety; guaranteeing of the quality of craft work; the promotion of research and development;*** the protection of the environment and the urban environment; the health of animals; intellectual property; ***and*** the safeguarding and conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives.

3. Grounds of a purely economic nature or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to or pursuit of regulated professions.

***3 a. 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.*

## Amendment 37

### Proposal for a directive Article 6

*Text proposed by the Commission*

#### Article 6

##### Proportionality

1. *Before introducing new* legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, *or amending existing ones, Member States shall assess whether those 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.

2. *When assessing the necessity and the proportionality of the provisions, the relevant competent authorities shall consider in particular:*

(a) the nature of the risks related to the public interest objectives pursued, in particular the risks to consumers, to

*Amendment*

#### Article 6

##### Proportionality

1. *Member States shall ensure that the* legislative, regulatory or administrative provisions restricting access to, or pursuit of, regulated professions *that they introduce, and that the amendments that they make to* existing provisions, are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.

*1a. In particular, when evaluating the regulation of healthcare professions, which has health and patient safety implications, Member States shall take into consideration the acquis communautaire, in particular with regard to the specific nature of the professions providing healthcare services, as recognised by the European legislator and the case-law of the Court of Justice. With regard to the regulation of such professions, Member States shall have a margin of discretion that is sufficient to ensure a high level of human health protection.*

2. *Before adopting the provisions referred to in paragraph 1 and 1a, Member States shall, where relevant, consider:*

(a) the nature of the risks related to the public interest objectives pursued, in particular the risks to *service recipients*,

professionals or third parties;

(b) the suitability of the provision as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus, addresses the risks identified in a similar way as in comparable activities;

(c) ***the necessity of the provision and in particular*** whether existing rules of a specific or more general nature, such as product safety ***legislation*** or consumer protection law, are insufficient ***to protect*** the objective pursued;

(d) the link between the scope of activities covered by a profession or reserved to it and the professional qualification required;

(e) the link between the complexity of the tasks and the ***necessary possession of*** specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required, as well as the existence of different routes to obtain the professional qualification;

(f) ***the scope of the professional activities reserved to holders of a particular professional qualification, namely*** whether and why the activities reserved to certain professions can or cannot be shared with other professions;

(g) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;

(h) the scientific and technological developments which may reduce the asymmetry of information between

***including*** consumers, to professionals or third parties;

(b) the suitability of the provision as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus, addresses the risks identified in a similar way as in comparable activities;

(c) 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;

(d) the link between the scope of activities covered by a profession or reserved to it and the professional qualification required;

(e) the link between the complexity of the tasks ***concerned*** and the ***need for those carrying them out to possess*** specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required, as well as the existence of different routes to obtain the professional qualification;

(f) whether and why the activities reserved to certain professions can or cannot be shared with other professions;

(g) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;

(h) the scientific and technological developments which may reduce ***or increase*** the asymmetry of information



professionals and consumers;

(i) ***the economic impact of the measure, with particular regard to the degree of competition in the market and the quality of the service provided, as well as*** the impact on the free movement of persons and services within the Union;

(j) the possibility to use less restrictive means to achieve the public interest objective;

(k) the ***cumulative*** effect of ***restrictions to both*** access to ***and*** pursuit of the profession, and in particular how each of those requirements contributes to and whether it is necessary ***to achieve*** the same public interest objective.

3. For the purposes of paragraph 2(j), where the measures are justified by consumer protection and where the risks identified are limited to the relationship between the professional and the consumer ***without negatively affecting*** third parties, ***the relevant competent authorities*** shall assess in particular whether the objective can be attained by ***protected professional title without*** reserving activities.

4. For the purposes of paragraph 2(k), ***the relevant competent authorities*** shall assess ***in particular the cumulative effect of imposing*** any of the following requirements:

(a) reserved activities, ***existing alongside*** protected professional title;

between professionals and consumers;

(i) the impact on the free movement of persons and services within the Union, ***on consumer choice and on the quality of the service provided;***

(j) the possibility to use less restrictive means to achieve the public interest objective;

(k) the effect of ***new or amended provisions, when combined with other provisions restricting*** access to ***or*** pursuit of the profession, and in particular how each of those requirements contributes to and whether it is necessary ***for the achievement of*** the same public interest objective.

