



Council of the
European Union

Brussels, 13 January 2017
(OR. en)

**Interinstitutional File:
2016/0404 (COD)**

**5281/17
ADD 2**

**COMPET 22
MI 32
ETS 3
DIGIT 6
SOC 16
EMPL 12
CONSOM 11
CODEC 36
IA 7**

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 January 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2016) 462 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a Directive of the European Parliament and of the Council on a
proportionality test before adoption of new regulation of professions

Delegations will find attached document SWD(2016) 462 final.

Encl.: SWD(2016) 462 final



Brussels, 10.1.2017
SWD(2016) 462 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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) 822 final}
{SWD(2016) 463 final}

Executive Summary Sheet

Impact assessment on Proposal to introduce a proportionality test for the regulation of professions

A. Need for action

Why? What is the problem being addressed?

With around 5600 EU regulated professions directly affecting a large part of the European labour force, disproportionate regulation represents a significant obstacle to the Single Market in services and has widespread negative economic effects. Regulatory decisions are often taken without thorough analysis or transparent procedures. The Professional Qualifications Directive requires Member States to assess proportionality of their regulations but does not provide a common set of criteria for conducting this or prevent disproportionate measures from being adopted.

What is this initiative expected to achieve?

The objective is to clarify minimum criteria by creating a transparent and predictable framework for Member States to assess proportionality before adopting new regulation. It aims at preventing disproportionate measures by:

- making proportionality checks more objective, comprehensive and comparable;
- ensuring the rules are applied in an equal manner by all national authorities
- requiring solid evidence and involvement of stakeholders in policy making;
- stimulating innovation while ensuring that rules are up to date due to periodic reviews; allowing for the analysis to be publicly available and thus enable peer review.

What is the value added of action at the EU level?

Current uneven scrutiny of the regulation of professions has a negative impact on the Single Market, the provision of services and the mobility of professionals. Action by Member States alone will not ensure a coherent EU legal framework and address the existing problems faced by national authorities. The objectives of the action could be achieved more successfully at EU level by virtue of its scale and effects through the introduction of a common and comparable EU-wide assessment mechanism. In view of frequent changes to professional regulation, without EU action, there is the risk that the gap between those who already apply good regulatory practices and those who do not will widen, increasing divergence in quality of regulation. This ultimately has a negative effect on access to a profession; ensuing negative consequences for mobility and economic performance.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

3 policy options are considered: 1) Guidelines and in-depth information exchange between authorities could help Member States to perform proportionality tests, but will have very limited impact. Establishing an EU wide proportionality test for regulated professions could encompass several options. It could lay down the minimum criteria for conducting proportionality checks, based on and complementing the case-law and by introducing transparency on Member States' assessments through a binding instrument (2a) or in a Recommendation (2b). Additionally, it could further include procedural aspects, such as public consultations and periodic reviews to ensure that proportionality checks are conducted in an objective and independent manner to ensure comprehensive assessments in all sectors of activities (two sub-options exist in this regard (3a EU Directive and 3b Recommendation). Although the options are not mutually exclusive, the preferred option is Option 3a, as it would address most adequately the problems at all levels of regulation (ex-ante effect) and generate the most benefits.

Who supports which option?
There is a general consensus across stakeholders that EU action should be taken to introduce clarity and a common approach as regards proportionality tests and strong support for it to be mandatory.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The benefits for professionals, consumers and public administrations lie in ensuring better regulation by preventing disproportionate rules being adopted. A Directive would guarantee that Member States implement the test in an equivalent manner in order to avoid fragmentation of the Single Market. The binding option compels objective prior analysis, clarity, and information sharing to promote reliable and comprehensive tests that evidence the robustness of final decisions. The preferred option would increase confidence, innovation and technological developments through regular reviews of national regulation of professions.
What are the costs of the preferred option (if any, otherwise main ones)?
The costs related to the proportionality assessments in general stem mainly from the current obligations as set out in the Qualifications Directive and the case-law and thus do not represent new additional administrative cost. However, the extended scope to include procedural aspects, such as public consultations, may increase costs and the workload of public authorities. On the other hand, the preferred option would impact positively the Single Market for professional services and it will help preventing disproportionate regulatory barriers in all sectors of activities in a consistent way. It is expected to promote social and economic integration especially for young skilled workers.
How will businesses, SMEs and micro-enterprises be affected?
The option does not entail any obligation for professionals and business. Rather, the prevention of unnecessary burdens should benefit them.
Will there be significant impacts on national budgets and administrations?
There will be a limited increase in administrative costs for both national administrations and the Commission but this impact is expected to be largely compensated by the lower cost of litigation procedures for non-compliance with the proportionality principle.
Will there be other significant impacts?
No other significant impacts are anticipated. Fundamental rights are fully respected.
D. Follow up
When will the policy be reviewed?
The Commission would report regularly on the implementation of the test at national level and an evaluation would be carried out within 5 years of the adoption.