



Proportionality Test Directive

Workshop – Training session

Finland, 26 September 2024

Proportionality Test Directive: Scope and objectives

Introduction

Proportionality Test Directive (PTD)

- *Adopted on 28 June 2018 - transposition deadline 30 July 2020*
- *Preventive: establishes rules for proportionality assessments to be conducted by Member States before adopting new professional regulations or amending existing regulations*
- *Legal basis: TFEU, case law, Professional Qualifications Directive*
- *Transposition check (scope, procedures, substantive criteria)*

Scope – provisions subject to assessment

- *Article 2 of the Proportionality Test Directive*
- **All provisions** that introduce new or amended requirements that restrict access to, or the pursuit of, a regulated profession, irrespective of the bodies
- **Limited exceptions** – EU act leaving no discretion; no restriction (editorial amendments, technical adaptations,...)

Procedural obligations

- ***Obligation to assess “ex ante”***
 - *before introducing new provision*
 - *assessment should feed into and form an inherent part of regulatory or legislative process*
- ***Sufficiently detailed explanation***
- ***Need to ensure independence and objectivity of assessment***
- ***Need to involve stakeholders***
- ***Monitoring obligation***
- ***Transparency obligation***

Substance of the assessment

- ***Burden of proof on Member States***
 - ***Sufficiently detailed explanation***
 - ***Evidence based: substantiated by qualitative, and wherever possible and relevant, quantitative elements***
 - *specific evidence*
 - *objective, facts-based analysis*
 - *tailor-made to specific circumstances*
 - *demonstrating genuine risks for achievement of public interest objectives*
 - ***Extent: proportionate to the nature, content and impact of the requirement***

Substance of the assessment

- *Scope -> Non-discrimination -> Justification -> Proportionality (suitability and necessity)*
- *Fully in line with case-law => assessment framework useful beyond PTD*

Proportionality criteria (always applicable):

Risks related to public interest objectives;	√ / X
Existing rules insufficient for the attainment of the objective pursued;	√ / X
Suitability of the provisions to obtain the objective pursued;	√ / X
Impact on free movement of persons and services;	√ / X
Possibility of using less restrictive means to achieve public interest objective;	√ / X
The effect of the provision when combined with existing provisions.	√ / X

Criteria (applicable depending on the content and nature of the provision)

Connection between scope of activities / reserves of activity and the professional qualification required;	√ / X
Connection between the complexity of the tasks concerned and the need for specific professional qualifications;	√ / X
Possibility of obtaining the professional qualification by alternative routes;	√ / X
Whether/why reserves of activities can/cannot be shared with other professions;	√ / X
Degree of autonomy in exercising a regulated profession	√ / X
Scientific and technological developments	√ / X

European Commission Guidance

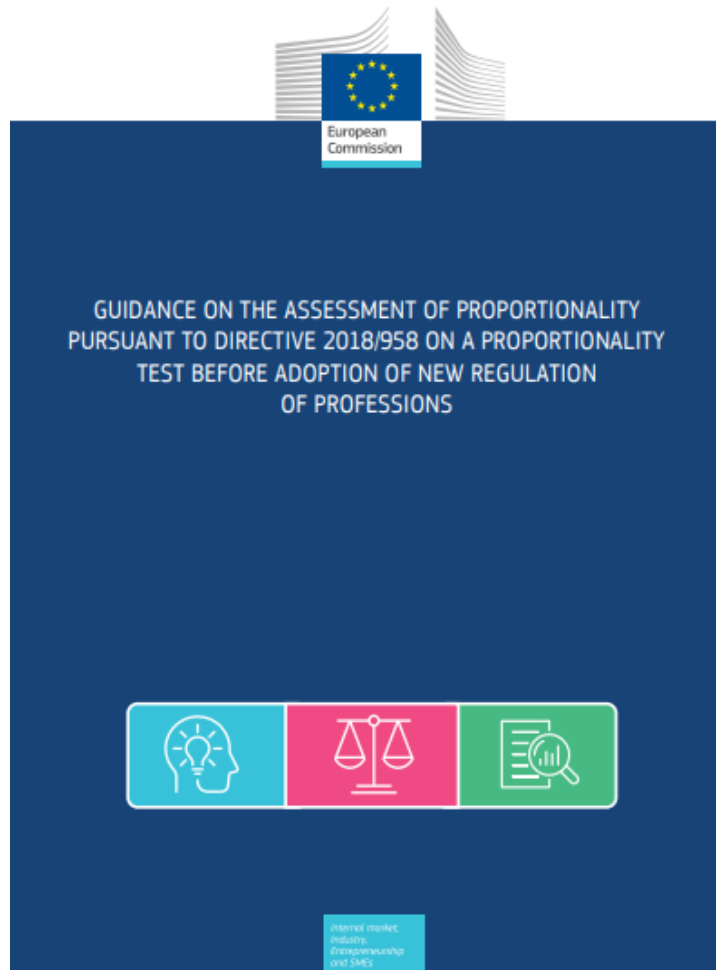


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The process of analysis (Section 2 of the Guidance)

Is it governed by specific EU rules?