***Where Member States consider, in view of the requirements for a given regulated profession, that any particular criterion is not relevant for the assessment, they shall duly justify their decision when notifying the Commission pursuant to Article 9(1).***

3. For the purposes of paragraph 2(j), where the measures are justified by consumer protection ***only*** and where the risks identified are limited to the relationship between the professional and the consumer, ***and therefore do not negatively affect*** third parties, ***Member States*** shall assess in particular whether the objective can be attained by ***means that are less restrictive than*** reserving activities.

4. For the purposes of paragraph 2(k), ***Member States*** shall assess ***the likely effects of new or amended provisions, when combined with*** any of the following requirements ***restricting access to or pursuit of regulated professions, bearing in mind the fact that such effects might be positive as well as negative:***

(a) reserved activities, protected professional title ***or any other form of regulation within the meaning of point (a)***

- (b) continuous professional development requirements;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory chamber membership, registration or authorisation schemes, in particular where those requirements imply the possession of a particular professional qualification;
- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding particular professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, *in particular* where the profession is regulated in parts of a Member State's territory in a different *manner*;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;

*of Article 3(1) of Directive 2005/36/EC;*

- (b) **mandatory** continuous professional development requirements;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory chamber membership, registration or authorisation schemes, in particular where those requirements imply the possession of a particular professional qualification;
- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding particular professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, **including** where the profession is regulated in parts of a Member State's territory in a **manner that is different to the way in which it is regulated in other parts**;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;
- (ja) **fixed minimum and/or maximum tariff requirements**;
- (jb) **requirements on advertising**.

**4a.** Where provisions referred to in paragraph 4 concern the regulation of healthcare professions and have patient safety implications, Member States shall take account of the objective of ensuring a high level of human health protection.

**4b.** Member States shall in addition ensure compliance with the principle of the proportionality of specific requirements related to cross-border provision of services, provided under Title II of Directive 2005/36/EC, including:

(a) automatic temporary registration with or pro forma membership of a professional organisation or body, referred to in point (a) of Article 6(1) of Directive 2005/36/EC, a professional card or any other equivalent requirement;

(b) a declaration to be made in advance, pursuant to Article 7(1) of Directive 2005/36/EC, documents, required pursuant to Article 7(2) of Directive 2005/36/EC or any other equivalent requirement;

(c) the requirement for the payment of a fee or any charges related to administrative formalities, which the service provider incurs.

## Amendment 38

### Proposal for a directive Article 7

*Text proposed by the Commission*

#### Article 7

Information and involvement of stakeholders

Member States shall, by appropriate means, inform citizens, service recipients, representative associations **and** relevant stakeholders **other than the** members of the profession before introducing new

*Amendment*

#### Article 7

Information and involvement of stakeholders

1. Member States shall, by appropriate means, inform citizens, service recipients, representative associations, **social partners and other** relevant stakeholders, **including** members of the profession before

legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ***or amending existing ones, and give them the opportunity to make known their views.***

introducing new ***or amending existing*** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions.

***2. Member States shall carry out public consultations in order to appropriately involve all parties concerned and give them the opportunity to make known their views.***

## **Amendment 39**

### **Proposal for a directive Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 7 a***

***Judicial review***

***Member States shall ensure that judicial review is available in national law in respect of the legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions falling within the scope of this Directive.***

*Justification*

*In order to ensure that citizens and businesses will fully benefit from adequate and proportionate rules, it is appropriate to foresee that the newly adopted rules must be subject to judicial review, while the national judge, entrusted with the application of the principle of proportionality will have at his disposal all the necessary information concerning the reasons for adopting the new regulation.*

## **Amendment 40**

### **Proposal for a directive Article 8**

*Text proposed by the Commission*

*Amendment*

Article 8

Article 8

Exchange of information between  
*competent authorities*

1. For the purposes of the efficient application of this Directive, before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, *or amending existing ones*, Member States shall encourage the exchange of information with *competent authorities of* other Member States on matters covered by this Directive, such as the particular way they regulate a profession or the effects of regulation identified in similar sectors of activities, on a regular basis, or, where appropriate, on an ad hoc basis.

