



2016/0404(COD)

23.6.2017

*****I**

DRAFT 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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	39

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 2017¹,
 - 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 opinions of the Committee on Employment and Social Affairs, the Committee on Environment, Public Health and Food Safety and the Committee on Legal Affairs (A8-0000/2017),
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.

¹ Not yet published in the Official Journal.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) In the absence of specific provisions harmonising the requirements on access to a regulated profession or its pursuit laid down in Union law, it is the Member States' ***prerogative*** to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Amendment

(2) In the absence of specific provisions harmonising the requirements on access to a regulated profession or its pursuit laid down in Union law, it is ***for*** the Member States to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Or. en

Justification

It is necessary to clarify that it is for the Member States to regulate professions, as long as they are not harmonised at EU level. Regulating professions is a shared competence according to the Treaty and the EU legislator has already harmonised many economic activities at EU level (architects, auditors, insurance brokers, etc.).

Amendment 2

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, it is therefore necessary to establish 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 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. 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. ***While professional regulation of healthcare services, consisting of activities intended to assess, maintain or restore the state of health of patients, remains, according to Article 59 of Directive 2005/36/EC, subject to compliance with the proportionality principle, it should be excluded from the scope of this Directive. With regard to the protection of public health, it should be highlighted that health and life of humans rank foremost among the interests protected by the Treaty and that it is for the Member States to determine the level of protection which they wish to afford to public health and the way in which that level is to be achieved. In that context, while respecting the minimum training conditions laid down in Directive 2005/36/EC for certain professions, Member States enjoy a margin of appreciation within which they are able to determine the intensity of the regulation of professions, provided that that regulation is justified by the***

protection of public health and contributes to guaranteeing access to healthcare, which is recognised as a fundamental right in the Charter of Fundamental Rights of the European Union, and in particular access to safe, high quality, and efficient healthcare to citizens on their territory.

Or. en

Justification

To guarantee the effectiveness and the efficiency of the entire proposal, it is necessary to focus the new obligations on sectors, other than healthcare services, while ensuring that the latter will remain subject to the obligation to comply with Article 59 of Directive 2005/36/EC.

Amendment 4

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Where the requirements on the access to a given profession or its pursuit are harmonised at Union level, Member States should avoid “gold-plating”, consisting in extending the scope of Union acts unnecessarily or in introducing an excess of norms, administrative procedures, fees or sanctions, especially when accumulated at national, regional and local level, which go beyond what is necessary to attain the objective pursued.

Or. en

Justification

Gold-plating practices, creating additional burden for citizens and businesses, should be explicitly addressed, given that Member States often overregulate certain sectors or extend the harmonised requirements to activities, which are not covered by the relevant EU act.

Amendment 5

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) This Directive should not affect Member States' rules concerning the organisation or the content of professional education and training, and in particular should not affect those rules as regards the possibility for Member States to delegate to professional organisations the power to organise or supervise professional education and training. However, if the period of professional education or training comprises activities, which are remunerated, the freedom of establishment and the freedom to provide services should be guaranteed.

Or. en

Justification

It is important to clarify that the rules concerning professional education and training remain within the competence of Member States, especially concerning the possibility to delegate this task to professional organisations. However, according to established case-law, if those activities are remunerated, free movement should be guaranteed in particular as regards the conditions required for accessing professional training (Case C-313/01 Morgenbesser).

Amendment 6

Proposal for a directive Recital 8

Text proposed by the Commission

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

(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.

a professional qualification. **Member States should also be able to adopt national 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 professional companies..**

Or. en

Justification

Directive 2005/36/EC gives only one example where one of the modes of pursuit of a profession is regulated i.e. protected professional title. It is therefore necessary to clarify in a recital that there are other forms of regulation, such as imposing qualification requirements only to managers or legal representatives of a company, which are less restrictive than imposing such requirement to any person practising the profession by way of reserved activities.

Amendment 7

Proposal for a directive Recital 9

Text proposed by the Commission

(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.