Is it BINDING and of GENERAL application?

Does requirement amount to RESTRICTION (access or pursuit)?

Requirement for REGULATED PROFESSION?

Note: Requirement list is non-exhaustive



The process of analysis (Section 4 of the Guidance)

What evidence?

- ***specific study, materials?***
- ***objective analysis?***
- ***Specific to requirement, situation***
- ***Qualitative, quantitative (reports, articles, surveys, stats, data/figures, etc.)?***
- ***What sources/resources available?***
- ***general allegations***

How detailed the analysis should be?



The process of analysis (Section 4 of the Guidance)

Suitable to attain the pursued objectives?

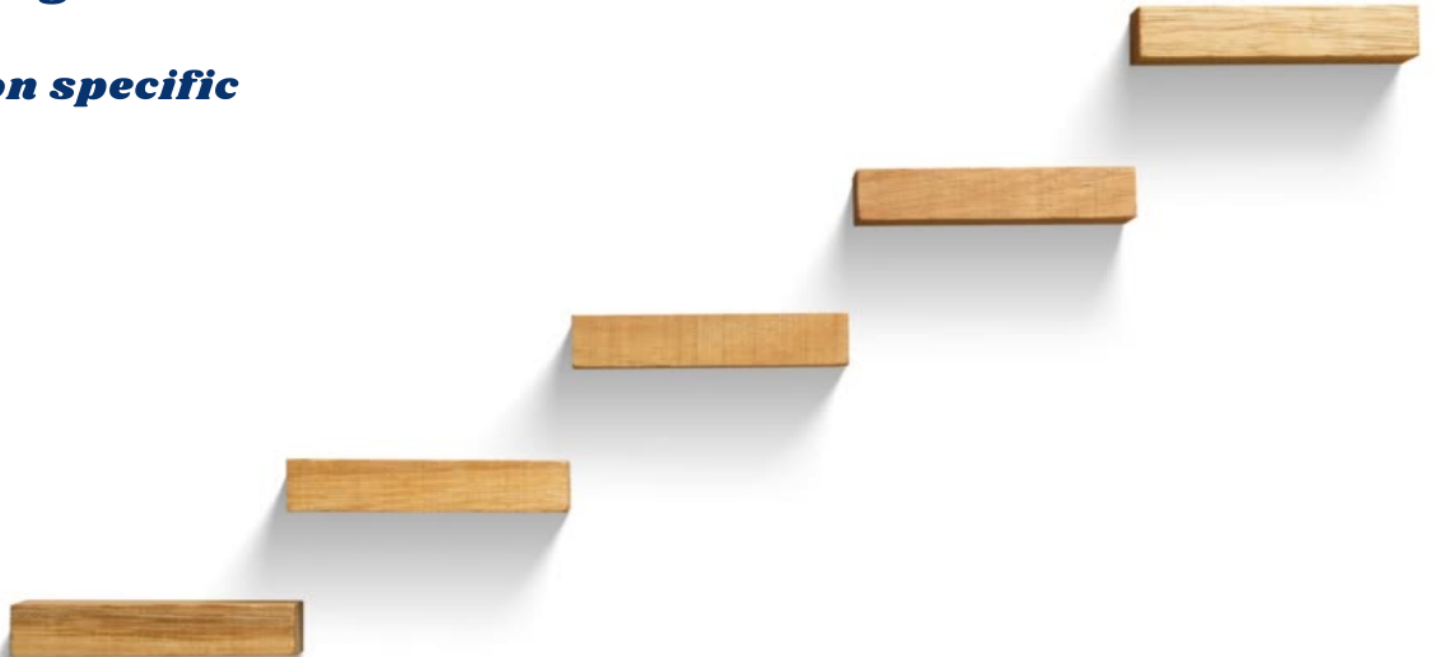
- ***Whom does the measure protect?***
- ***What are risks/benefits?***
- ***How does measure operate (appropriateness)?***
- ***Consistency***
- ***Scientific/technological developments?***
- ***Qs on qualification specific requirements***

Justified by public interest objectives?

Non-discriminatory?

Necessary to attain those objectives?

- ***Existing rules insufficient?***
- ***Other less restrictive means?***
- ***Overall impacts (e.g., on mobility, consumer choice, quality of services)***
- ***Combined effects***



The procedure (Section 3 of the Guidance)

Transparency/reporting

- 6 months post-adoption
- RegProf database

Continuous monitoring

- continuous, systematic, regular review after adoption
- in light of developments
- effective/workable arrangements in place

Stakeholder involvement

Objectivity and independence

- e.g., opinion of an independent body (depending on the author)?
Supervisory role of the ministry?
- consequences in case of failure to obtain opinion?