2. Member States shall inform the Commission of the *competent* authorities responsible for transmitting and receiving information for the purposes of applying paragraph 1.

Exchange of information between *Member States*

1. For the purposes of the efficient application of this Directive, before introducing new, *or amending existing*, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, Member States shall *take the necessary measures to* encourage the exchange of information with other Member States on matters covered by this Directive, such as the particular way they regulate a profession or the effects of regulation identified in similar sectors of activities, on a regular basis, or, where appropriate, on an ad hoc basis.

2. Member States shall inform the Commission of the *relevant* authorities responsible for transmitting and receiving information for the purposes of applying paragraph 1.

## Amendment 41

### Proposal for a directive Article 9

*Text proposed by the Commission*

Article 9

Transparency

1. The reasons for considering that provisions, assessed in accordance with this Directive, are justified, *necessary* and proportionate, and which are communicated to the Commission pursuant to *paragraphs 5 and 6* of Article 59 of Directive 2005/36/EC, shall be recorded by the *relevant competent authorities* in the database of regulated professions, referred to in *Article 59 paragraph 1* of Directive 2005/36/EC and *thereafter* made publicly available by the Commission.

*Amendment*

Article 9

Transparency

1. The reasons for considering that provisions, assessed in accordance with this Directive, are *non-discriminatory*, justified, and proportionate, and which are *to be* communicated to the Commission pursuant to Article 59(5) of Directive 2005/36/EC, shall be recorded by the *Member States* in the database of regulated professions, referred to in *Article 59(1)* of Directive 2005/36/EC and made publicly available by the Commission.

2. Member States and other interested parties may submit *comments* to the Commission *or to the Member State which has notified* the provisions.

2. Member States and other interested parties may submit *observations* to the Commission *concerning* the provisions *and the reasons for considering that they are non-discriminatory, justified and proportionate. These observations shall be duly taken into account by the Commission in its summary report produced pursuant to Article 59(8) of Directive 2005/36/EC.*

## Amendment 42

### Proposal for a directive

#### Article 11 – paragraph 1 – subparagraph 1

##### *Text proposed by the Commission*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest. They shall forthwith communicate to the Commission the text of those provisions.

##### *Amendment*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *12 months following the day of its publication in the Official Journal of the European Union* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

## **EXPLANATORY STATEMENT**

### **I. Introduction**

The proportionality principle has been recognised as a fundamental principle of EU law by the Treaties as well as the ECJ who defined the concrete criteria for its application. Thus, there is no doubt that any professional regulation should be proportionate and fit for purpose.

In 2013, the Professional Qualifications Directive even endorsed this principle, by requiring national authorities to assess the proportionality of their existing regulation and to submit relevant information to the Commission. The Commission proposal and the changes to it suggested by the Rapporteur should be seen in this context. The Commission aims at setting up a common framework for conducting proportionality tests when introducing new regulation of professions, in order to ensure that national authorities in all Member States assess the proportionality of their regulation in an equally efficient manner.

The Rapporteur welcomes these efforts to deepen the Single Market for services, and considers that the proposal should not be an instrument of mere “de”-regulation. The added value of professional regulation should be recognized and an emphasis should be put on the fact that smart regulation can further the economic growth in the Member States and in the EU as a whole.

Your Rapporteur therefore believes that several improvements have to be made to the Commission's proposal to ensure that this becomes a tool for smart regulation in the context of the internal market for services.

### **II. The Rapporteurs position**

#### **1. Recognition of the specific status of healthcare services and guaranteeing the highest level of human health protection when regulating professions**

The Rapporteur believes that it is important to protect the health sector and the high quality of the healthcare services in the interest of EU citizens, without at the same time harming the internal market. Therefore, the Rapporteur proposes to create a specific status for healthcare professions, ensuring their “protection” within the proportionality principle.

#### **2. Addressing gold-plating practices**

Whereas a number of professional activities are already harmonised at EU level, often Member States impose unnecessary requirements which are not foreseen by the relevant EU law. The Rapporteur proposes to address explicitly these gold-plating practices where EU rules on regulated professions are used as an excuse to impose unjustified burdens to citizens and businesses.