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 proportionality of the measure 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 measure prior to its adoption, it should carry out an objective and detailed analysis, capable of demonstrating, on the basis of consistent evidence, that there are genuine risks for**

the achievement of public interest objectives, in view of the specific circumstances of that Member State.

Or. en

Justification

It is necessary to clarify the way to prove the proportionality of national measures in allowing a reasonable margin of appreciation to Member States and avoiding additional burdens. While Member States should not be asked to produce a specific form of evidence, such as studies (see Case C-316/07), they should provide detailed evidence, so that the risk must be measured, not according to the yardstick of general conjecture, but on the basis of relevant research (see Case C-148/15 Deutsche Parkinson).

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 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.

Or. en

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 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

(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 might include an opinion obtained from an independent body entrusted by the Member States concerned to provide such opinion.*** In particular, 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.

Or. en

Justification

Member States should be allowed more flexibility and institutional autonomy in deciding to involve independent bodies in the assessment of their legislation, without necessarily having to create new structures.

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 should be 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.

Or. en

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

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,

Amendment

(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; combating fraud and prevention of tax evasion and avoidance; road safety; **guaranteeing the quality of craft work; research and**

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 general interest.

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 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. *It is important to ensure that public interest objectives are adequately identified in order to determine the appropriate level of regulation. For example, where the risks to the public interest objective increase, Member States should enjoy a margin of appreciation within which they are able to determine the degree 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.*

Or. en

Justification

The list of overriding reasons should be completed by two additional reasons, identified by the ECJ. Moreover, since the proportionality principle goes both ways, it is important to clarify that Member States may take the necessary measures and strengthen their regulation whenever the risk to the public interest objective increases.

Amendment 12

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) Where a Member State intends to

Amendment

(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.

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. ***Member States should apply the proportionality criteria laid down in this Directive when introducing new or amending existing legislative, regulatory or administrative provisions to the extent that those criteria are relevant for a given profession. The extent of the assessment should be proportionate to the nature, the content and the impact of the provision being introduced, and should take into account the entirety of the regulatory context for a given regulated profession.***

Or. en

Amendment 13

Proposal for a directive

Recital 14

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

Amendment

(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.

exceptions to the restrictions involved are applied in line with the stated objective. Furthermore, the national measure should contribute **effectively** to achieving the objective pursued and therefore, where it has no effect on the ground for justification, it should not be considered as suitable.

Or. en

Amendment 14

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.*** Where a Member State regulates a profession, account should be taken of the fact that technological developments may ***either*** 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 technological developments carry a high risk to the public interest objectives, it is for the Member States , where necessary, to provide for stricter regulation encouraging professionals to keep up with technical and scientific progress.***

Or. en

Justification

The need for regulation of professions may not only be reduced in case of technological developments, but may also arise due to risks of emerging technologies, requiring further training, depending on the nature of the activity.

Amendment 15

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 *balance between, on the one hand, the freedom to choose an occupation, to exercise the right of establishment and to provide services and, on the other hand, the protection of the public interest objectives, paying particular regard to the quality of 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 *provision restricting access to or pursuit of regulated professions* is proportionate to the importance of the objectives pursued and the expected gains.

Or. en

Justification

The economic impact of measures as such has not been identified by the court as one of the proportionality criteria. Furthermore, such requirement could lead to an 'economic needs test' that conditions market access upon the fulfilment of certain economic criteria, which is not allowed by the ECJ.

Amendment 16

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

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 **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.

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.

Or. en

Justification

A clarification is needed concerning the use of different forms of regulation, starting with the less restrictive form, such as protected title only in cases where consumers can reasonably make a choice; and the most stringent form, combining reserved activities and protected professional title in case of a risk of serious harm to public interest objectives.

Amendment 17

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 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,

Amendment

(20) **Member States** should carry out a **comprehensive** assessment of the circumstances in which the **requirement** is adopted and implemented and examine in particular the **combined** effect of imposing several requirements in addition to the specific professional qualification. 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

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.***

liability. Therefore, when assessing the effect of the measures, ***Member States*** should take into account ***all*** 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 as well as language knowledge requirements, to the extent necessary to practise the profession.