Accompanying explanation (form and content)

“Ex-ante” (prior to adoption)



Focus on parliamentary
measures and measures of
non-governmental bodies

Parliamentary measures

- **What?**

- **Parliamentary initiative**, i.e. legislation initiated by one or more members of, or groups or parties in parliament, rather than on a government initiative
- **Parliamentary amendments** on government proposals or on parliamentary initiatives

- **General principles**

=> a general requirement for all laws and amendments to be **in line with EU law** does **not suffice** as implementation (e.g. in several Member States compliance with EU law is checked by Council of State)

=> there should be a clear **obligation** for *someone* to do an ex ante proportionality assessment in line with the directive

=> obligation should be laid down **in binding rules**

=> a **full proportionality assessment** in line with Art. 7 (proportionate to the nature/content/effect of the provision)

Measures of non-governmental bodies

- **Rules...**
 - *of general application,*
 - *having binding effects and*
 - *restricting access to and/or pursuit of a regulated profession*
- **...adopted by non-governmental bodies**
 - *in particular, professional associations entrusted by the state with delegated (public law) powers and/or created or controlled by the state*

Measures of non-governmental bodies (2)

- *Such measures fall within the scope of the Directive (Article 2)*
- *There should be a clear **obligation** to do an ex ante proportionality assessment in line with the provisions of the Directive for such measures*
- **Possible options:**
 - *impose the obligation to do the assessment directly on the professional associations*
 - *require the supervising ministry or other (independent) body to assess the measures proposed by associations*

Measures of non-governmental bodies (3)

- *Need to ensure that **professional bodies or associations are fully aware of their obligations under the Directive***
 - => *provision imposing such obligation is clear enough, awareness campaigns, trainings...*
- *Need to **ensure the objectivity and independence of the assessment***
 - => *obligation imposed on the professional associations with regulatory powers to submit the proportionality assessment to the government (or independent body) for its views (opinion)*
 - => *clear obligation to supervise/provide opinion (e.g. not a mere possibility for the relevant ministry to react)*

Practical examples of proportionality tests

General remarks

Scope of the proportionality assessment (1)

- *This Directive shall apply to the legislative, regulatory or administrative provisions 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.***

Scope of the proportionality assessment (1)

- *Regulated profession => reserved activities (or title) subject to **specific professional qualifications***

Profession	Qualification requirement	Regulated (as per Directive 2005/36/EC)
Emergency medicine [Member State]	<ul style="list-style-type: none"> - Certificate of Completion of Specialist Training in Emergency Medicine - Training of 6 years 	Regulated
Security guard [Member State]	<ul style="list-style-type: none"> - Compulsory schooling (the first level of secondary school) 	Non-regulated
Youth worker [Member State]	<ul style="list-style-type: none"> - Have a university or higher college degree in social work, social pedagogies, psychology, educational sciences, a teacher's professional qualification, a qualification as a social worker or a social assistant worker. 	?
[Profession]	Specific mandatory courses after access to profession	?

Scope of the proportionality assessment (2)

- **Not** merely an overall assessment of all requirements
- **1 new or amended requirement = 1 proportionality assessment**

Ex ante nature of the proportionality assessment

- **Before** any new, or amending, legislative, regulatory or administrative provisions are **adopted**

Substance of the assessment (1)

- ***Evidence-based assessment***

=> ***qualitative and, where possible, quantitative elements***

E.g.: reference to studies, statistics, academic research articles, surveys, market monitoring reports etc.

Substance of the assessment (1) – School social worker (Finland)

Qualification requirements

“Several studies agree that staff qualifications matter. Research shows the link between strong training and the quality of services.”

Substance of the assessment (1) – example from a Member State

Qualification requirements

Stakeholder consultations show that overall, the feedback received from industry stakeholders, non-operators and the general public was greatly positive, with many welcoming these regulations and stating their importance in seriously addressing public concerns relating to the industry. Some critics within the public have requested for even tighter measures, however the legislator sought to balance the service recipients' and the service providers' interests. The Regulation creates a licensed profession for these specific services, introducing better competency and safety requirements, whilst using the least restrictive measures in place. Based on police press releases and online media reports spanning from 2015 to 2022, a minimum of 22 incidents involving wall collapses were documented. Fatalities were reported in round 18% of these incidents.