### **3. Defining a reasonable margin of appreciation for Member States with regard to their institutional and procedural autonomy**

While professional regulation is a shared competence according to Articles 4, 46, 53 (1) and 62 TFUE, it is important to define a reasonable margin of appreciation of Member States when taking regulatory choices. The Rapporteur proposes therefore to remove the obligation to consult an independent scrutiny body, which could involve important additional costs where new bodies have to be created. Instead, it is clarified that it is for the Member States to decide whether they chose to request the opinion of an independent body.

With regard to the procedural autonomy, the Rapporteur proposes to allow a reasonable margin of appreciation to Member States, suggesting that specific studies or materials should not be required. The decision-makers should be able to gather evidence by any means (hearings, consultations, etc.). Nevertheless, in line with the case-law of the ECJ, Member States should provide detailed evidence (Case C-148/15).

### **4. Non-discrimination**

While compliance with the principle of non-discrimination on the basis of nationality or residence is required by well-established case-law and by Article 59 of Directive 2005/36/EC, the initial proposal of the Commission does not make reference to it. Therefore, the Rapporteur proposes to include it as an additional step of the assessment, made by national authorities.

### **5. Completing the list of overriding reasons**

Changes proposed in the list of overriding reasons of general interest merely reflect the case-law of the ECJ. The rapporteur proposes to complete the list with two additional reasons, identified by the ECJ, namely guaranteeing the quality of craft work, as well as research and development, in view of the fact that professions, such as crafts, researchers and teachers generate important added value to society and the economy of the EU as a whole. Furthermore, depending on the public interest to protect and the risks related to it, the Rapporteur believes that it is important to clarify that Member States may take the necessary measures and strengthen their regulation if there is an increasing risk.

### **6. Clarification of the proportionality test criteria**

In line with established case-law, Member States may impose several requirements on the access to certain professions, such as membership in professional organisations, continuous training etc. which can be important to achieve the public interest objective and should be accepted, unless if they are disproportionate. The Rapporteur proposes therefore several clarifications indicating where such requirements seem to be appropriate. Furthermore, the Rapporteur believes that while technological and scientific progress should be promoted and in many cases disruptive technologies involve modernisation of regulated professions in reducing the risk for consumers, there are cases where such developments may require additional training for dealing with new technologies. In addition, the Rapporteur considers that instead of focussing on the economic impact as a criterion in the assessment of the proportionality of the measures, the balance between the restrictions imposed on a



fundamental freedom and the public interest objective should rather be pursued. Last but not least, the Rapporteur believes that service providers of regulated professions are already obliged to fulfil higher standards of quality of professional independence, life-long education or life-long learning. Therefore, these professions should be able to rely on purely proportionate measures by Member States, where they provide services.

### **7. Enabling citizens and companies to enforce their rights by providing for a judicial review**

The proper implementation of the Commission's initiative raises questions and it is unclear whether a specific action is required if an interested party challenges a specific provision or assessment. Therefore, the Rapporteur proposes to provide for a judicial review of requirements, governing access to or pursuit of professions according to national procedures.

### **8. Wider public consultations**

The Rapporteur considers that the information obligation, provided in the initial proposal is not sufficient and it does not place all stakeholders, namely members of the profession on equal footing. Therefore, it is proposed to inform equally all interested parties and in addition, to introduce a possibility for wider public consultations. Public consultations are an essential element of governing transparent and evidence-based policy making.

### **9. Clarification of the purpose of the exchange of information between Member States**

The Rapporteur proposes to clarify that the exchange of information between Member States on their regulatory approaches only aims at informed decisions, but this does not mean that a given national regulatory approach can or should be automatically transposed in another Member State. On the contrary, Member States must decide whether to regulate or not according to their own regulatory context.

### **10. Transparency and enhanced role of the Commission in centralising the information**

The Rapporteur welcomes the enhanced transparency in the initial proposal, but suggests a central role for the Commission in receiving observations from national authorities, in order to avoid unnecessary bilateral conflicts between Member States.

13.10.2017

## **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, set out in Article 168 of the Treaty on Functioning of the European Union (TFEU), 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 that result, such regulated professions should be excluded from the scope of this Directive.***

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 9**

*Text proposed by the Commission*

*Amendment*

(9) The burden of proof of justification and proportionality lies on the Member States. The reasons for regulation invoked by a Member State by way of justification should thus be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and by specific evidence substantiating its arguments.