Or. en

Justification

The deleted part of the recital is moved to recital 20a.

Amendment 18

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) 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 chamber membership should 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 may 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. 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.

Or. en

Justification

In line with established case law, Member States are free to impose 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. It is therefore necessary to clarify in which cases such requirements seem to be appropriate.

Amendment 19

Proposal for a directive

Recital 20 b (new)

(20b) According to Directive 2005/36/EC, Member States have the right to require service providers wishing to provide services on a temporary basis, to provide a certain amount of information to the authorities by a written declaration to be made in advance of the first service provision and to renew this declaration on a yearly basis. Directive 2005/36/EC provides for administrative cooperation where a Member State has duly justified doubts as to the information or documents presented. Given that, for regulated professions, a compulsory qualification and higher safeguards are usually required, the risk of circumvention of the applicable rules regarding working conditions is limited. Rules concerning service providers, who might already be required to submit a declaration and documents in accordance with Directive 2005/36/EC, as well as of workers exercising the activity under their responsibility, represent an additional burden for those providers and should therefore only be applied if this would be proportionate with regards to the specific circumstances.

Or. en

Amendment 20

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

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 **when** introducing new **or amending existing**

access to or pursuit of regulated professions and give them the opportunity to make known their views.

requirements restricting access to, or pursuit of regulated professions and give them the opportunity to make known their views. ***Where necessary, Member States are encouraged to carry out wider public consultation in order to gather adequate evidence necessary for designing reforms of professional services, especially in cases of reforms with a greater impact.***

Or. en

Justification

Wider consultations are key to evidence-based policy making. Member States should however be free to define how this consultation is to be organised, without prescribing a particular method (such as online consultation or hearings) or timing.

Amendment 21

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) 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.

Or. en

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 22

Proposal for a directive Recital 22

Text proposed by the Commission

(22) *To facilitate the exchange of best practices, **each** Member State **should encourage the relevant competent authorities** to share adequate and regularly updated information with other Member States on the regulation of professions.*

Amendment

(22) ***For the purposes of exchanging** best practices, Member State **are to be encouraged** to share adequate and regularly updated information with other Member States on the regulation of professions, **including on the effects of such regulation. The Commission should facilitate that exchange of best practices among Member States.***

Or. en

Amendment 23

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.***

Or. en

Justification

While transparency of the decision-making should be enhanced, the Commission in its role as guardian of the Treaties, has to gather and analyse the data received by Member States. Moreover, parallel dialogues and unnecessary bilateral conflicts between Member States should be avoided.

Amendment 24

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 ***when*** introducing new ***or amending existing*** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, with a view ***of*** ensuring the proper functioning of the internal market.

Or. en

Justification

Editorial change in order to ensure that the text adopted at national level complies with the proportionality principle and to avoid specifying a period before the adoption within which the assessment must be carried out.

Amendment 25

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

Text proposed by the Commission

Amendment

This Directive shall not apply to healthcare services consisting of activities intended to assess, maintain or restore the state of health of patients whether or not they are provided via healthcare facilities.

Or. en

Justification

Healthcare services, as defined in Case C-57/12, are excluded from the scope of this Directive in order to ensure efficiency in focussing efforts on other sectors.

Amendment 26

Proposal for a directive
Article 2 – paragraph 2

Text proposed by the Commission

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.

Amendment

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

Or. en

Justification

Editorial change to unify the terminology used, while keeping the legal articulation between this Directive and other specific EU instruments, following the logic of Art. 2(3) of Directive 2005/36/EC.

Amendment 27

Proposal for a directive
Article 4 – title

Text proposed by the Commission

Ex ante assessment ***of new measures***

Amendment

Ex ante assessment ***and monitoring***

Or. en

Amendment 28

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ***ensure that***

Amendment

1. Member States shall ***undertake an***

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.**

assessment in accordance with the rules laid down in this Directive when introducing new or amending **existing** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions. **This shall only apply to essential regulatory decisions on regulated professions.**

Or. en

Amendment 29

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Any **requirement** 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.

