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COMPET 30
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SOC 30
EMPL 24
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NOTE

From:	European Commission
To:	Working Party on COMPETITIVENESS and GROWTH (High Level)
Subject:	Preventing new obstacles in the services single market: the recent Proportionality Test Directive

Delegations will find in Annex a note from the Commission on Preventing new obstacles in the services single market: the recent Proportionality Test Directive, in view of the meeting of the members of the Working Party on Competitiveness and Growth (High Level) on 3 February 2022.

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Preventing new obstacles in the services single market: the recent Proportionality Test Directive

It is widely recognized that the potential of the Single Market for services is greatly underexploited and too many unnecessary barriers persist. Attempts to remove existing restrictions tend to meet with strong resistance from stakeholders and are often politically difficult to push through. Therefore, designing mechanisms to prevent new barriers from emerging and becoming entrenched in national legal systems has become an ever more important policy objective.

On 28 June 2018 the co-legislator adopted Directive 2018/958/EU on a proportionality test before adoption of new regulation of professions (hereafter "the PTD"). The main objective of the PTD is to prevent new (or amended) unjustified or disproportionate restrictions in the area of regulated professions by obliging Member States to assess the proportionality of any restrictive draft measure before it is introduced. While an obligation to ensure that single market restrictions are proportionate was already fully part of the EU acquis on the fundamental freedoms, the PTD strengthened this in three ways. For one, it requires that Member States' decision-making procedures include a solid process to assess the proportionality of envisaged restrictions prior to their adoption. Secondly, it sets out a common set of criteria that should be checked as part of the proportionality assessment. And thirdly, it lays down several procedural obligations that should, on the one hand, add to the quality of those assessments, and on the other hand, ensure full transparency and public involvement as well as subsequent monitoring and availability of judicial remedy.
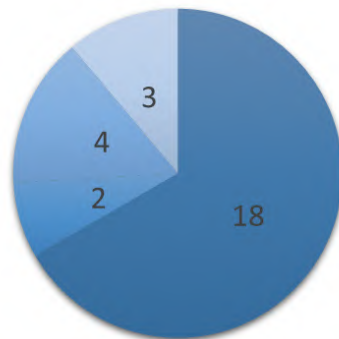
The deadline for transposing the PTD was 30 July 2020. Following an analysis of the notified transposition measures, in December 2021 the Commission sent letters of formal notice to 18 Member States for failure to comply with their obligations under the PTD. In addition, there were three other Member States that did not communicate full transposition and received reasoned opinions in November 2021. The main problems of incompliance include the failure to capture all types of measures within the scope, the failure to accurately transpose the criteria of the proportionality test and the failure to ensure the necessary procedural guarantees.

It is clear that in order for the PTD to realize its full potential in terms of prevention, effective transposition at national level is essential. An effective transposition requires a genuine commitment by Member States to take the necessary actions to ensure that the proportionality test procedure will work in practice and that it is fully embedded in the relevant decision-making processes.

In the context of the HLG meeting, the Commission would like to invite Member States to share experience and views regarding the transposition and, if available, application of this tool and what they have done or intend to do to ensure that national proportionality assessment procedures effectively work in practice and form an integral part of the decision-making process.

In this context, the proposal in the recent Swedish Action Plan for Services to extend the PTD to other services, demonstrates that such preventive mechanisms have a potential to contribute significantly to strengthening the Single Market for services if correctly transposed and thoroughly applied in Member States.

**Situation in Member States
(December 2021)**

- Letters of formal notice (AT, BG, CZ, DE, DK, EL, FI, FR, HR, HU, LT, NL, PL, PT, RO, SE, SL, SK)
- No full communication (BE, IE)
- Under assessment (CY, ES, LV, LU)
- No issues identified (MT, IT, EE)

Member States (areas of incompliance)

Area	Value
Scope of application (failure to cover certain measures, or bodies)	16
Obligation to ensure objectivity of assessments	10
Obligation to ensure effective ex-post monitoring	9
Stakeholder information and involvement obligations	8
Proportionlaity assessment criteria	8
Other procedural obligations	7
Effectve remedy	6
Definitions	4
Exceptions to obligation assess proportionality	3
Public interest objectives	1