(9) The burden of proof of justification and proportionality lies on the Member States. The reasons for regulation invoked by a Member State by way of justification should thus be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and by specific evidence substantiating its arguments. ***That should not prevent Member States from taking immediate measures in the field of health care which they consider necessary in order to protect public health.***

### Amendment 3

#### 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 national historic and artistic heritage, social policy objectives and cultural policy objectives. According to settled case-law, purely economic reasons, having

##### *Amendment*

(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 *TFEU*, 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. ***Where those objectives apply, regulation of professions should be considered to be a necessary safeguard of the public interest rather than an obstacle to competition and free movement.*** It is important to ensure that public interest objectives are adequately identified in order to determine the intensity of the regulation. For example, ***account should be taken of the fact that people's health and lives are of prime importance among the assets and interests protected by the TFEU.*** In order to ensure a high level of protection of public health, Member States should ***be granted*** 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, ***including patients***, and workers; the safeguarding of the proper administration of justice; fairness of trade transactions; combating fraud and prevention of tax

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.

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 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.

#### **Amendment 4**

##### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) Where regulation of a profession is justified by the protection of public health, the special characteristics of health services should be borne in mind. Health services are very different from other services, and patients are very different from other service recipients. As a result, it should be assumed that health professions are typically subject to regulation of professions.***

#### **Amendment 5**

##### **Proposal for a directive Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) This Directive seeks to strike a balance between securing public interest objectives and quality of services on the one hand, and improving access to, and exercise of, regulated professions, which is in the interests of the professionals themselves, on the other. It is for the Member States to determine the level of***

*protection which they wish to afford to the public interest objectives and the proportionate way in which that level is to be achieved. It is clear from settled case law of the Court of Justice that when one Member State imposes less strict rules than another Member State, that does not necessarily mean that the stricter rules are disproportionate.*

## Amendment 6

### Proposal for a directive Recital 18

*Text proposed by the Commission*

(18) The economic impact of the measure, including a cost-benefit analysis with particular regard to the degree of competition in the market and the quality of the service provided, as well as the impact on the right to work and on the free movement of persons and services within the Union should be duly taken into account by the competent authorities. Based on this analysis, Member States should ascertain, in particular, whether the extent of the restriction of access to or pursuit of regulated professions within the Union is proportionate to the importance of the objectives pursued and the expected gains.

*Amendment*

(18) The economic impact of the measure, including a cost-benefit analysis with particular regard to the degree of competition in the market and the quality of the service provided, as well as the impact on the right to work and on the free movement of persons and services within the Union should be duly taken into account by the competent authorities. ***However, none of those prerogatives should take precedence over public safety, which remains paramount.*** Based on this analysis, Member States should ascertain, in particular, whether the extent of the restriction of access to or pursuit of regulated professions within the Union is proportionate to the importance of the objectives pursued and the expected gains.

## Amendment 7

### Proposal for a directive Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) According to Article 168(1) TFEU a high level of human health protection should be ensured in the definition and implementation of all Union policies and***

*activities. That also implies that a high level of human health protection is to be ensured when the Union adopts acts under other TFEU provisions.*

## **Amendment 8**

### **Proposal for a directive Recital 20 b (new)**

*Text proposed by the Commission*

*Amendment*

*(20b) The introduction of additional requirements could add value to the public interest objective and the fact that their combined effect should be assessed does not mean that those requirements are disproportionate. For example, continuous professional development requirements might be suitable for the purpose of ensuring that professionals keep abreast of developments in their respective areas, while contributing to safe practice in professions with particular risks. In addition, continuous professional development requirements might be suitable where they cover technical, scientific, regulatory and ethical developments, and where they motivate professionals to participate in lifelong learning relevant to their profession. Where it is necessary and suitable to achieve the public interest objective, compulsory chamber membership could be considered to be appropriate, in particular where chambers have a public mandate.*