Or. en

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 30

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 **non-discriminatory, justified** and proportionate shall be substantiated by qualitative and, wherever possible, quantitative evidence, **taking into account the reasonable margin of appreciation allowed to Member States.**

Justification

To allow a reasonable margin of appreciation to Member States as to the means of proof, while keeping with the requirement to provide detailed evidence, substantiated by qualitative elements (analysing the objective reasons behind the problem) and whenever possible quantitative elements (using measurable data to quantify the problems and the effects), as already required in Case C-148/15 Deutsche Parkinson and in the Protocol on subsidiarity and proportionality concerning Union acts.

Amendment 31

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall monitor the ***compliance*** of legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions ***with the rules laid down in this Directive*** on a regular basis and with a frequency appropriate to the regulation concerned, having due regard to any developments that have occurred since the ***provision*** concerned was adopted.

Or. en

Amendment 32

Proposal for a directive Article 4 – paragraph 5

Text proposed by the Commission

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***.

Amendment

5. 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.

Justification

Member States should be allowed more flexibility when deciding which scrutiny bodies should be involved in the assessment, especially in the case of public bodies. Therefore, the possibility to consult independent bodies is clarified in a recital.

Amendment 33

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.

Or. en

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 34

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they ***intend to***

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they introduce and

introduce and amendments they *intend to* make to existing provisions are justified by public interest objectives.

amendments they make to existing provisions are justified by public interest objectives.

Or. en

Amendment 35

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 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

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 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, ***guaranteeing the quality of craft work, 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.

Or. en

Justification

To facilitate Member States' task in identifying overriding reasons, it is necessary to add the quality of craft work, recognised in Case C-215/01 Schnitzer, as well as research and development, identified in Case C-39/04 Laboratoires Fournier.

Amendment 36

Proposal for a directive

Article 5 – paragraph 3

Text proposed by the Commission

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

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.

Or. en

Justification

The grounds of a purely economic nature are now clarified in the corresponding recital, in line with the findings of the ECJ in Case C-201/15.

Amendment 37

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. ***When*** introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones, Member States shall ***ensure that*** those provisions are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective. ***The extent of the assessment shall be proportionate to the nature, the content and the impact of the provision being introduced, in view of all regulation in place, taking into account the reasonable margin of appreciation of the Member States.***

Or. en

Justification

The intensity of the proportionality assessment should be adapted to the content of the new provisions, taking into account the entire regulatory context, without excluding from this obligation certain amendments.

Amendment 38

Proposal for a directive

Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. ***Member States*** shall consider ***where relevant***:

Or. en

Amendment 39

Proposal for a directive

Article 6 – paragraph 2 – point h

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Depending on the activity concerned, it is appropriate to clarify that scientific progress may not only reduce, but also increase the asymmetry of information and require additional training to enable professionals to use new technologies properly.

Amendment 40

Proposal for a directive

Article 6 – paragraph 2 – point i

Text proposed by the Commission

Amendment

(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*;

(i) the *balance between, on the one hand, the freedom to choose an occupation, to exercise the right of establishment and to provide services and, on the other, the protection of public interest objectives, paying particular regard to the quality of the service provided*;

Or. en

Justification

The economic impact as such is not among the criteria, identified by the ECJ when assessing the proportionality of a measure. Rather the intention is to focus on the balance between the limitations on the fundamental freedoms and the protection of the legitimate public interest objective (see Case C-99/16).

Amendment 41

Proposal for a directive

Article 6 – paragraph 2 – point k

Text proposed by the Commission

Amendment

(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.

(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 to achieve the same public interest objective.

Or. en

Justification

Technical clarification to cover restrictions on access or pursuit of professions in a comprehensive way.

Amendment 42

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. For the purposes of paragraph 2(j), where the measures are justified **only** 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 **Member States** shall assess in particular whether the objective can be attained by **less restrictive means than** reserving activities.

Or. en

Justification

It is important to allow Member States to use not only the protected title, but also other less restrictive means that they deem necessary.