Substance of the assessment (1) - example of assessment by a Member State

Ban on multidisciplinary activities (reduced requirement)

As is apparent from a study carried out by [A] on the quality of the service provided in the real estate sector, there is a large degree of market appreciation:

- 52 % of those who actually purchase the property, conclude the transaction with a real estate agent.*
- 64 % of people immediately contracted to a real estate agency for the sale of a property*
- experience with the agency is positive, especially when it comes to purchasing: 7 out of 10 buyers say that in case of future needs they would again refer to this channel, more for the professionalism of real estate agents (56 % indicates this factor) than for the availability of the city's best buildings (44 %);*
- 65 % of those who had experience of buying and selling by agency express a positive opinion.*

The market would not appear to highlight any problems with regard to consumer choices and the quality of the service provided.

Substance of the assessment (2)

- Relevance of the assessment criteria for specific requirements should be assessed (“second list”)

=> E.g.: the case of assessment criteria relevant for qualification requirements (Article 7(2))

Substance of the assessment (2) - examples

Requirements subject to proportionality	Relevance of the criterion concerning alternative routes to obtain qualifications
Incompatibility	
<p>The pursuit of mediation activities shall be incompatible with the pursuit of business activities relating to the production, sale, representation or promotion of assets in the same commercial sector for which the mediation activity is carried out (...).</p>	<p>Not relevant since the restriction on the activities is not related to the possession of specific qualifications</p>
<p><u>[Real estate agent in a Member State]</u></p>	
Training	
<p>Master's degree which includes or has been supplemented with major studies or studies equivalent to the major studies in social work completed at a university (...)</p>	<p>Relevant because it concerns qualifications restricting access to a regulated profession</p>
<p><u>[School social worker in Finland]</u></p>	

Specific remarks on the assessment criteria

Non-discrimination

- *When introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions, **Member States shall ensure that those provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.***
- *This criterion should be captured by the assessment*

Non-discrimination – example of assessment by a Member State

Restrictions on commercial communication by lawyers

*In accordance with the Act of 6 March 2018 on the rules governing the participation of foreign entrepreneurs and other foreign persons in trade in the territory of the [Member State] (consolidated text: Of Laws 2022, item 470). Within its regulatory scope, the Act implements Directive 2006/123/EC. In accordance with Article 1 paragraph 1 This Act regulates the taking-up and pursuit of business activities by foreign persons in the territory of the [Member State], the temporary offering or provision of services in the territory of the [Member State] by foreign persons who are entrepreneurs, and lays down rules for the establishment of branches and representative offices by foreign persons who are entrepreneurs in the [Member State]. For its part, **Article 9. 1 of the above-mentioned Act directly entitles service providers from Member States exercising a regulated profession to disseminate information on services provided with a view to promoting goods, services or image, if that information is compatible with the rules governing the exercise of that profession.** Consequently, that provision, on the one hand, grants the persons referred to therein the right to use commercial communications but, on the other hand, requires compliance with the rules governing the use of commercial communications in [Member State]. This means that **a lawyer from another Member State who has obtained the right to practise in [Member State] has the same right and the same restrictions on the use of commercial communications as a [Member State] lawyer.** On the other hand, the proposed regulatory provisions on the provision of commercial information do not differentiate rights and obligations according to the country of origin. It must be inferred from this that the proposed regulatory provisions are non-discriminatory.*

Non-discrimination – School social worker (Finland)

Qualification requirements:

The qualification requirements are not directly or indirectly discriminatory against any group. The qualification requirements are the same for all those applying for each position, regardless of their citizenship or place of residence.

Structure of the assessment

- *Reference to the **European Commission Guidance** which presents the questions in a more sequential order*

Public interest objectives (1)

- **Narrow interpretation** of 'public policy', 'public security' and 'public health' in the ECJ case law

Public interest objectives (1) – School social worker

Qualification requirements (public health and social policy objectives)

School social workers operate at the **interfaces between education and health and social services**. The activities of school social workers involves supporting the most vulnerable students and families and those at risk of social exclusion. Identifying and intervening in social problems is an essential part of their work. Most often, students are referred to a school social worker for behavioural reasons. These include absenteeism, neglecting school, reckless behaviour and breaking of rules, difficulties with concentration, lack of motivation and violent behaviour. Reasons related to social relationships include bullying and complications with friendships. Family-related reasons include matters related to the care and upbringing of children, serious problems related to family situations (substance abuse, domestic violence and mental health issues) and matters related to changes in the family setup. **Common emotional difficulties that students experience** include anxiety and fears, depression and feeling low as well as timidity and nervousness. The work of school social workers aims **to bring structure to the clients' situation** by bolstering their resources and finding positive solutions. The students' overall situation in life and their studies is examined comprehensively at the level of the individual, family and school communities. In their activities, school social workers pay attention to how smooth the everyday life of students is, how well they cope and how they interact with others.