## **Amendment 9**

### **Proposal for a directive Recital 20 c (new)**

*Text proposed by the Commission*

*Amendment*

*(20c) This Directive should respect the Member States' competence to regulate*

*professions in the field of health care based on Article 168(7) TFEU as well as Member States' intention to provide and guarantee a high level of health care and patient safety. For this purpose, Member States should be able to decide on the degree of importance of economic considerations in relation to the other relevant proportionality criteria.*

## **Amendment 10**

### **Proposal for a directive Recital 20 d (new)**

*Text proposed by the Commission*

*Amendment*

*(20d) The proportionality criteria as set out in this Directive could be applied to the appropriate extent and degree of intensity during an assessment of proportionality undertaken before introducing new provisions, or before amending existing ones. The extent and degree of intensity applied during the assessment should be proportionate to the content of the provision being introduced and to its impact.*

## **Amendment 11**

### **Proposal for a directive Recital 24**

*Text proposed by the Commission*

*Amendment*

(24) Since the objectives of this Directive, namely the removal of disproportionate restrictions on access to or pursuit of regulated professions cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance

(24) Since the objectives of this Directive, namely the removal of disproportionate restrictions on access to or pursuit of regulated professions cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance



with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

with the principle of ***non-discrimination, and with the principle of*** proportionality as set out in that Article, this Directive does not go beyond what is necessary, in order to achieve those objectives,

## Amendment 12

### Proposal for a directive Article 1 – paragraph 1

#### *Text proposed by the Commission*

This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, with a view to ensuring the proper functioning of the internal market.

#### *Amendment*

This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new ***essential*** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, with a view to ensuring the proper functioning of the internal market, ***while also ensuring that the protection of citizens through the use of verified standards and qualifications of all those regulated professions and professionals, remains of paramount importance. It does not affect the Member States' prerogative and discretion to decide whether and how to regulate a profession within the limits set by the principles of non-discrimination and proportionality.***

#### *Justification*

*In order to respect the principle of subsidiarity, to avoid additional bureaucracy and to be “proportional” the proportionality assessments have to focus on only essential modifications.*

## Amendment 13

### Proposal for a directive Article 2 – paragraph 1

#### *Text proposed by the Commission*

1. This Directive shall apply to requirements under the legal systems of the

#### *Amendment*

1. This Directive shall apply to requirements under the legal systems of the

Member States restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title, falling within the scope of Directive 2005/36/EC.

Member States restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title, falling within the scope of Directive 2005/36/EC, ***without prejudice to paragraph 1a of this Article.***

## Amendment 14

### Proposal for a directive Article 2 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. This Directive shall not apply to any requirements restricting access to, or to the pursuit of, regulated health professions in relation to the provision of healthcare services, including pharmaceutical services and the prescription, dispensation and provision of medicinal products and medical devices, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private.***

## Amendment 15

### Proposal for a directive Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, the relevant competent authorities undertake an assessment of their proportionality in accordance with the rules laid down in this Directive.

1. Member States shall ensure that before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, the relevant competent authorities undertake an assessment of their proportionality in accordance with the rules laid down in this Directive, ***taking full account of the specific nature of each profession.***

## Amendment 16

### Proposal for a directive Article 4 – paragraph 3

*Text proposed by the Commission*

3. The reasons for considering that a provision is justified, necessary and proportionate shall be substantiated by qualitative and, wherever possible, quantitative evidence.

*Amendment*

3. The reasons for considering that a provision is justified, necessary and proportionate shall be substantiated by qualitative and, wherever possible **and relevant**, quantitative evidence.

## Amendment 17

### Proposal for a directive Article 5 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they intend to introduce and amendments they intend to make to existing provisions are justified by public interest objectives.

*Amendment*

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they intend to introduce and amendments they intend to make to existing provisions are justified by public interest objectives, **including the objective of public health and safety**.

## Amendment 18

### Proposal for a directive Article 5 – paragraph 2

*Text proposed by the Commission*

2. The relevant competent authorities shall consider in particular whether those provisions are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, the safeguarding of the proper administration

*Amendment*

2. The relevant competent authorities shall consider in particular whether those provisions are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services, **including patients**, and workers, the safeguarding of

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 national historic and artistic heritage, social policy objectives and cultural policy objectives.

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 national historic and artistic heritage, social policy objectives and cultural policy objectives.

