OPINION

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

for the Committee on the Internal Market and Consumer Protection


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 framing 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 opinion 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, it considers the provisions of the directive to be sufficient and that they should not be made more complicated by introducing a systematic, ex-ante proportionality test.

The rapporteur 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

(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 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

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**
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 accord 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 general interest.

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 accord 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 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
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

(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 7**

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

*Text proposed by the Commission*

(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*

(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
The extent and degree of intensity applied 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

(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.

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 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

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,
ensuring the proper functioning of the internal market.

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 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.

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, 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

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

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.

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, 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
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 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. 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 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

Amendment

2. When assessing the necessity and
the proportionality of the provisions, 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
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

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<th>Title</th>
<th>Proportionality test before adoption of new regulation of professions</th>
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<td>Rapporteur</td>
<td>Françoise Grossetête 5.4.2017</td>
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| | 0: 2 |
| Substitutes present for the final vote | Herbert Dorfmann, Luke Ming Flanagan, Elena Gentile, Ulrike Müller, Christel Schaldemose, Bart Staes, Keith Taylor |
| Substitutes under Rule 200(2) present for the final vote | John Howarth, Răzvan Popa, Sven Schulze |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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**Key to symbols:**
+ : in favour
- : against
0 : abstention

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