Public interest objectives (1) - example of assessment in a Member State

Qualification requirements for pharmacists (public health objective)

*Pharmacists have overall responsibility for medicine management, medicine supply and quality assurance as well as in-depth medicine counseling in pharmacies and hospitals, training of personnel and dispatching of medicine. Pharmacists are also responsible for the manufacture, inspection, quality assurance and registration of new medicines, sales and marketing in the pharmaceutical industry. Apart from that, pharmacists work within government agencies and universities. **Pharmacists contribute to a safe and appropriate use of medicines in the community.** Pharmacists are independent in their profession and the risk level in their work is high. Accordingly, **a pharmacist's practice implicates significant responsibility for public health and patient safety.** A lack of skills may involve serious risks to public health and patient safety.*

Public interest objectives (2)

- *Assessment of how a provision attains **each** of the public interest objectives mentioned*

Public interest objectives (2) - School social worker (Finland)

Qualification requirement – social policy objectives:

Assessments show that the **scope of activities and job description** of school social workers **have become more demanding**. School social workers are required to have **a sufficiently wide range of skills** and, above all, they must strengthen the capabilities of student welfare services to provide preventive support for mental health problems and learning difficulties. To perform their duties successfully, school social workers **must have sufficient knowledge of both Finnish social welfare legislation and the Finnish healthcare and social welfare service system**. Adequate scope in the qualification requirements also gives education providers opportunities to take the **different needs of students** into consideration, and a school social worker that best meets the needs of each educational institution can thus be selected

Public interest objectives (2) - Vessel traffic controller (Finland)

Qualification requirements *The qualification requirements for vessel traffic service personnel are strongly linked to the objective of ensuring **maritime safety**. (...) The requirements for the competence of a [VTS] are based on (...) the **SOLAS Convention**, which obliges Member States, as far as possible, to follow the guidelines developed by the IMO. (...) This would require staff to have completed a general training course approved by the competent authority, successfully completed on-the-job training at the VTS centre where the person is working, recurrent assessments and refresher training to ensure continued competence, and appropriate competence and rating endorsement (...) The vessel traffic controller's activities prevent accidents and incidents in ship traffic. **An effective response to incidents requires the appropriate skills to be achieved by the training and qualification requirements proposed in this government proposal** . The proposed training requirements are relatively light; for example, the **basic training course** for a vessel traffic instructor is usually about two weeks long. A requirement that is somewhat higher than the training requirements would be a **pre-requisite for a six-month seagoing service**. The requirement would ensure that vessel traffic controllers have pre-existing skills that cannot be trained by course-based training. For example, practical experience in working at the bridge is also important when acting as a vessel traffic controller to anticipate incidents and communicate with operators.*

Public interest objectives (2) - example of assessment by a Member State

Ban on multidisciplinary activities (reduced requirement)

— **Protection of consumers and recipients of services (...).**

In this proposal, the first general and abstract prohibition on real estate agents from carrying out any activity as an employee of a private body undermines a restriction solely on the dependence on entrepreneurs carrying out activities in the same sector of goods. That limit therefore appears proportionate and not excessive in relation to the interest of ensuring the third-party nature of mediation and, at the same time, such as to enable economic liberalisation and competition to be pursued, while respecting the rights of individuals, ensuring a high level of consumer protection.

— **Fairness of commercial transactions.**

*(...) the incompatibilities referred to in the provision appear to be instrumental in **ensuring that the consumer/final recipient of the service has:***

- the professional's absolute **impartiality** and impartiality in relation to the parties;*
- the trader's **neutrality** in relation to his business;*
- the **absence of conflict of interest situations**;*
- that the property is properly assessed in order to determine its real market value, as well as the real situation of the property, showing any problems, such as co-ownership or extraordinary maintenance.*

Objective pursued in a consistent and systematic manner

- *A measure reflects a concern to attain the objective pursued in a consistent and systematic manner*
- *E.g.: similar risks related to certain activities are addressed in a comparable way (with reference to activities within the same profession or in relation to other pertinent activities or professions)*

Objective pursued in a consistent and systematic manner – example from a Member State

Reserved activities, qualification requirements and license requirement

(...) There are other professional occupations that have direct impact on individual's livelihoods and are already subject to similar requirements to practice their services, such as architecture, engineering and accounting. Naturally, the requirements for eligibility in these jobs are higher and more complex but conceptually the idea remains the same. All local regulated professions are managed by their respective competent authority which happens to be responsible for regulating the warrants within the pertinent profession. This case is no exception. In these professions, after satisfying a number of criteria, individuals qualify to obtain a warrant or a licence and practice these professions. Furthermore, such professions also have boards or committees established that are generally in charge of issuing the warrant, ensuring the upkeep of standards, maintaining a register of licence/warrant holders. The board or committee in these other professions also reserves the right to whereby such practising certificate may be revoked, suspended or subject to other conditions. Reserving activities to such licence holders guarantees that the quality of these services matches the standards expected by the regulating authorities and committees in charge of these licensing procedures. These requirements are therefore considered to be standard practice in any profession that can directly impact the livelihoods of recipients of such services with imminent serious health implications on consumers if standards are not adequately upheld. This effectively portrays that some of the new legislation within the Regulation are in line with principles which have already been established and implemented in Acts governing other professions, ensuring quality and safety to consumers and clients.

Objective pursued in a consistent and systematic manner – Ship's Pilot (Finland)

Qualification requirement, license requirement

The proportionality of the requirements has also been assessed by comparing the requirements between different license types. The proposed requirements regarding the regional exemption of the PEC permit would be more equal than the current requirements for other permits. The current situation, where the license requirements of a certain group of vessels differ from other groups of vessels, cannot be considered justified in all respects

Objective pursued in a consistent and systematic manner – designer and supervisor (Finland)

Qualification requirements, reserved activities and title protection (?):

*“The categories of complexity of the proposal for a regulation, as well as the training required for the different categories of complexity, are a **coherent way of regulating** the needs arising from the complexity of the various construction planning and management tasks, which are directly linked to the risks of construction projects.”*

Objective pursued in a consistent and systematic manner – example of assessment by two Member States

Profession and requirements concerned	Assessment
Pharmacist – introduction of qualification requirements	<p>The training requirements for health care professionals covered by the provisions in the Patient Safety Act on license and protection of title are similar for all professions when it comes to the level of education. The duration of the required training varies though.</p>
Lawyers – restriction on commercial communications	<p>The profession closest to the profession of lawyer is the profession of legal adviser. The profession also has rules of professional ethics for commercial communications, which are designed to protect customers and maintain the dignity of the profession. While the details of the regulatory provisions may differ, similar rules on commercial communications apply to this profession.</p>

Scientific and technological developments

- *When relevant in view of the nature and content of the specific provision*
- *Scientific and technological developments may reduce the information asymmetry between professionals and recipients of services*

Scientific and technological developments - example of assessment in Member State

Reserved activities, qualification requirements and license requirement (construction services)

*The construction services industry is limited by asymmetric information between the professionals and their clients with regards to the quality of the services being provided. In this case, provided that construction professionals hold a higher level of technical knowledge and expertise than the clients, they might find it difficult to assess the quality of the services provided. **It is also not expected that any developments may boost the level of technical knowledge of third parties in assessing the quality of the service.** Therefore, this Regulation proposes greater levels of regulatory requirements with the introduction of qualification/training requirements for the attainment of the specific licence, and the setting up of the Construction Industry Licensing Committee ensuring that such training requirements are met to maintain the highest standards.*

Requirements concerning qualifications and reserved activities (1)

- ***Link between activities and qualifications***

=> Explain why certain professional qualifications (e.g. number of years/hours, specific training) are required for the pursuit of specific activities

- ***Link between complexity of tasks and professional qualifications***

=> Assess whether the complexity of the reserved activities justifies the level, nature and duration of the professional qualifications required

- ***Degree of autonomy of the professional***

=> The autonomy and level of responsibility should be considered when requiring specific professional qualifications

- ***Organisational and supervisory arrangements***

=> Explain how the organisational and supervisory arrangements surrounding the professional affect the attainment of the objective pursued, in particular where activities are pursued under supervision/responsibility of a duly qualified professional

Requirements concerning qualifications and reserved activities (1) – School social worker

Qualification requirement

Assessments show that the **scope of activities** and job description of school social workers have become **more demanding**. School social workers are required to have a sufficiently wide range of skills and, above all, they must strengthen the capabilities of student welfare services to provide preventive support for mental health problems and learning difficulties. To perform their duties successfully, school social workers must have sufficient knowledge of both Finnish social welfare legislation and the Finnish healthcare and social welfare service system. Adequate scope in the qualification requirements also gives education providers opportunities to take the different needs of students into consideration, and a school social worker that best meets the needs of each educational institution can thus be selected

Requirements concerning qualifications (1) - example of assessment by a Member State

Qualification requirements for radon experts:

- *Link between activities and qualifications*

*The professional in question must carry out interventions in the buildings, such as ventilation of air chambers, insulating the floor from the ground, sealing possible access routes from walls and floors in contact with the ground, pressurisation of the dwelling or suction of gas from the ground to below the building, etc. **These interventions require knowledge and skills in the design and execution of building works as a necessary precondition.***

Requirements concerning qualifications (1) - example of assessment by a Member State

Qualification requirements for radon expert

- *Link between complexity of tasks and professional qualifications*

Building design activity requires a particular technical and scientific preparation, which is only carried out through specific courses of study and professional development repeated over time. In [Member State], in order to be an expert in the design of construction works, you must hold a specific diploma of at least 3 years. In addition, the professional is required to undergo continuous training in order to ensure the quality and efficiency of the professional performance, in the best interests of the user and the community, and to address the objection of professional development.