## Amendment 19

### Proposal for a directive

#### Article 6 – paragraph 2 – introductory part

##### *Text proposed by the Commission*

2. When assessing the necessity and the proportionality of the provisions, the relevant competent authorities shall consider in particular:

##### *Amendment*

2. When assessing the necessity and the proportionality of the provisions, the ***competent authorities shall apply the criteria listed in this paragraph taking into account the particular circumstances of the profession concerned, the nature of the provision and the public interest objective pursued. The relevance of any individual criterion may therefore depend upon the importance of the public interest objectives pursued.*** The relevant competent authorities shall consider in particular:

## Amendment 20

### Proposal for a directive

#### Article 6 – paragraph 2 – point a

##### *Text proposed by the Commission*

(a) the nature of the risks related to the public interest objectives pursued, in particular the risks to consumers, ***to*** professionals or third parties;

##### *Amendment*

(a) the nature of the risks related to the public interest objectives pursued, in particular the risks to consumers, ***service recipients, including patients,*** professionals or third parties;

## Amendment 21

**Proposal for a directive**  
**Article 7 – paragraph 1**

*Text proposed by the Commission*

Member States shall, by appropriate means, **inform citizens, service recipients, representative associations and** relevant stakeholders **other than the members of the profession** before **introducing** new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, **and give** them the opportunity to make known their views.

*Amendment*

**In addition to members of the profession,** Member States shall, by appropriate means, **inform all** relevant stakeholders **including citizens, service recipients and representative associations** before **proposing** new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, **giving** them the opportunity to make known their views, **which shall then be given due consideration. That process may take place, for example, by means of a public consultation the results of which shall inform the content of the provisions adopted.**

**Amendment 22**

**Proposal for a directive**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. The reasons for considering that provisions, assessed in accordance with this Directive, are justified, necessary and proportionate, and which are communicated to the Commission pursuant to paragraphs 5 and 6 of Article 59 of Directive 2005/36/EC, shall be recorded by the relevant competent authorities in the database of regulated professions, referred to in Article 59 paragraph 1 of Directive 2005/36/EC and thereafter made publicly available by the Commission.

*Amendment*

1. The reasons for considering that provisions, assessed in accordance with this Directive, are justified, necessary and proportionate, and which are communicated to the Commission pursuant to paragraphs 5 and 6 of Article 59 of Directive 2005/36/EC, shall be recorded **expeditiously** by the relevant competent authorities in the database of regulated professions, referred to in Article 59 paragraph 1 of Directive 2005/36/EC and thereafter made publicly available **as soon as possible** by the Commission.

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Proportionality test before adoption of new regulation of professions
<b>References</b>	COM(2016)0822 – C8-0012/2017 – 2016/0404(COD)
<b>Committee responsible</b> Date announced in plenary	IMCO 1.2.2017
<b>Opinion by</b> Date announced in plenary	ENVI 1.2.2017
<b>Rapporteur</b> Date appointed	Françoise Grossetête 5.4.2017
<b>Discussed in committee</b>	29.6.2017
<b>Date adopted</b>	12.10.2017
<b>Result of final vote</b>	+: 57 –: 1 0: 2
<b>Members present for the final vote</b>	Marco Affronte, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Ivo Belet, Biljana Borzan, Lynn Boylan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Birgit Collin-Langen, Miriam Dalli, Angélique Delahaye, Mark Demesmaeker, Stefan Eck, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Arne Gericke, Jens Gieseke, Julie Girling, Sylvie Goddyn, Françoise Grossetête, Andrzej Grzyb, Jytte Guteland, Jean-François Jalkh, Benedek Jávor, Karin Kadenbach, Urszula Krupa, Jo Leinen, Peter Liese, Norbert Lins, Rupert Matthews, Valentinas Mazuronis, Susanne Melior, Miroslav Mikolášik, Gilles Pargneaux, Piernicola Pedicini, Bolesław G. Piecha, Julia Reid, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Renate Sommer, Ivica Tolić, Nils Torvalds, Adina-Ioana Vălean, Jadwiga Wiśniewska, Damiano Zoffoli
<b>Substitutes present for the final vote</b>	Herbert Dorfmann, Luke Ming Flanagan, Elena Gentile, Ulrike Müller, Christel Schaldemose, Bart Staes, Keith Taylor
<b>Substitutes under Rule 200(2) present for the final vote</b>	John Howarth, Răzvan Popa, Sven Schulze