Amendment 43

Proposal for a directive

Article 6 – paragraph 4 – introductory part

Text proposed by the Commission

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:

Amendment

4. For the purposes of paragraph 2(k), **Member States** shall assess all **regulation in place and** in particular the effect of **the new or amended requirement in combination with** the following requirements, **it being understood that there might be positive as well as negative effects**:

Or. en

Justification

It is important to clarify that measures cannot be assessed in isolation and the specific national regulatory context in its entirety should be taken into account.

Amendment 44

Proposal for a directive

Article 6 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) reserved activities, protected professional title, ***or any other form of regulation of one of the modes of pursuit of a profession;***

Or. en

Amendment 45

Proposal for a directive

Article 6 – paragraph 4 – point b

Text proposed by the Commission

(b) continuous professional development ***requirements***;

Amendment

(b) ***obligation to undergo*** continuous professional development;

Or. en

Amendment 46

Proposal for a directive

Article 6 – paragraph 4 – point i

Text proposed by the Commission

(i) requirements concerning insurance cover or other means of personal or collective with regard to professional liability;

Amendment

(i) requirements concerning insurance cover or other means of personal or collective ***protection*** with regard to professional liability;

Or. en

Amendment 47

Proposal for a directive

Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Member States shall in addition assess the proportionality of administrative requirements and control measures concerning the cross-border provision of services by service providers for which the access or the pursuit is regulated or by any person providing such a service under the responsibility of such a provider.

This concerns in particular the following obligations:

- (a) to obtain an authorisation, including a specific professional card from, or to be registered with, the competent authorities, or to satisfy any other equivalent requirement;***
- (b) to make a declaration other than the one referred to in article 7 (1) of Directive 2005/36/EC;***
- (c) to have a representative in its territory;***
- (d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.***

Member States shall in particular assess whether the information and documents which might be required according to Article 7 of Directive 2005/36/EC together with the possibility of obtaining further details by way of administrative cooperation between Member States through the IMI system, are not sufficient and whether there is a risk of circumvention of the applicable rules by service providers.

Or. en

Justification

Whereas Member States may, where necessary and in accordance with Directive 2005/36/EC provide for declaration requirements and other administrative formalities, 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.

Amendment 48

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

Member States shall, by appropriate means, inform citizens, service recipients, representative associations and relevant stakeholders ***when*** 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.

Or. en

Justification

The information obligation should put on equal footing all interested parties, including the members of the profession concerned.

Amendment 49

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.

Or. en

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 50

**Proposal for a directive
Article 8 – paragraph 1**

Text proposed by the Commission

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.

Amendment

1. For the purposes of the efficient application of this Directive, ***when*** 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 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.

Or. en

Amendment 51

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

Text proposed by the Commission

1. The reasons for considering that provisions, assessed in accordance with

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 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.

this Directive, are ***non-discriminatory, justified*** and proportionate, and which are communicated to the Commission pursuant to paragraphs 5 of Article 59 of Directive 2005/36/EC, shall be recorded by the ***Member States*** in the database of regulated professions, referred to in Article 59 paragraph 1 of Directive 2005/36/EC and thereafter, ***unless the Member State concerned objects***, made publicly available by the Commission.

Or. en

Amendment 52

Proposal for a directive Article 9 – paragraph 2

Text proposed 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***.

Amendment

2. Member States may submit comments 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 pursuant to paragraph 8 of Article 59 of Directive 2005/36/EC.***

Or. en

Justification

To align the text to the process established in Article 59 of Directive 2005/36/EC and to ensure a central role for the Commission in the assessment of newly adopted measures while avoiding bilateral disputes between Member States.

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. Limiting the scope of the Directive by excluding healthcare services

The Rapporteur proposes to exclude healthcare services, as defined in Case C-57/12 from the scope of the Directive, while reminding that nevertheless they remain subject to the obligation to assess proportionality, laid down in Article 59 of Directive 2005/36/EC. In order to ensure the effective application of the current proposal, it is necessary to focus efforts on the remaining sectors of activities.

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.