Requirements concerning qualifications (1) – designer and supervisor (Finland)

Qualification requirements, reserved activities and title protection (?):

*In the preparation of the regulation, it has been taken into account that construction planning and work management tasks **require specialized skills**, and due to the **complexity of the tasks**, the professional qualifications of the persons and the required level of education or experience are at the center .*

Requirements concerning qualifications (1) - example of assessment by a Member State

Qualification requirements for radon experts

- *Degree of autonomy of the professional*

The exercise of the profession may be wholly or partly independent. (...)



Requirements concerning qualifications (1) - example of assessment in a Member State

Qualification requirements for clinical dental technicians

*Clinical dental technicians are the members of the dental healthcare team **specifically trained and educated in the skills and knowledge necessary to provide [dental health] services to the general public. It implies that the dental technician directly works in the oral cavity of the patient. A qualified clinical dental technician is specifically educated and trained for this purpose; he/she is equipped with a solid technical training as a technician, supplemented with a (usually post-technician) specific training in sciences, clinical skills and interpersonal skills. A dental technician does not give injections, does not use X-rays and does not cut [...], [but] works with appliances or constructed devices only. Furthermore, dental technicians are entitled to work independently (under full responsibility) with the patients, in particular for [activities] that justify a need for minimum qualifications. These activities are clearly distinct from those of a university-trained [dental practitioner], who performs the full range of services related to [dental] healthcare. In view of clearly defined activities limited to [...] and the right to carry out [...] activities autonomously, vocational education of [n] years duration is considered appropriate to ensure the adequate knowledge and skills.***

Requirements concerning qualifications (2) - alternative routes

- *Explain whether there are **alternative routes to obtain the required qualifications and why certain pathways were chosen or not***
- *The more pathways there are, the less restrictive the system would be*

Insufficiency of existing rules of a specific or general nature

- *Look at the existing safeguards created by other types of applicable ex ante or ex post regulation, such as **consumer protection law, product safety law, rules on ex post liability or inspection mechanisms**, and explain why these existing rules are insufficient to attain the public interest objective pursued.*

Insufficiency of existing rules of a specific or general nature - Designer and supervisor (Finland)

Qualification requirements, reserved activities and title protection (?):

*As far as safety and health of construction is concerned, the **regulations in force mainly concern the technical requirements for construction, construction products and their control**, which alone are not sufficient to regulate and guarantee the quality and safety of construction. It is therefore essential that the capacity of those performing construction tasks is assessed in the light of the complexity of the construction project and that regulation is at the level of regulation.*

Insufficiency of existing rules of a specific or general nature – example of assessment by a Member State

Protected title with reserved activities for the profession of landscape architect/designer

The existing general regulations do not address the need for organisation, articulation and consistency of policies in order to create an economical, sustainable and carbon-free society. Only competent and highly qualified professionals can address such a need when they conduct projects locally on behalf of the public contracting authorities. [...] A ‘Good Practice Reference Guide’ ([...]) was set up by the [...] Landscape Federation in 20[xx], whose objective was to promote and clarify the profession with the contracting authorities. However, due to lack of its use by professionals and recipients of services, it was not sufficient to achieve its objective of providing information and protecting consumers.

Tourist guides – qualification requirements

Nor is it possible to solely rely on the regular customer protection system (...). Such a law is indeed too general in scope and, while being effective against general malpractices enacted by market operators, it is not suitable to ensure the quality of guiding services and the protection from individual frauds. In lack of a specific regulation, the Consumption Code cannot be effectively enforced and the prevention of frauds requires specific ex ante remedial actions.

Less restrictive means to achieve the objectives

- *Comparison between the measure at hand and alternative, less restrictive means that would result in the same objective being attained*
- *Explain why alternative, less restrictive means are insufficient*
- *E.g.: regulating education and training as an alternative to requiring possession of specific professional qualifications; regulation only for special modes of pursuit of the profession as an alternative to regulating professions as such*

Less restrictive means to achieve the objectives – designer and supervisor (Finland)

Qualification requirements, reserved activities and title protection (?):

*Regulations on qualification requirements and training are the main means of ensuring an appropriate level of skills for construction designers and managers. Appropriate skills requirements significantly reduce the risks of construction errors. It has been assessed that the proposed changes are necessary to ensure the safety, health and quality of the construction and buildings, and it is **not possible to use less restrictive means** to verify and promote this. The proposed provisions are therefore necessary and proportionate to the public interest they pursue*

Less restrictive means to achieve the objectives – ship's pilot (Finland)

Qualification requirement

*In the preparation, it has been estimated that the proposed changes are necessary to ensure maritime safety, and it is **not possible to use less restrictive means to ensure and promote safety**. The proposed regulations are therefore necessary and proportionate to the public interest.*

Less restrictive means to achieve the objectives – example of assessment by a Member State

Hearing-aid maker

Extension of the reserve of certain activities to neighbouring professions [is not acceptable as alternative less restrictive means, because]: [t]he patient would then have difficulties in identifying the various professionals and the activities carried out by them. He/she could then make mistakes in the choice of the trader to be consulted, which could have a negative impact on his/her health.

Tourist guides – qualification requirements

*[Member State] has assessed the possibility to avail itself of less restrictive means, such as **the set up of a quality label system** (...). Such a system **has the twofold advantage of opening the access to the market and of being extremely smooth and easy to enact**. As a matter of fact, such a system relies on the capability of consumers to inform themselves and chose a guide that has the quality label instead of others. **However, the quality label system is deemed unsuitable for the following reasons: (...) would not ensure a minimum standard to enact the cultural policy and to attain Goal no. 1, since unqualified and eventually substandard guides would still be able to perform on the market. (...)***

Overall impact of the measure

- *The regulation's **ultimate impact on the users of services** (e.g. considerations such as consumer choice, competitiveness should be taken into account, together with the general objective of protecting consumers)*
- ***Impact on cross-border EU mobility***

Overall impact of the measure – example from a Member State

*The licensing application is open to all existing and new construction service providers and therefore it **does not impact competition within the market.** The lack of a regulatory framework surrounding the entry into the market by construction service providers led to a lack of accountability by such professionals towards the public and problems with the quality of services whereby, in some unfortunate situations, a lack of professionalism and safety led to injury or the loss of life. The Regulation enforces greater regulation and governance over the industry in terms of higher scrutiny on licensed service providers. **With regard to the impact on the free movement of persons and services, the proportionality assessment found that the measures introduced are non-discriminatory provided that no discrimination on the basis of member state residence or nationality is factored into the decision.***

Overall impact of the measure – example of assistant nurse in a Member State

Profession and requirements subject to proportionality

Assistant nurse (qualification requirements and reserved activities)

Overall impact of the measure

The newly created nursing profession has access to a clearly defined range of professional activities, which can be objectively separated from those of a general care nurse. Furthermore, the professional titles used by these professionals are clearly distinct. For these reasons, national provisions creating an assistant nurse, qualified below the minimum requirements of Directive 2005/36/EC, would not make the market of [the Member State] less attractive to the incoming professionals meeting the minimum harmonised standards, nor is it likely to inhibit outbound mobility of general care nurses from [the Member State]

Overall impact of the measure – designer/supervisor (Finland)

Qualification requirements, reserved activities and title protection (?):

The proposal for a regulation does not restrict the free movement of persons or services within the Union

Overall impact of the measure – Ship's pilot (Finland)

Professional qualification and license requirement: *The free movement of persons within the Union would be promoted by including provisions on the recognition of a license obtained in another EU member state in the Pilotage Act.*

Combined effect

- *Effect of the new or amended provisions when combined with other new, amended or already existing requirements restricting access to, or the pursuit of a regulated profession*
- *Thorough assessment and explanations allowing to ascertain proportionality*

Combined effect – VTS operator (Finland)

Qualification requirements:

*The required **six-month seagoing service** in deck officers, in addition to the **certificate of watch officers** issued, ensures the necessary maritime knowledge which cannot be replaced by, for example, **initial and on-the-job training** of the vessel traffic controller (...) A requirement that is somewhat higher than the training requirements would be a pre-requisite for a **six-month seagoing service**. The requirement would ensure that vessel traffic controllers have pre-existing skills that cannot be trained by **course-based training***

Combined effect – example of assessment by a Member State

Automotive expert (professional qualifications, reserved activities and conflict of interest rule)

*The independence and impartiality (**no conflict of interest**) of the automotive expert is a key requirement for pursuing general interest objectives. **Professional qualifications alone are not sufficient to guarantee this independence**, which is indispensable for the conduct of an inspection activity, especially if such checks are carried out in the field of motor vehicle safety.*

Lawyers (good repute, CPD, language requirement)

*Lawyers must continuously develop their professional qualifications, **but the training is linked to the acquisition of additional professional knowledge and does not relate to requirements of good repute**. A person wishing to become a lawyer must have knowledge of the official language. **The language requirement concerns the ability to participate in proceedings, communicate with clients, and analyse legislation. Language proficiency is not linked to requirements of good repute (no alternative).** (...)*

To sum up...

The proportionality assessment should be:

- *Conducted 'ex ante'*
- *Tailormade for each profession and requirement*
- *Sufficiently detailed to ascertain proportionality*
- *Evidence-based*

To sum up...

How to improve the process?

- *Raising awareness*
- *Exchange of best practices*
- *Tailor made guidance, decision trees, questionnaires (fitting into national processes)*
- *Transparency: improving IT tools (RegProf, IMI)*

Thank you



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