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

57	+
ALDE	Catherine Bearder, Gerben-Jan Gerbrandy, Valentinas Mazuronis, Ulrike Müller, Nils Torvalds
ECR	Mark Demesmaeker, Arne Gericke, Julie Girling, Urszula Krupa, Rupert Matthews, Bolesław G. Piecha, Jadwiga Wiśniewska
EFDD	Piernicola Pedicini
ENF	Sylvie Goddyn, Jean-François Jalkh
GUE/NGL	Lynn Boylan, Stefan Eck, Luke Ming Flanagan
NI	Zoltán Balczó
PPE	Pilar Ayuso, Ivo Belet, Birgit Collin-Langen, Angélique Delahaye, Herbert Dorfmann, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Jens Gieseke, Françoise Grossetête, Andrzej Grzyb, Peter Liese, Norbert Lins, Miroslav Mikolášik, Sven Schulze, Renate Sommer, Ivica Tolić, Adina-Ioana Vălean
S&D	Biljana Borzan, Paul Brannen, Soledad Cabezón Ruiz, Nessa Childers, Miriam Dalli, Jytte Guteland, John Howarth, Karin Kadenbach, Jo Leinen, Susanne Melior, Gilles Pargneaux, Răzvan Popa, Christel Schaldemose, Daciana Octavia Sârbu, Damiano Zoffoli
VERTS/ALE	Marco Affronte, Benedek Jávor, Bart Staes, Keith Taylor

1	-
EFDD	Julia Reid

2	0
PPE	Annie Schreijer-Pierik
S&D	Elena Gentile

Key to symbols:

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Proportionality test before adoption of new regulation of professions			
<b>References</b>	COM(2016)0822 – C8-0012/2017 – 2016/0404(COD)			
<b>Date submitted to Parliament</b>	12.1.2017			
<b>Committee responsible</b> Date announced in plenary	IMCO 1.2.2017			
<b>Committees asked for opinions</b> Date announced in plenary	EMPL 1.2.2017	ENVI 1.2.2017	CULT 1.2.2017	JURI 1.2.2017
	PETI 1.2.2017			
<b>Not delivering opinions</b> Date of decision	EMPL 21.11.2017	CULT 27.2.2017	JURI 20.6.2017	PETI 28.2.2017
<b>Rapporteurs</b> Date appointed	Andreas Schwab 25.1.2017			
<b>Discussed in committee</b>	12.7.2017	21.11.2017		
<b>Date adopted</b>	4.12.2017			
<b>Result of final vote</b>	+: -: 0:	33 3 0		
<b>Members present for the final vote</b>	Pascal Arimont, Sergio Gaetano Cofferati, Lara Comi, Daniel Dalton, Nicola Danti, Pascal Durand, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Nosheena Mobarik, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo			
<b>Substitutes present for the final vote</b>	Biljana Borzan, Birgit Collin-Langen, Kaja Kallas, Roberta Metsola, Matthijs van Miltenburg, Lambert van Nistelrooij, Sabine Verheyen			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Jonathan Bullock, Andrey Kovatchev, Rupert Matthews, Bogdan Brunon Wenta, Flavio Zanonato			
<b>Date tabled</b>	8.12.2017			



## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

33	+
ALDE	Kaja Kallas, Jasenko Selimovic, Matthijs van Miltenburg
ECR	Daniel Dalton, Rupert Matthews, Nosheena Mobarik, Anneleen Van Bossuyt
EFDD	Robert Jarosław Iwaszkiewicz
PPE	Pascal Arimont, Birgit Collin-Langen, Lara Comi, Andrey Kovatchev, Roberta Metsola, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Sabine Verheyen, Bogdan Brunon Wenta, Lambert van Nistelrooij
S&D	Biljana Borzan, Sergio Gaetano Cofferati, Nicola Danti, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Flavio Zanonato
Verts/ALE	Pascal Durand, Igor Šoltes

3	-
EFDD	Jonathan Bullock, Marco Zullo
ENF	Mylène Troszczynski

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention