



**ECEC opinion on
Proposal for a Directive on a proportionality test before adoption of new
regulation of professions:**

Background:

The proposal introduces a harmonised proportionality test - with very broad and detailed requirements - to be used by Member States before adopting or amending any national regulations of professions. The use of the test would be obligatory.

ECEC opinion:

The proposal deals with the well-known principles of proportionality: non-discrimination, public interest and the necessity principle. It is a general principle of legislation and all Member States are already in the habit of carrying out such a prior analysis of proportionality in their legislation procedures.

Regulation of Professional Services remains a prerogative of the Member States. That being the case, the test must not compromise the competence of the Member States in the field of profession regulations or interfere with national legislative processes. The obligation to make additional ex ante proportionality reports will introduce another formality while offering no obvious benefits.

Although the European Commission stresses that the choice as to whether and how to regulate professions remains in the Member States - within the remits of justification, proportionality and necessity – this freedom is very theoretical. Should the obligatory test be negative, it will hardly be possible for the legislator to argue the compliance with the Services Directive anyway.

When seen in connection with the “Proposal for a Directive on the enforcement of the Directive 2006/123/EC on service in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services” the impact is even stronger. Practically, where professional regulations are concerned - measures would also fall under the scope of both Directives in many cases. The notification obligation also requires provision of information demonstrating compliance with the Services Directive, including overriding reasons of public interest, proportionality and an assessment as to why less restrictive means are not available. So where Directives apply, this would in fact be the result of the proportionality test; and seen in this context, no legislative freedom remains whatsoever.

Many of the given proportionality criteria that need to be considered are quite broad and open actually allowing manifold answers, depending on the chosen testing approach, the chosen testing persons/organisations etc. As such they are very adequate for a supporting guideline, but less for an obligatory procedure with a considerable impact on the whole legislative process.

It is also problematic that the proposed Directive only addresses ex ante regulation (title protection, compulsory registration etc.) although ex post regulation (insurance requirements, Continuing Professional Development (CPD), professional certifications schemes, local regulations or building inspections) can impose significant restrictions on the professional practice. This does not lead to an objective comparison of the regulatory systems.

The proposed procedure leads to considerable restrictions for national legislators and thus prevents lean, effective and fast legislative reforms.

The ECEC thus believes that it is in contradiction with the proportionality principle to interfere in national legislative procedures to such a high degree when there are already adequate procedures foreseen for cases when a Member State is not in compliance with the Services Directive such as pilot procedure, infringement procedure.

The ECEC therefore is against the implementation of a mandatory proportionality test but would regard a non-mandatory guideline as helpful.

The ECEC would also ask the European Commission to consider that such a – not clearly proportionate – regulation restricting the freedom of national legislators could also be problematic in the current political situation, where unnecessary interventions of the

European Union and additional bureaucratic requirements with an impact on costs and efforts could contribute to strengthen anti-European movements.