



European  
Commission

# GUIDANCE ON THE ASSESSMENT OF PROPORTIONALITY PURSUANT TO DIRECTIVE 2018/958 ON A PROPORTIONALITY TEST BEFORE ADOPTION OF NEW REGULATION OF PROFESSIONS



## EUROPEAN COMMISSION

Directorate-General for Internal market, Industry, Entrepreneurship and SMEs  
Directorate E — Single market enforcement

Unit E.1 — Enforcement I

Contact: GROW.E.1

E-mail: [GROW-E1@ec.europa.eu](mailto:GROW-E1@ec.europa.eu)

European Commission  
B-1049 Brussels

## LEGAL NOTICE

**This document has been prepared for the European Commission however, it reflects the views only of the authors, and the European Commission is not liable for any consequence stemming from the reuse of this publication. More information on the European Union is available on the Internet (<http://www.europa.eu>).**

Print	ISBN 978-92-76-58108-6	doi: 10.2873/390782	ET-04-22-136-EN-C
PDF	ISBN 978-92-76-58008-9	doi: 10.2873/825625	ET-04-22-136-EN-N

Manuscript completed in November 2022

1st edition

The European Commission is not liable for any consequence stemming from the reuse of this publication.

Luxembourg: Publications Office of the European Union, 2022

© European Union, 2022



The reuse policy of European Commission documents is implemented by Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39). Unless otherwise noted, the reuse of this document is authorised under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>). This means that reuse is allowed provided appropriate credit is given and any changes are indicated.  
For any use or reproduction of elements that are not owned by the European Union, permission may need to be sought directly from the respective rightholders.

## Table of Contents

<b>INTRODUCTION</b> .....	3
<b>1. LEGAL BACKGROUND</b> .....	4
<b>2. SCOPE OF THE PROPORTIONALITY ASSESSMENTS</b> .....	5
2.1. Is the provision binding and of general application? .....	5
2.2. Does the requirement stem from a specific EU act leaving no discretion? .....	7
2.3. Does the requirement amount to a restriction? .....	8
2.4. Does the requirement concern a regulated profession? .....	9
<b>3. PROCEDURAL OBLIGATIONS</b> .....	10
3.1. Ex ante nature of the assessment .....	10
3.2. Accompanying explanation.....	10
3.3. Objectivity and independence of the assessment.....	10
3.4. Involvement of stakeholders .....	11
3.5. Monitoring obligation .....	12
3.6. Transparency obligations .....	13
<b>4. SUBSTANCE OF THE ASSESSMENT – HOW TO ASSESS?</b> .....	15
4.1. How detailed should the analysis be?.....	15
4.2. What evidence should underpin the analysis? .....	15
4.3. What are the assessment criteria? .....	17
4.3.1. Non-discrimination.....	18
4.3.2. Public interest objectives .....	18
4.3.3. Proportionality .....	20
4.3.3.1. Suitability.....	20
4.3.3.2. Necessity .....	30
4.4. Non-exhaustive list of requirements subject to analysis .....	40



# INTRODUCTION

On 28 June 2018, the European Parliament and the Council adopted Directive (EU) 2018/958 on a proportionality test before adoption of new regulation of professions (Proportionality Test Directive or ‘the Directive’). The Directive obliges Member States to assess thoroughly, before their adoption, the proportionality of any new national regulations of professions. Using the approach that prevention is better than cure, the Directive seeks to prevent unnecessarily restrictive regulation of professions from coming into effect. Member States were obliged to transpose the Directive into national law by 30 July 2020.

In its March 2020 Communication *Long-term action plan for better implementation and enforcement of single market rules*<sup>1</sup>, the Commission announced that it would ‘provide assistance and guidance to Member States and facilitate the exchange of best practices between Member States on *ex ante* proportionality assessments on the basis of the Proportionality Test Directive’<sup>2</sup>. The present document forms part of the Commission’s follow-up to this commitment. It seeks to provide guidance to Member States on how to perform *ex ante* proportionality assessments in line with the Directive, and with EU law more generally. It complements the regular presentations and exchanges taking place in the dedicated group of national experts (Group of Coordinators for the recognition of professional qualifications) and bilateral contacts with Member States. This guidance document also serves to facilitate the exchange of best practices among Member States on matters covered by the Directive. It should be read together with any technical guidance documents on the use of the database of regulated professions (‘RegProf database’) for transparency and reporting obligations under Article 59 of Directive 2005/36/EC on the recognition of professional qualifications (Professional Qualifications Directive)<sup>3</sup> and Article 11 of the Proportionality Test Directive.

Section 1 of this guidance document describes the relevant legal background. Section 2 clarifies the material scope of the Directive, i.e. the types of provisions for which a proportionality assessment is required and the exceptions thereto. In Section 3, the various procedural obligations under the Directive are discussed:

- the obligation to assess measures *ex ante*;
- to accompany them with a sufficiently detailed explanation of the reasons why the measures are proportionate;
- to ensure the objectivity and independence of the assessment;
- to inform and involve all relevant stakeholders;
- to monitor the continued proportionality of measures after their adoption; and
- to record the reasons for considering that provisions are justified and proportionate in the database of regulated professions.

Section 4 sets out the substance of the proportionality assessment. It starts by describing the expected level of scrutiny and the type of evidence that should underpin the assessments. It then continues with a discussion of the various issues to be assessed, i.e. non-discrimination,

---

<sup>(1)</sup> COM(2020) 94 final, 10 March 2020.

<sup>(2)</sup> Action 9.

<sup>(3)</sup> Directive 2005/36/EC on the recognition of professional qualifications (OJ L 255 30.9.2005, p. 22), as amended by Directive 2013/55/EU.

justification on grounds of public interest objectives, and proportionality. The part on proportionality discusses in detail the various assessment criteria and is structured in two parts, i.e. suitability and necessity. Finally, a non-exhaustive list of requirements that will be subject to analysis is provided.

### Disclaimer

*This guidance document draws on:*

- *information about requirements for regulated professions, and explanations of their proportionality, that Member States sent to the Commission in line with Article 59(5) of Directive 2005/36/EC on the recognition of professional qualifications<sup>4</sup>;*
- *relevant case law of the Court of Justice of the European Union; and*
- *other information acquired by the Commission when checking the transposition of Directive 2018/958/EU by Member States and when enforcing and monitoring the application of Directive 2005/36/EC in Member States.*

*The discussion in this document of the examples of proportionality assessments drawn from the database of regulated professions should not be understood as constituting approval or disapproval of the specific entries in the database. This document aims solely to assist Member States in better understanding the various components of the proportionality assessment required by the Proportionality Test Directive.*

## 1. LEGAL BACKGROUND

The principle of proportionality is one of the general principles of EU law. It follows from settled case law<sup>5</sup> that national measures liable to hinder, or to make less attractive, the exercise of the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union (TFEU) are prohibited unless they satisfy four conditions. They must: be applied in a non-discriminatory manner; pursue a justified public interest objective; be suitable for securing the attainment of that objective; and not go beyond what is necessary to attain that objective.

Article 59(3) of the Professional Qualifications Directive recalls this duty under the TFEU. It obliges Member States to examine whether requirements under their legal system that restrict access to, or the pursuit of, a regulated profession comply with the principles of non-discrimination and proportionality, and in particular:

- whether requirements are neither directly nor indirectly **discriminatory** on the basis of nationality or residence;
- whether requirements are **justified** by overriding reasons of general interest;
- whether they are **suitable** for securing the attainment of the pursued objectives and do not go beyond what is **necessary** to attain these objectives.

---

<sup>(4)</sup> Directive 2005/36/EC on the recognition of professional qualifications (OJ L 255 30.9.2005, p. 22), as amended by Directive 2013/55/EU.

<sup>(5)</sup> CJEU Case C-55/94 Gebhard, ECLI:EU:C:1995:411, paragraph 37.

Article 59 of the Professional Qualifications Directive also contains transparency obligations requiring all Member States to report about the professions they regulate, and to communicate to the Commission the reasons for considering that those requirements comply with the principles of non-discrimination and proportionality.

Article 59(3) and (5) formed the legal basis for a mutual evaluation exercise that took place in 2014-2016. In view of the quality and depth of the analyses submitted by Member States during the mutual evaluation exercise, the Commission proposed a binding legal instrument containing a common framework with clear criteria for conducting such proportionality assessments (Article 1 of the Proportionality Test Directive). The Proportionality Test Directive was adopted as EU legislation on 28 June 2018. As of 30 July 2020 (the deadline for transposition of the Directive), Member States are under the obligation to carry out *ex ante* proportionality assessments based on the Proportionality Test Directive framework before introducing new, or modifying existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions (Article 4(1) of the Proportionality Test Directive).

## 2. SCOPE OF THE PROPORTIONALITY ASSESSMENTS

Article 2(1) of the Proportionality Test Directive stipulates that this Directive applies '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 the Professional Qualifications Directive.' It covers all such provisions introducing new or amended requirements restricting access to, or the pursuit of, a regulated profession. The scope of the Directive is not limited to provisions introduced by certain types of national bodies or to certain types of regulation.

Article 2(2) of the Directive contains a limited exception to the Directive's provisions on proportionality assessment for those national provisions that implement specific requirements that derive from another EU act which does not leave Member States any choice as to the exact way in which they are to be implemented.

The following three sections discuss in more detail the various considerations to be taken into account when assessing whether a new or amended legislative, regulatory or administrative provision would be covered by the obligation to carry out an *ex ante* proportionality assessment under the Directive.

### 2.1. Is the provision binding and of general application?

All **binding** provisions, i.e. provisions which restrict access to a profession, are subject to the Proportionality Test Directive obligations. Non-binding or non-restrictive measures such as mere recommendations do not have to be assessed as to their proportionality under the Directive's framework.

Similarly, the Directive's obligation to assess proportionality applies in relation to new or amended measures of **general application**, and does not extend to individual measures, such as decisions addressed to specific natural or legal persons.

All binding measures of general application fall within the scope of the Directive's obligations, **regardless of the body that adopted those provisions**. This means that all legislative, regulatory or administrative measures of general application adopted by the public authorities, such as the legislature and/or government, are covered by the Directive's obligations. But it also includes any **measures of non-governmental bodies** of general application and having binding effects and restricting the access to and/or pursuit of a regulated profession. In particular, this may be the case where certain bodies or professional associations are entrusted by the state with delegated (public law) powers, and/or where such bodies or professional associations are created or controlled by the state<sup>6</sup>. These powers often concern matters such as obligations regarding continuous professional development, the payment of fees for mandatory membership, tariffs, or rules on advertising.

Different options are available to Member States to ensure that measures adopted by such bodies or professional associations are covered by the Directive's obligations. These include imposing the obligation to make the assessment directly on the professional associations, or requiring a supervising ministry or other (independent) body to assess the measures proposed by associations. To ensure that these professional bodies or associations are fully aware of their obligations under the Directive, the transposition measures imposing this task on them must be sufficiently detailed and explicit. In addition Member States could for instance organise awareness raising campaigns or specific training.

It is important to note that measures that are based on **parliamentary initiatives** (i.e. legislation initiated by one or more members of, or groups or parties in, parliament), and not just government proposals, are also covered by the Directive's obligations. Depending on national constitutional frameworks this could, for instance, be achieved by adopting national transposing measures that also apply to (members of) the parliament. Support for the assessment could be provided by, for instance, the parliament secretariat or government administration. Alternatively, a Member State could require a mandatory government opinion to be issued during the legislative process that incorporates such a proportionality assessment. In addition, it should be ensured that **parliamentary amendments** to government proposals that affect the initial proportionality assessment are also duly evaluated in line with the Directive's obligations.

Even **initiatives by citizens**, such as people's initiatives or petitions for referenda with the purpose of creating new requirements, are covered. For example, if such initiatives are subject to parliamentary scrutiny, an option could be to require parliament to conduct a proportionality assessment.

The Directive does not provide for exemptions on the basis of the **urgency of a particular measure**. It does, however, allow that the extent of the assessment is commensurate with the nature, content and impact of the provision. Hence, in those Member States that have in place

---

<sup>(6)</sup> See, for example, joined cases 266 and 267/87, *Royal Pharmaceutical Society*, ECLI:EU:C:1989:205, concerning a professional body that was created by a statute and was entrusted with enforceable disciplinary powers.



specific decision-making procedures for urgent measures or crisis situations, it is advisable to clarify how compliance with the Directive's obligations would be ensured in those circumstances.

## **2.2. Does the requirement stem from a specific EU act leaving no discretion?**

Where Member States implement specific requirements concerning the regulation of a given profession that derive from a separate EU act that does not leave Member States any choice as to the exact way in which they are to be implemented, a proportionality assessment is not required (Article 2(2) and recital 10 of the Proportionality Test Directive).

This will be the case where a full harmonisation of one or several requirements has been established at EU level. This occurs mainly in the land transport, maritime and aviation sectors, but even there it is very rare.

Moreover, where an EU directive lays down minimum requirements for a profession, Member States might still choose not to regulate beyond those harmonised minimum requirements. In such cases, no proportionality test has to be made at national level, as the evaluation of appropriateness and proportionality would have already been conducted at EU level.

One concrete example relates to minimum training requirements for nurses responsible for general care, doctors, pharmacists, dental practitioners, midwives and veterinary surgeons, set out in the Professional Qualifications Directive. Another example is the obligation in Article 3(4)(b) of Directive 2006/43/EC that at least the majority of voting rights in an audit firm should be held by approved auditors or audit firms. In those cases, a proportionality assessment of that particular requirement will not be necessary as long as the national measures do not go beyond the required EU minimum. However, if the Member State decides to regulate beyond the minimum harmonised level or introduces other types of restrictive requirements for that profession, the relevant provisions would be subject to a proportionality assessment.

Lastly, in the case where maximum requirements are set at EU level, Member States might still have to perform a proportionality test for the specific requirements they intend to introduce, as the harmonised maximum would only indicate an overall ceiling for permissible regulation. Therefore, even when setting a requirement at a level within the limits of the threshold, the proportionality of the measure in its specific context should still be checked.

However, the exception from an obligation to carry out a proportionality assessment does not apply to situations where other EU law instruments merely set out the obligation to ensure that any restrictive measure is justified and proportionate without prescribing the specific content of the requirement. For instance, a number of requirements covered by the Proportionality Test Directive may also fall within the remit of the application of the Services Directive 2006/123/EC<sup>(7)</sup>. In such cases, the Proportionality Test Directive and the Services Directive

---

<sup>(7)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 376.

continue to apply in parallel to the extent that there are no conflicts between these two instruments (see Article 3(1) of the Services Directive).

In particular, with respect to the obligation in Article 15 of the Services Directive to ensure the proportionality of the requirements listed there (regarding shareholding, voting rights, tariffs, etc.), the Proportionality Test Directive continues to apply when these types of requirements concern regulation of a profession. The Directive complements the Services Directive by providing details on how such an assessment of proportionality has to be carried out.

Similarly, an obligation to ensure the proportionality of requirements with regard to the provision of services covered by Article 16 of the Services Directive applies in parallel with the Directive's obligations. Most notably, Article 16 of the Services Directive limits the public interest objectives (see Article 16(1)(b): public policy, public security, public health or protection of the environment) that can be invoked to justify the application of national requirements to service providers established in their Member States when they provide services in another Member State. This limitation is not affected by the Proportionality Test Directive.

### **2.3. Does the requirement amount to a restriction?**

Any requirement restricting access to a regulated profession as defined in the Professional Qualifications Directive, or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title, fall within the scope of the Proportionality Test Directive obligations to assess proportionality. This may include qualification requirements, requirements on corporate forms, shareholding, and others. Section 4.4. below provides a detailed (but non-exhaustive) overview of such restrictive requirements.

It should be noted that such restrictions can also be part of national measures that do not have as their main objective to regulate a profession, e.g. general laws in the area of construction that reserve certain activities to holders of specific professional qualifications.

The Directive's obligation to carry out an *ex ante* proportionality assessment also covers situations in which the restrictiveness of a requirement is reduced by way of an amendment but where a restriction remains in place, the objective being to ensure that even the lighter requirement is not disproportionate. An obligation to carry out a proportionality assessment also applies with respect to requirements where a professional has the right to apply for an exemption and the competent authority has the possibility to exempt the professional from such a requirement<sup>8</sup>.

Finally, there is no *de minimis* principle in place when it comes to an obligation to perform a proportionality assessment. Even if the effects of a given requirement are generally light (e.g. for the purposes of a prior declaration the disclosure of a limited amount of information is requested or the obligation to make a declaration is purely declaratory), such a restriction on

---

<sup>(8)</sup> CJEU Case C-169/07 *Hautflauer*, ECLI:EU:C:2009:141.

a fundamental freedom is, in principle, prohibited by the Treaty, even if it is of limited scope or minor importance<sup>9</sup>.

Accordingly, the only provisions that do not require a prior proportionality assessment are those that do not restrict access to, or the pursuit of, regulated professions. This could be the case for editorial amendments, technical adaptations to the content of training courses or the modernisation of training regulations (recital 9 of the Proportionality Test Directive). For instance, if a Member State merely modifies the name of a certain degree, or makes changes to the content of the training without (noticeably) affecting its level, contents or duration, a proportionality assessment would usually not be required.

## 2.4. Does the requirement concern a regulated profession?

Article 2(1) of the Proportionality Test Directive states that it applies to all regulated professions within the meaning of the Professional Qualifications Directive. Article 3(1)(a) of the Professional Qualifications Directive defines a regulated profession as 'a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to' the possession of specific professional qualifications.

Hence, to qualify as a regulated profession within the meaning of Article 3(1)(a) of the Professional Qualifications Directive, the access to or exercise of the profession should have been made conditional upon the possession of a *specific* professional qualification and not merely of a certain level of education (secondary education, bachelor's degree, etc.)<sup>10</sup>. A profession is also considered to be regulated when the professional qualification is required for only one or some of its modes of pursuit, e.g. only for managers, for supervisors/responsible staff, shareholders, salaried staff, self-employed, for activities subject to reimbursement by social/public funds, for public/private sector, or when using a professional title.

It should be noted that any carve-out from the scope of the Professional Qualifications Directive and the Proportionality Test Directive of professions based on their potential link with the public service or exercise of official authority cannot go beyond the Court of Justice of the European Union (CJEU) restrictive interpretation of the derogations enshrined in Articles 45(4)<sup>11</sup> and 51 TFEU<sup>12</sup>.

---

<sup>(9)</sup> CJEU Case C-315/13 *De Clercq*, ECLI:EU:C:2014:2408, paragraph 61 ; CJEU Case C-168/20 *BJ and OV v Mrs M and Others*, ECLI:EU:C:2021:907, paragraph 105.

<sup>(10)</sup> It should be noted that in those situations where the Professional Qualifications Directive would not apply because access to a profession is granted on the basis of *any* professional qualification attesting to a level of education, the provisions of the Treaty on the Functioning of the EU, and in particular Articles 45 TFEU and 49 TFEU, could still apply directly.

<sup>(11)</sup> As regards Article 45(4) TFEU, the Court stated that the Member States are only allowed to restrict public service posts to their nationals, if they are directly related to the specific activities of the public service, namely those involving the exercise of public authority and the responsibility for safeguarding the general interest of the State including those of public bodies such as local authorities. (see e.g. CJEU C-173/94 *Commission v Belgium* ECLI:EU:C:1996:264; CJEU C-290/94 *Commission v Greece*, ECLI:EU:C:1996:265).

<sup>(12)</sup> Concerning Article 51 TFEU, it is settled case law that its derogation must be interpreted in a narrow way and be limited to activities that constitute direct and specific participation in the exercise of the public authority. (see e.g. CJEU C-575/16 *Commission v Czech Republic*, ECLI:EU:C:2018:186, paragraphs 101-102) This excludes functions that are merely auxiliary and preparatory vis-à-vis an entity which effectively exercises official authority by taking the final decision. (see e.g. CJEU C - 42/92 *Thijssen*, ECLI:EU:C:1993:304, paragraph 22).

## 3. PROCEDURAL OBLIGATIONS

### 3.1. Ex ante nature of the assessment

The proportionality assessment should be carried out before any new, or amending, legislative, regulatory or administrative provisions are introduced (Article 4(1) and recital 12 of the Proportionality Test Directive).

While Member States may choose which bodies undertake the proportionality tests, they need to ensure that such tests form an inherent part of the regulatory or legislative process and are completed *before* the provisions in question are adopted or amended. Therefore, doing a proportionality test after adoption of the measure but before its entry into force is not sufficient. This is particularly relevant where the assessment is carried out by a body other than the one that drafts or adopts the provisions. Such a process, with a clear sequence of steps, should allow the bodies that introduce or amend the relevant provisions to take into consideration the results of the assessment.

### 3.2. Accompanying explanation

When provisions are subject to the obligation of a prior proportionality assessment under the Directive, Member States should accompany them with a sufficiently detailed explanation that makes it possible to appraise compliance with the principle of proportionality (Article 4(3)).

While it is up to Member States to determine the precise form and content of this explanation accompanying the draft provisions, it should make it possible to assess whether those provisions comply with the principle of proportionality. Hence, it is not sufficient solely to present the outcome of the proportionality assessment without providing insight into how the analysis was done, the facts and evidence underlying the assessment and what elements were considered.

### 3.3. Objectivity and independence of the assessment

The quality and content of proportionality assessments can be affected by the way Member States implement certain procedural requirements laid down in the Directive.

Pursuant to Article 4(5) of the Directive, Member States should carry out proportionality assessments in an objective and independent manner. Such objectivity and independence need to be ensured in particular where regulatory powers are delegated to a particular professional body. Indeed, while the greater proximity to local conditions and specialised knowledge could, in certain cases, make these bodies better placed to identify the best way of meeting the public interest objectives, there is also a genuine risk that their policy choices could be influenced by an inherent bias in favour of their members, thus favouring established operators at the expense of new market entrants (recital 14).

For instance, requiring the opinion of an independent body, which can include existing bodies that are part of the national legislative process, could be an effective method to ensure

objectivity. Obtaining the opinion of such an independent body could be particularly important in cases where local authorities, regulatory bodies or professional organisations are responsible for the proportionality assessment.

Depending on the author of the proposed measure and/or proportionality assessment, the responsibility for such an independent opinion could be entrusted to, for example, the national coordinator, supervising ministry, other responsible ministries or national competition authorities. Failure to obtain such an independent opinion could, for instance, be sanctioned in accordance with national procedures. To ensure that such opinions are treated as more than a formality, a good practice could be, for example, to require the drafter of the measure either to take into account the comments and suggestions, or to justify why it did not follow these. In addition, these opinions could be submitted together with the draft measure to the body responsible for adopting the final measure and could be published. A Member State may also choose to increase the weight of this independent opinion by empowering administrative courts (or other relevant authorities) to annul the measure if it is shown that the author of the draft measure has not taken due account of the independent opinion.

Alternatively, a Member State may provide for an independent check of the assessment prepared by a professional body; a vague or discretionary possibility for a responsible ministry to oversee the actions of professional bodies would not seem sufficient to ensure the objectivity and independence of the proportionality assessment in practice. Such objectivity could be ensured, for example, by a process that requires the active supervision and a duty for the ministry to react on any draft measure, *and* on the proportionality assessment prepared by the professional body.

Finally, in some Member States the independence and objectivity of the proportionality assessments is pursued by requiring the prior consent of the responsible ministry before draft measures prepared by professional bodies can be adopted. However, those Member States should not lose sight of rules for which such a prior consent might not be imposed, such as rules on continuous professional development requirements, membership fees, and rules on advertising, and which would be caught by the obligation to conduct a proportionality assessment.

### **3.4. Involvement of stakeholders**

The Directive (Article 8, recital 31) also lays down an obligation for Member States, before introducing or amending restrictive requirements, to provide information to citizens, representative associations and other relevant stakeholders, including those who are not members of the profession, as well as to social partners. This must be understood as a requirement to involve all parties concerned and to give them the opportunity to make their views known (if appropriate and relevant, through public consultations in accordance with national procedures). Such early-stage involvement of all relevant stakeholders could provide important information and contribute significantly to the balancing exercise by which Member States have to assess the restrictiveness of the chosen regulatory means in view of the importance of the public interest objectives pursued.

To facilitate meaningful input, Member States should ensure that information is sufficiently visible and easily accessible. For example, publishing draft regulations only on the website of

a professional association will generally not be sufficient to guarantee that stakeholders from outside the profession are duly informed and involved.

To properly inform stakeholders of the issues at stake, it could be a good practice to share the (preliminary) proportionality assessment (or a summary thereof) together with the draft regulation.

Furthermore, stakeholders should be given a reasonable and clearly defined period, and an easily accessible procedure, to express their views.

To ensure that stakeholder input is taken seriously, it could moreover be a good practice to request the regulator to summarise all contributions and explain how the proposal gives due consideration to those arguments and opinions.

Where Member States rely on existing information and/or consultation procedures in the context of decision-making, they should make sure that these procedures also apply to measures adopted by non-governmental bodies, such as professional associations, and to measures based on initiatives from parliaments (proposals from one or more members of, or groups or parties in, parliament) or initiatives from citizens (such as people's initiatives or petitions for referenda).

### **3.5. Monitoring obligation**

Article 4(6) of the Directive requires Member States to monitor the proportionality of new or amended provisions restricting access to, or the pursuit of, regulated professions after their adoption. This continuing review of the proportionality of a restrictive national measure should be based not only on the objective of that national measure at the time of its adoption, but also on its effects as observed after its adoption, and any developments that have occurred since the measure was adopted.

To ensure effectiveness of continuous monitoring, in addition to compliance with their general monitoring obligations competent authorities should put in place specific and workable arrangements. Moreover, for this monitoring obligation to achieve its goal of ensuring that the adopted provisions remain compliant with the principle of proportionality, against the background of potential developments, its implementation should involve some type of systematic or regular review over time. This could be accomplished, for example, by introducing some degree of regularity or frequency of the monitoring, possibly combined with specific events triggering a review. Specific events that could trigger such a review might need to be tailor-made to each profession and could, for example, include: changes in the regulation of neighbouring professions/services; scientific or technological developments; complaints by service recipients; changes to other general or specific laws that have an impact on the professional service or its context; and relevant market developments (such as increased or reduced demand for, or supply of, certain services, and novel business models). It could also be achieved by means of a system of continuous monitoring that requires immediate action to be taken whenever there is a change in the relevant circumstances, provided that these relevant circumstances are well described and comprehensive. Member States may also choose to introduce a mandatory reporting period, for example at least once every 2 years.



On top of those regular checks, a Member State could also consider granting the right to relevant stakeholders to file a reasoned request for an *ex post* review of the proportionality.

In contrast, a one-off obligation to reassess the proportionality at a specific point in time after the adoption of the provisions is not sufficient to ensure that those provisions remain proportionate in view of a changing reality. Likewise, granting unlimited discretion to the relevant authority to decide if or when such a review should take place would not be a good practice, as it might fall short of ensuring that the monitoring takes place with some degree of regularity and in a systematic manner. It is equally important to ensure that predetermined monitoring periods remain flexible enough to be able to keep up with any relevant development in the profession. The objective of the monitoring obligation is to ensure that the national regulatory environment remains fit for purpose. Therefore, it should not be confused with other Member State reporting obligations (e.g. those referred to in Article 59(5) of the Professional Qualifications Directive).

### 3.6. Transparency obligations

Following entry into force of the Proportionality Test Directive, the procedure for complying with transparency obligations regarding new or modified requirements for regulated professions is the same as set out in Article 59(5) of the Professional Qualifications Directive. Such reporting obligations have to be completed via the so-called RegProf database<sup>13</sup>. The information reported by Member States is made easily accessible and publicly available by the Commission on the public database site (Article 11, recital 34 of the Proportionality Test Directive)<sup>14</sup>. This also allows other Member States and interested parties to submit their comments and views on reported requirements and reasons for regulation.

The reporting obligations under Article 59 of the Professional Qualifications Directive, however, are not limited to the obligation to communicate the proportionality reasoning referred to in Article 11 of the Proportionality Test Directive. Article 59 of the Professional Qualifications Directive requires Member States to communicate comprehensive information about regulated professions, including information about requirements restricting access to, or the pursuit of, such professional activities. Therefore, the information collected via the RegProf database aims to cover all main aspects of each regulated profession and consists of three main parts: (1) general information (name of the regulated profession, legal basis for regulation, recognition regimes, etc.); (2) information about the requirements (specific requirements that apply to the regulated profession); and (3) details about reported regulatory changes and proportionality analyses. It is essential that Member States complete all the required fields about the regulation of professions in the RegProf database and regularly update it.

Pursuant to Article 59(5), any new or amended requirements should be communicated no later than 6 months after the adoption of a restrictive measure. Furthermore, any requirements that

---

<sup>(13)</sup> The RegProf database contains information on regulated professions, statistics on professionals moving abroad (including on an occasional and temporary basis), and information on competent authorities. The database is maintained by the Commission and information in the database is provided by EU Member States and EEA countries.

<sup>(14)</sup> <https://ec.europa.eu/growth/tools-databases/regprof/>

have been abolished or made less stringent should also be reflected in the database in a timely manner.

The proportionality reasoning reported to the Commission via the RegProf database does not need to consist of a fully-fledged proportionality study. However, the summary of the analysis in the form of replies to the questions in the RegProf database (screening information) should be clear, targeted and comprehensive enough to make it possible to appraise compliance with the principle of proportionality for that specific measure. Member States should therefore ensure that all questions about applicable requirements are answered correctly<sup>15</sup>.

In this context, a few other substantive points should be emphasised, in particular regarding those situations that do not necessitate a proportionality analysis, even if they concern professional activities falling within the scope of the Professional Qualifications and Proportionality Test directives.

As mentioned in Section 2.3 above, certain requirements having no restrictive effect (purely editorial and/or technical changes) will not trigger an obligation to carry out a fully-fledged *ex ante* assessment and an obligation to report the proportionality reasoning. However, this should not be understood as discharging a Member State from its duty to keep the RegProf database complete and up to date. In particular, when notifying such changes to the Commission in line with their transparency obligation under Article 59 of the Professional Qualifications Directive, Member States should clearly explain the content and nature of such editorial or technical changes and why they have no restrictive effects. The Commission, other Member States and interested parties should be able to ascertain, on the basis of the information provided by the authority, whether the reported requirement indeed falls outside the scope of the Proportionality Test Directive obligations.

Similarly, in situations where requirements are laid down in specific EU legislation leaving no discretion to Member States on how to implement them (Article 2(2) of the Proportionality Test Directive), Member States are not required to carry out a proportionality analysis. However, when fulfilling their transparency obligations under Article 59 of the Professional Qualifications Directive, Member States should specify which EU law provisions lay down the requirements and explain why they consider that EU law does not leave any discretion as to how to implement them. In those cases where there is a margin for discretion as to how to implement a given requirement, Member States should confirm that the national transposing measure does not go beyond the minimum requirements set out in the specific EU instrument, or, if that is not the case, should provide a proportionality analysis.

It should also be noted that the transparency obligations under the Services Directive<sup>16</sup> and the Proportionality Test Directive continue to coexist. To avoid duplication of these obligations, procedural arrangements have been put in place in the RegProf database.

---

<sup>(15)</sup> For instance, the regulatory approach requirements and qualification requirements will always be present in the case of a regulated profession within the meaning of the Professional Qualifications Directive (this follows from the very definition of a regulated profession in Article 3). However, the Commission has observed instances in the RegProf database where only one of the applicable requirements has been specified by Member States.

<sup>(16)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 376.



Given that the present document only supplements technical guidance documents on the use of the RegProf database for transparency and reporting obligations under Article 59 of the Professional Qualifications Directive, Member States should consult those technical guidance documents carefully prior to completing the information in the RegProf database<sup>17</sup>.

## **4. SUBSTANCE OF THE ASSESSMENT – HOW TO ASSESS?**

### **4.1. How detailed should the analysis be?**

When provisions are subject to the obligation of a prior proportionality assessment under the Directive, Member States should ensure that these assessments result in sufficiently detailed analyses that enable appraisal of their compliance with the principle of proportionality (Article 4(3)). The benchmark is to be proportionate to the nature, content and impact of the provision (Article 4(2) and recital 12).

However, owing to the heterogeneity of the professions and the specificities of their respective markets and regulations, no general formula can be applied to these proportionality analyses<sup>18</sup>. It is necessary to assess carefully in each individual case what the impact of a given restriction of access or conduct would be, on the public interest objective pursued, and also on the freedom to choose an occupation, the freedom to conduct a business, and the fundamental freedoms of establishment, provision of services and/or movement of workers.

Generally, the greater the degree of restrictiveness, the more thorough and substantiated the proportionality assessment should be.

For instance, the creation of a new regulated profession would require a more rigorous assessment compared with a minor change in the number of hours required for continuous professional development.

Generic assessments that would apply to a whole category of professions (for example, all health professions) would never be in line with the obligation to analyse a specific measure and to provide specific evidence substantiating the arguments (recital 13).

### **4.2. What evidence should underpin the analysis?**

Recital 13 of the Directive indicates, as does the case law of the CJEU, that the burden of proof of justification and proportionality lies with Member States. The public interest reasons

---

(<sup>17</sup>) The technical guidance on the use of the RegProf database was circulated to the responsible authorities via the Group of Coordinators for the Recognition of Professional Qualifications and can be consulted in the RegProf database. After the planned migration of the RegProf database to the IMI is completed, the technical guidance documents will also be available on the IMI website: [https://ec.europa.eu/internal\\_market/imi-net/library/index\\_en.htm](https://ec.europa.eu/internal_market/imi-net/library/index_en.htm)

(<sup>18</sup>) See CJEU C-180/98 *Pavlov and Others*, Opinion of AG Jacobs, ECLI:EU:C:2000:151, paragraph 89.

for regulating invoked by a Member State should be accompanied by specific evidence substantiating its arguments<sup>19</sup>. Although a Member State does not necessarily have to produce a specific study or a specific form of evidence or materials establishing the proportionality of such a measure prior to its adoption, it should carry out an objective analysis, taking into account the specific circumstances of that Member State, that demonstrates that there are genuine risks to a public interest objective (recital 13).

Article 4(4) of the Directive specifies that the reasons for considering that a provision is justified and proportionate should be substantiated by qualitative and, wherever possible and relevant, quantitative elements. Such qualitative and/or quantitative elements could include market monitoring reports, academic research articles, surveys, statistical data, etc.

The nature of the substantiating elements required will also depend on the individual public interest objective that is being invoked and the related arguments. For instance, in the context of the public interest objective to maintain the financial balance of the social security system, the Court of Justice requires that the reasons invoked by way of justification be accompanied by a thorough analysis. Such an objective, detailed analysis, supported by figures, must be capable of demonstrating, with solid and consistent data, that there are genuine risks to the balance of the social security system<sup>20</sup>. Merely alluding to a risk of imbalances in the social security system was found to be insufficient.

To facilitate evidence-based assessments, it could be useful to provide the relevant actors with an overview of the specific national sources and resources available for such quantitative and qualitative assessments. Also, the creation of more detailed decision-making and problem analysis models, trees, flowcharts or questionnaires could strengthen the evidence-based character of policy decisions. Another instrument could be the use of pilot projects to test new measures before making them permanent. A good practice would also be to accompany reforms with *ex ante* and *ex post* empirical data gathering. Furthermore, the diligent monitoring of newly introduced or amended provisions, in line with Article 4(6) of the Directive, is likely to provide Member States with more empirical data and analytical practices that could be used for substantiating future proportionality analyses.

The following are examples of how Member State authorities rely on various sources of data to support their proportionality analysis.

<b>Examples*</b>	<b><u>Architect (qualification requirements):</u></b> [reference to a particular source] [shows] that as the number of architecture students and, accordingly, the number of professionals, has grown, we have witnessed corresponding growth in the turnover in the sector and improved quality of design and construction. The growth in number of architects brought about an added value that guarantees the quality of the final product, enhancement of the public spaces and protection of the historic and cultural heritage of the built environment.
	<b><u>Child supervisor (qualification requirement):</u></b> Based on the findings of, among others, Fukkink, R. G., & Lont, A. (2007) ' <i>Does training matter? Meta-analysis</i>

<sup>(19)</sup> See, for example, CJEU C-384/18 *Commission v Belgium*, ECLI:EU:C:2020:124, paragraph 48 and the case law cited therein.

<sup>(20)</sup> CJEU C-651/16 *DW*, ECLI:EU:C:2018:162 and CJEU C-515/14 *Commission v Cyprus*, ECLI:EU:C:2016:30, paragraphs 54-55.

	<p>and review of caregiver training studies' (Early Childhood Research Quarterly 22(3), p. 294-311), it can be said that 'there is a broad consensus among researchers, practitioners and policymakers that the quality of ECEC [early childhood education and care] and ultimately the outcomes for children and families depends on well-educated, experienced and competent staff. The quality and relevance of staff training has a direct effect on practitioners and an indirect effect on children (source: The European Quality Framework: <a href="http://ec.europa.eu/dgs/education_culture/repository/education/policy/strategic-framework/archive/documents/ecec-quality-framework_en.pdf">http://ec.europa.eu/dgs/education_culture/repository/education/policy/strategic-framework/archive/documents/ecec-quality-framework_en.pdf</a>, p. 31).' This 'staff' [in need of appropriate training] is not [limited to] the childcare worker, but also [includes] the responsible supervisor or manager that runs the childcare setting.</p>
	<p><b>Architects (requirement of protected professional title):</b> In 2001, a study [...] was conducted to gauge the efficacy of the [Act]. It concluded that the Act was working well and that it was an efficient way of providing a form of regulation, given that the level of organisation within the group was too low to establish regulation on a private-law basis. The report offered a number of recommendations that were further explored, including a period of practical experience as an extra condition for registration. Extensive experiments were conducted and evaluated on this front and a two-year period was introduced. The results of the evaluations indicated that practical experience was a necessary and much-desired addition to the standard academic qualifications. Practical skills and insight into subjects such as building regulations, procedures, construction costs and suchlike – all of which are essential to perform the tasks of a fully-fledged architect – are not part of the educational programme but they can be developed during the 2 years after graduation. The latest amendment to the [Act] ensures that a two-year period of practical experience is required to use the title of architect.</p>

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

Member States should clearly indicate the sources or the relevant figures underlying their assessment, and should analyse these findings to ascertain whether they are indeed linked to the proposed regulation. General allegations would not be sufficient, such as: 'Due to regulation, the number of accidents relating to the operation of cranes, in comparison with similar countries, is very low.'

### 4.3. What are the assessment criteria?

The objective of the Directive is to lay down a common framework for assessing the proportionality of the measures within its scope, with the aim of avoiding fragmentation of the internal market and a coordinated approach to eliminating barriers to the taking-up and pursuit of certain employed or self-employed activities (Article 1 and recital 5). Therefore, the substance of the analysis required under the Directive has been set out in considerable detail in Articles 5-7 of the Directive.

Nonetheless, the interpretation of these criteria and their application to concrete draft provisions by the relevant authorities and bodies could be supported at national level with additional tools, such as questionnaires, decision trees, guidance documents, training, etc.

Where appropriate, the proportionality test could be incorporated into existing impact assessment procedures and tools.

Moreover, if the responsibility to conduct proportionality assessments is given to professional associations, Member States should make sure that the transposing measures and accompanying actions provide sufficient clarity as to what is expected from those organisations. A mere reference to the criteria in Article 7 of the Directive would not be sufficient.

The following sections describe each of the assessment criteria referred to in Articles 5-7 of the Directive, supported by relevant examples.

#### *4.3.1. Non-discrimination*

As part of the analysis of newly introduced or amended requirements restricting regulated professions, Member States should verify that they are neither directly nor indirectly discriminatory on the basis of nationality or residence (Article 5 of the Directive).

Discrimination (direct or indirect) is found where two comparable groups are treated differently, or where non-comparable groups are treated the same way. Thus, two groups should not be treated differently where there are no differences between them that could be used as a basis for different treatment.

Apart from overt discrimination by reason of nationality, there may be situations of covert (indirect) discrimination where the measure in question is intrinsically liable to affect migrant professionals more than nationals, and where there is a risk that the former will be disadvantaged, e.g. a residence requirement would primarily affect migrant professionals, as this condition can be more easily satisfied by nationals than by non-nationals<sup>21</sup>. Similarly, accepting only diplomas issued in a specific Member State for access to a profession would constitute 'an indirect and disguised but quite definite restriction with regard to nationals of other Member States desirous of entering the profession'<sup>22</sup>. Requirements of particular local experience or requirements concerning specific local knowledge (e.g. geographic, historical, national administration, knowledge about legislation or health system, or local dialects) could also constitute indirect discrimination. For a discrimination to be present, it is not necessary that *all* nationals benefit from the requirement and that *all* foreigners are disadvantaged<sup>23</sup>.

#### *4.3.2. Public interest objectives*

Member States will need to identify the relevant public interest objectives<sup>24</sup> pursued by the new or modifying professional regulation restricting access to, or the pursuit of, regulated professions (Article 6(1) of the Directive).

---

<sup>(21)</sup> CJEU C-237/94 *O'Flynn v Adjudication Officer*, ECLI:EU:C:1996:206 and CJEU C-512/13 *Sopora*, ECLI:EU:C:2015:108, paragraph 23 and case law referred to therein.

<sup>(22)</sup> Opinion of Advocate-General Mayras delivered on 29 March 1977 in Case 71-76 *Thieffry*, ECLI:EU:C:1977:55.

<sup>(23)</sup> See CJEU C-388/01 *Commission v Italy*, ECLI:EU:C:2003:30, paragraph 14 and case law referred to therein.

<sup>(24)</sup> The term 'public interest objectives' is to be considered as consistent with the term 'overriding reasons of public interest' as used by the CJEU.

Member States may consider the following: ‘public policy, public security or public health, [...] preserving the financial equilibrium of the social security system; the protection of consumers, of recipients of services and of workers; the safeguarding of the proper administration of justice; ensuring the fairness of trade transactions; the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision; transport 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.’ While this list is non-exhaustive, it reflects overriding reasons recognised by the case law of the CJEU in the area of the freedom of establishment, the free movement of workers and the freedom to provide services (Article 6(2) and recital 17).<sup>25</sup> The list of overriding reasons of public interest may evolve over time if there are sufficiently strong reasons for a new legitimate objective to arise.

It should be noted that the terms ‘public policy’, ‘public security’ and ‘public health’ are concepts of European Union law that stem directly from Article 52 TFEU. The CJEU has consistently interpreted these concepts in a narrow sense, requiring a *genuine and serious threat to a fundamental interest of society* and placing on the Member State invoking these public interest objectives the burden to demonstrate the risks involved.<sup>26</sup>

For instance, in the following redacted example, the objective of ‘public health’ is interpreted too broadly: *regulation of the profession of hairdresser is justified by the **public health** objective, in particular as the vocational training on disinfection and health and hygiene regulations is required to **protect customers**. Moreover, the knowledge about first aid is mandatory because of the use of tools such as knives or scissors.*

While the above measure is said to protect public health, the arguments brought forward do not address the impact on public health. The analysis is essentially linked to the prevention of harm to the recipients of hairdresser services, so to consumer protection. The simple fact that a service provider has many customers does not automatically bring the risk of harm to these customers within the realm of public health or safety. Similar considerations may be relevant for medical professions, where the objective of protecting patient safety should not be used interchangeably with that of public health and public safety.

If a Member State invokes several public interest objectives for the same requirement, it should assess how the provision (introducing a requirement) attains each of these objectives.

It should also be pointed out that, according to settled CJEU case law, purely economic reasons, namely promoting the national economy to the detriment of the fundamental freedoms<sup>27</sup>, and purely administrative reasons, such as carrying out controls or gathering

---

<sup>(25)</sup> See also the Handbook on the implementation of the Services Directive (2022), pages 88-92.

<sup>(26)</sup> See CJEU C-257/05 *Commission v Austria*, ECLI:EU:C:2006:785, paragraph 25. See also the Handbook on the implementation of the Services Directive (2022), pages 88-90 for a more detailed description of the case law concerning the public interest grounds listed in Article 52 TFEU.

<sup>(27)</sup> CJEU C-72/83 *Campus Oil*, ECLI:EU:C:1984:256, paragraph 35; CJEU C-352/85, *Bond van Adverteerders*, ECLI:EU:C:1988:196, paragraphs 33-34; CJEU C-288/89 *Collectieve Antennevoorziening Gouda*, ECLI:EU:C:1991:323, paragraph 29; CJEU C-211/91 *Commission v Belgium*, ECLI:EU:C:1992:526, paras 9-11; CJEU C-318/05 *Commission v Germany*, ECLI:EU:C:2007:495, paragraphs 93-95; CJEU C-384/08 *Attanasio Group*, ECLI:EU:C:2010:133, paragraph 55; CJEU C-338/09 *Yellow Cab*, ECLI:EU:C:2010:814, paragraph 51.

statistics<sup>28</sup>, cannot constitute overriding reasons in the public interest (Article 6(3) and recital 17). For example, while the CJEU has accepted the need to ensure 'the fairness of trade transactions', if a Member State were to rely on an additional overriding reason aimed at 'protecting trade persons' that goes beyond the objective to ensure fairness of trade transactions, this would seem to have as its objective the protection of such trade persons from competition or economic pressure, and thus run counter to the prohibition to rely on grounds of a purely economic nature.

### 4.3.3. Proportionality

To comply with the principle of proportionality, Member States should ensure that the provisions being introduced or amended are both suitable and necessary to achieve the public interest objective(s) pursued (Article 7(2), first subparagraph of the Proportionality Test Directive).

Where the provision being introduced or amended concerns the reserving of activities or qualification requirements, Member States should in addition take into account more specific assessment criteria set out in the second subparagraph of Article 7(2) of the Proportionality Test Directive.

#### 4.3.3.1. Suitability

To meet the requirement of proportionality, a measure should be suitable as regards its appropriateness to secure the attainment of the objective pursued, i.e. there should be a 'fit' between the measure and its objective.

When assessing the suitability of the measure, the following questions in particular would need to be considered:

#### ***Q1. Whom does the measure aim to protect? (point a of the first subparagraph of Article 7(2) of the Proportionality Test Directive )***

The proportionality assessment should be clear about whose interests the measure aims to protect. Does it intend to protect the interests of service recipients (consumers, patients, business consumers, etc.) or of the professionals providing the service, their co-workers, etc.? Or will the measure (also) protect third parties (possibly society as a whole) who might be affected by the professional services at hand? The subsequent analysis should then fully take into account the nature of the persons the measure aims to protect (e.g. repeat versus one-off buyers, business clients versus consumers). For example, when the recipients of certain services are solely or primarily business clients, the required level of protection could be different than when these services are delivered to consumers.

For instance, the following are examples of how Member State authorities try to identify the entities whose interest the measures aim to protect.

---

<sup>(28)</sup> CJEU Case 205/84 *Commission v Germany*, ECLI:EU:C:1986:463, paragraph 54; CJEU C-334/02 *Commission v France*, ECLI:EU:C:2004:129, paragraph 29; CJEU C-386/04 *Walter Stauffer*, ECLI:EU:C:2006:568, paragraph 48; CJEU C-512/13 *Sopora*, ECLI:EU:C:2015:108, paragraph 33.



<b>Examples*</b>	<b><u>Clinical dental technician:</u></b> In order to secure the protection of <b>patients</b> , it is necessary to make sure that only individuals who have the necessary qualifications and training can get an authorisation.
	<b><u>Crane operator:</u></b> Mobile cranes can cause harm to <b>the public, drivers and others</b> if not used properly. The aim of the educational requirement is to ensure sufficient qualifications on safety to prevent risks during work for both the employee and others.
	<b><u>Dietician:</u></b> making the exercise of the profession of dietician subject to examination of the required skills gives the <b>consumer</b> and the user of a service ( <b>patients</b> ) and the <b>employer</b> (e.g. hospitals) the necessary certainty about these skills.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the first example, the qualification requirement is linked to the need to protect the patients of the clinical dental technician. In the second example, qualification requirements are said to be necessary to protect ‘the public’, ‘drivers’ and ‘others’ from harm. However, it is not clarified who these ‘others’ would be. In the last example, the regulation of dieticians is aimed at, *inter alia*, protecting employers in the same way as it protects consumers/recipients of services. However, no consideration is given to the fact that employers (hospitals) are in a very different situation compared with consumers. Only the latter lack the high level of technical knowledge needed to assess the quality of the service and the service provider. It is therefore questionable that the measure at issue is at all aimed at protecting the needs of employers. Should there be such a need to protect employers, it should be explained why employers are not in a position to assess the skills of their employees.

***Q2. What are the risks the measure aims to minimise, or the benefits it aims to maximise, for the pursuit of the public interest objectives? How does the measure operate to achieve those objectives (appropriateness of the measure to attain the objectives)? (points a & c of the first subparagraph of Article 7(2) of the Proportionality Test Directive)***

The national measure should effectively contribute to achieving the objective pursued. Where it has no effect on the objective, it should not be considered as suitable (see recital 22). Therefore, Member States should: (1) clearly identify the specific risks or benefits the measure aims to minimise or maximise; and (2) explain in what manner and to what extent the concrete measure will help to achieve the specific goal(s) pursued. This is one of the most important parts of the assessment and it requires a thorough fact-based analysis showing that there are indeed relevant risks and that the measure would be able to mitigate these risks. General statements about the measure being beneficial for service quality or consumer protection are not sufficient but need to be corroborated by a meaningful analysis focusing on the specific measure and the impact it can be expected to have on the public interest objectives being pursued<sup>29</sup>.

The following are examples of how Member State authorities try, with varied degrees of specificity and precision, to identify the risks or benefits targeted at by the measures.

<b>Examples*</b>	<p><b><u>Tax adviser (consumer protection):</u></b> The recipients of tax advice services are business organisations, central government agencies, civil organisations. The work of tax advisers ensures transparent and correct taxation processes and practices inside the companies. The main risks of the service lie in incorrect or false taxation processes, statements, analysis, etc., which could indicate wrong economic decisions, resulting in significant damages to the organisations and to the central state budget. Tax advisers are to fully satisfy the requirements as to professional competence, for instance, bearing adequate professional knowledge or taking part in compulsory education about the new and modified regulations. Well-educated tax advisers with up-to-date information can minimise the risks and guarantee correct taxations.</p>
	<p><b><u>Architect (protection of clients):</u></b> The regulation seeks to minimise the risk associated with provision of services by an unqualified person. [...] It also seeks to maximise the quality of the services provided by architects and guarantee a standard of competence while ensuring protection of the rights and interests of the clients.</p> <ul style="list-style-type: none"> <li>- The academic qualification required for practice of the profession serves to guarantee the knowledge and skills needed for said practice and ensure compliance with the standards in terms of quality and safety that a client can expect.</li> <li>- Protection of the professional title guarantees to the public that the service provider satisfies the requirements for enrolment in the Association of Architects, thus fostering a relationship of trust between the client and the qualified professional.</li> <li>- Ethical standards ensure working relationships between professionals and between them and society.</li> </ul>
	<p><b><u>Physiotherapist (protection of public health):</u></b> The education and training requirements for physiotherapists were introduced with the aim to protect, promote and maintain the health and safety of the public.</p>
	<p><b><u>Electrotechnical installer (public security and consumer protection):</u></b> The regulation contributes to public safety because it reduces the risk of fire, electrocution and electromagnetic interference. About 30% of all fires are caused by a problem in the electrical installation or an electrical device. Another important safety risk is electrocution, caused by poorly installed electrical systems and malfunctioning electrical appliances. Correctly executed installations and repairs substantially reduce the risk of fire and electrocution. The regulation helps to achieve correct installations and repairs. Another less well-known safety risk concerns electromagnetic interference. All electric and electronic devices produce electromagnetic radiation. This radiation can interfere with other devices (e.g. air traffic control systems). To prevent electromagnetic interference, a minimum professional qualification is needed. The professional regulations also contribute to consumer protection. So, on the one hand, there are the security aspects discussed above. But on</p>

<sup>(29)</sup> See e.g. CJEU C-66/18 *Commission v Hungary*, ECLI:EU:C:2020:792, paragraph 204; CJEU C-384/18 *Commission v Belgium*, ECLI:EU:C:2020:124, paragraph 48; CJEU C-377/17 *Commission v Germany*, ECLI:EU:C:2019:562, paragraph 74.



	the other, due to major investments, the impact of electrical installation work on real estate owners should not be underestimated. Poorly executed electrical work may cause large and irreversible damage to a property.
--	--

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the example on tax advisers, an effort is made to identify the different types of risks involved, indicating that not only direct business clients but also the state budget could be affected. However, while a long explanation is given, the actual link between the specific measure (i.e. education requirement and reserved activities) and the risks (i.e. incorrect/false taxation processes leading to wrong economic decisions, damage to organisations or state budget) is not genuinely analysed. Indeed, it is assumed that reserving the activity of tax advice to 'well-educated' tax advisers will minimise that risk. However, other dimensions of service quality, such as the availability and accessibility of the service (e.g. where the increase in educational requirements results in fewer practitioners, service quality may also suffer) or price/accessibility (some consumers might not be willing or able to pay for very expensive high-tech tax advice), are not assessed. Likewise, it is not explained how the specific measure, i.e. the specific reserved tasks and educational requirements, is tailored to the specific risk. For instance, whether the tasks performed by tax advisers in these different types of organisations is always of the same complexity and thus justifies reserving the activity of tax advice solely to highly educated professionals. Or whether it has been considered that, for instance, civil organisations typically have less complex tax statements and could thus benefit more from being able to hire less qualified/expensive professionals to prepare these (lower benefit from measure).

In the example on architects, there is no explanation of the risks that would result from the provision of services by unqualified persons. Similarly, there is no explanation of what is meant by 'the quality of the service' or of how the specific competency requirements ensure that quality. For instance, if the regulatory approach in the example were limited to title protection (so no exclusive reserved activities), one could develop the argument that the skills requirements combined with title protection can foster trust between the client and professionals, while leaving access to the activities open to professionals without such protected title. These 'differently qualified' professionals could then serve consumers with different preferences and needs. Hence, there would be less risk of a reduced supply or unwanted price increase of those services.

In the penultimate example, the correlation between the imposed educational requirements for physiotherapists and the desired outcome (public health and safety) is not explained at all. In addition, the protection of public health is confused with patient safety.

In the example on electrotechnical installers, the different types of risks are identified and explained. However, it is not clarified how the specific professional qualification requirement has been designed to ensure that professionals provide the minimum level of service quality deemed necessary to avoid those risks. Likewise, it is not specified which concrete activities should be reserved to qualified professionals to prevent those risks from materialising. Moreover, other aspects of service quality, such as the availability and accessibility of services, are not addressed. It is, for instance, not unlikely that qualification requirements would reduce the number of electrotechnical installers in the market or lead to an increase in prices. This

could make those services less widely available or even unaffordable for certain consumers. Lack of availability or accessibility could then prompt consumers to resort to ‘do-it-yourself solutions’ thereby increasing rather than reducing the risks.

**Q3. Whether the objective is being pursued in a consistent and systematic manner? (point c of the first subparagraph of Article 7(2) of the Proportionality Test Directive)**

A measure should be considered to be suitable for securing the attainment of the objective pursued only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner (without contradictions or inconsistencies).<sup>30</sup> This will be the case, for instance, where similar risks related to certain activities are addressed in a comparable way and where any exceptions to the restrictions involved are applied in line with the stated objective<sup>31</sup> (recital 22).

For instance, in the *DocMorris* case<sup>32</sup>, the Court of Justice had to examine if a national rule that precludes non-pharmacists from owning and operating a pharmacy constituted a proportionate restriction of the freedom of establishment. The Court pointed to inconsistencies in the way this rule was applied to three different types of pharmacies: community pharmacies, inherited pharmacies and hospital pharmacies.

The need to show consistency is not necessarily limited to activities within the same profession. Where relevant, a comparison should also be made in relation to other pertinent activities or professions, in other words with reference to categories such as ‘crafts’, ‘liberal professions’, ‘public functions’, ‘personal care services’ (hairdressers, beauticians, pedicurists, masseurs, opticians), ‘technical construction activities’ (electrician, drainage, pipe fitter ...), etc.

Furthermore, the need to ensure consistency must not be narrowed down to the internal consistency of the legal framework of a Member State, such as avoiding contradiction between legal norms addressing the same situation, ensuring that higher-ranked norms are properly implemented by lower-ranked (implementing) measures, etc. Rather than looking at the formal consistency of the legal framework, this criterion requires Member States to ensure that the content of the measure(s) reflects a consistent approach to the pursuit of comparable objectives or prevention of similar risks related to certain activities.

The following are examples of how Member State authorities try to justify a consistent and systemic approach to regulation.

<b>Examples*</b>	<b>Healthcare services (registration with a state body):</b> [MS] has no professional register other than that for <b>healthcare professions</b> . At present, there are plans for adding <b>social welfare professionals</b> to the same register that contains the details of healthcare professionals. The register of professionals is considered to function reliably and systematically. The register makes it easier for [the authority] to conduct its monitoring exercises
------------------	---

<sup>(30)</sup> CJEU C-169/07 *Hartlauer*, ECLI:EU:C:2009:141, paragraph 55; CJEU C-384/08 *Attanasio Group*, ECLI:EU:C:2010:133, paragraph 51 ; CJEU Joined cases C-184/13-187/13, 194/13, 195/13, 208/13, *API*, ECLI:EU:C:2014:2147, paras 53, ; CJEU C-377/17 *Commission v Germany*, ECLI:EU:C:2019:562, paragraph 89 and case law cited therein.

<sup>(31)</sup> See e.g. CJEU C-218/19 *Onofrei*, ECLI:EU:C:2020:1034, paragraph 36.

<sup>(32)</sup> CJEU Joined Cases C-171/07 and C 172/07 *DocMorris NV*, ECLI:EU:C:2009:316, paragraph 42.

	and therefore reduces risks to patient safety and public health. It also boosts the confidence that the public has in the professionals themselves and the service system.
	<b><u>Real estate agent (multiple requirements):</u></b> The <b>real estate agent's</b> role as intermediary can be compared with that of the <b>insurance intermediary</b> . An insurance intermediary must also be registered, covered by a liability insurance, and have adequate training.
	<b><u>Real estate agent (reduced/removed requirements):</u></b> Professional qualifications resulted in an unwanted division of the market between <b>real estate agents</b> themselves and, for example, <b>appraisers</b> . Abolishing the title of real estate agent could guarantee more equal chances on the market.
	<b><u>Physiotherapist:</u></b> Yes. Comparable professions are subject to the same requirements.
	<b><u>Architects (protected title):</u></b> The <b>different types of architectural professions</b> (architects, urban planners, garden and landscape architects, and interior designers) are all protected in the same way. The legal requirements for professionals in each of these fields are more or less the same. Reserved activities were not added to the title protection for architects since there are other instruments to assess whether buildings meet the safety standards. <b>Constructors (engineers)</b> have no title protection but the work they deliver is subject to certain formal criteria (for building projects that need planning permission). Planning permission is granted on the basis of, amongst other things, whether the project meets the health and safety standards in the Building Code. In short, consistent and systematic protection is in place for the architectural disciplines.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the first example above, a comparison is made between healthcare and social welfare professions. However, there is no explanation on how these registration systems are comparable in terms of similar risks being addressed with regard to the two groups of professions.

In the second example on real estate agents, the Member State could explain in more detail why the risks involved in both professions are comparable and thus warrant the same type of regulatory response.

In the example on physiotherapists, the Member State did not at all assess or explain whether the objective is being pursued in a consistent and systematic manner.

In the example on architects, it is explained that the objective (of consumer protection) is consistently pursued via title protection across the different types of architects. However, no justification is provided for the different treatment of architects as compared with constructors/engineers. Indeed, whereas it is explained that a reserve of activities for architects is not necessary since there are other instruments in place to ensure that buildings meet the safety standards, it is not clarified why title protection is required for architects and not for engineers.

**Q4. Are there any scientific and technological developments that might effectively reduce the asymmetry of information between professionals and consumers? (point f of the second subparagraph of Article 7(2) of the Proportionality Test Directive)**

Where relevant in view of the nature and content of the specific provision, Member States should also take into account the scientific and technological developments that may affect the asymmetry of information between professionals and consumers.

Markets for professional services can be characterised by an asymmetry of information between consumers and professionals. Given the complex nature of some professional services that require a high level of technical knowledge on the side of the professional, consumers might find it difficult to judge the precise content, extent or quality of the services provided to them<sup>33</sup>. Hence, consumers will need to be able to trust the professional. To instil such trust, regulators have tried to indirectly influence the quality of professional services by relying upon different types of access and conduct requirements.

As explained by AG Jacobs in *Pavlov and Others*<sup>34</sup>, *‘[s]uch an asymmetry between seller and buyer arises where the buyer cannot fully assess the quality of the product he receives. In the professions, the problem is particularly acute because of the nature of their highly technical services. The consumer cannot assess the quality of those services prior to purchase by inspection (as he could for example when buying cheese), but only after consumption. Even worse, he might never fully understand whether or not the professional (e.g. doctor, architect, lawyer) provided a high-quality service. [...] The usual methods of overcoming or mitigating the negative effects of asymmetric information, or in other words of preventing a ‘race to the bottom’, can all be found in the professions. Access examinations are intended to guarantee a high initial standard of skills. Liability rules, the consequences of a good or a bad reputation, and certification schemes are incentives to exploit those skills to the full. Advertising is seen by some as a means of overcoming or mitigating asymmetry, while others claim that advertising exacerbates the problems.’*

In addition to the uncertainty about the precise content, extent or quality of the actual service, consumers may face difficulties to establish the level of qualification needed to ensure that service providers are capable of delivering services that correspond adequately to the needs of the recipient. This asymmetry of information may prevent consumers from making informed choices as to service providers. To remedy the risk of potential market failures, measures like title protection clarifying the technical knowledge and competences of professionals might provide consumers with the information they need to choose the type of service they wish to receive.

However, scientific and technological developments might help to reduce this information asymmetry. For instance, the rise of the internet has greatly enhanced the amount and sources of information available to everybody. Hence, assessments by experts or by more experienced users have become more easily available. Likewise, the possibility to exchange experiences

---

(<sup>33</sup>) See for instance, CJEU Joined cases C-94/04 and C-202/04 *Cipolla*, where the Court acknowledged that ‘in the field of lawyers’ services, there is usually an asymmetry of information between ‘client-consumers’ and lawyers. Lawyers display a high level of technical knowledge that consumers may not have; the latter therefore find it difficult to judge the quality of the services provided to them.’ ECLI:EU:C:2006:758, paragraph 68.

(<sup>34</sup>) CJEU C-180/98 *Pavlov and Others*, Opinion of AG Jacobs, ECLI:EU:C:2000:151, paragraph 86.

with a large community of consumers might lead to consumers being more informed. Therefore, where a particular measure is inspired by the asymmetry of information, Member States should fully take into account any possible scientific or technological developments that might have altered this information imbalance.

<b>Examples*</b>	<p><b><u>Lawyer (reserved activities):</u></b> [...] other alternatives for compulsory representation by lawyers in proceedings were also considered. Although it is possible, in principle, for legal experts, who are not lawyers, to perform work that is currently performed by lawyers, for example on the basis of a system of licences and accreditations, the evaluation committee does not believe that the advantages outweigh the disadvantages. Partly because of the information asymmetry between the client and legal service provider, the diversity of different service providers would not make it simpler to choose a good legal service provider. Enhancing and maintaining the quality of legal services would also become very complex. The threshold above which legal representation in civil proceedings is compulsory was recently raised to EUR 25 000. As a result, there is a limited procedural monopoly for lawyers. [<i>Sources redacted</i>].</p> <p><b><u>Real estate agent (reduced/removed requirement):</u></b> Several aspects were taken into account when considering liberalisation of the real estate agent profession and relying on market based certification schemes. A protected title has little to say about actual quality. The check that measured the quality of the agent was only done once, when the agent applied for the title. Certification by the market, on the other hand, contains a periodic check whereby continued quality can be guaranteed. Also, more requirements can be asked for with a certification scheme. Because of the new features of the real estate market, mainly the decline of information asymmetry between agent and customer, the market became more capable to create quality (expertise) norms. The real estate market was already very organised by associations, allowing this market to apply self-regulation.</p>
------------------	---

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the second example, it is explained that the decline of information asymmetry between real estate agents and customers was one of the elements that allowed to deregulate the profession and to rely on the market mechanism itself to ensure service quality.

In addition, digitalisation and scientific developments more generally have the capacity to reduce the complexity of some of the tasks traditionally performed by professionals, thereby potentially reducing the need for certain qualification requirements. Hence, although, as is explained in the first example, reserving the specific task of legal representation in court for cases above a certain threshold to lawyers could be justified due to the likely complexity of such cases, this is not necessarily so for all tasks traditionally performed by lawyers. For example, recent development in legal software and technology solutions may have created possibilities for certain types of tasks to be entrusted to alternative types of service providers.



**Q5. For requirements concerning qualifications and reserved activities (points a, b & c of the second subparagraph of Article 7(2) of the Proportionality Test Directive and recital 25):**

- **What is the connection between the scope of activities reserved to the profession and the professional qualification required?**
- **What is the connection between the complexity of the tasks and the professional qualification required (with regard to the level, nature and duration of training required)?**
- **What degree of autonomy will the professional have in the exercise of its profession?**
- **How will 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)<sup>35</sup>?**

When assessing the proportionality of reserving certain activities to individuals possessing particular professional qualifications, Member States should evaluate how the **scope** of the specific reserved activities is reflected in the precise professional qualifications being demanded (point a of the second subparagraph of Article 7(2)). Member States should consider that the broader the scope of reserved activities, the larger the impact of an exclusive right to provide these services will be.

Furthermore, Member States should assess whether the **complexity** of the reserved activities justifies the level, nature and duration of the professional qualifications being required. The less complex these tasks, the weaker the justification for reserving these activities to professionals with specific professional qualifications (point b of the second subparagraph of Article 7(2)).

The **autonomy and level of responsibility** in performing those tasks should also be taken into account. The less responsibility the professional has when performing those tasks, i.e. when this happens under the control and responsibility of another qualified professional, the weaker the justification is for reserving these activities only to those with specific professional qualifications (point e of the second subparagraph of Article 7(2)).

<p><b>Examples*</b></p> <p><b><i>establish the link between the specific</i></b></p>	<p><b><u>Clinical dental technicians</u></b> 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</p>
--	---

<sup>(35)</sup> See also, CJEU C-76/90 *Säger*, ECLI:EU:C:1991:331, paragraph 18, and case CJEU C-79/01 *Payroll Data*, ECLI:EU:C:2002:592, paragraph 34:

*'In that respect, it is appropriate to point out that it is for the national court to establish the nature of the activities of the DPCs [data processing centres]. If it concludes that the services of preparing and printing pay slips offered by Payroll involve essentially the execution of instructions and do not require any special professional qualities, the disputed provision would not seem apt to protect workers' rights'.*

<b>qualification required</b>  <b>AND</b>  <b>the reserved activities, their complexity, and autonomy / level of responsibility</b>	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.
	<b>Dental nurse:</b> In [the] health sector, the professions that are regulated require the demonstration/mobilisation of a high level [of] skills, under penalty if [the] professionals apply wrong techniques in patients with damage/injury to the patient's health.
	<b>Hearing-aid maker:</b> Otoscopy and regional and voice audiometry are technical acts that must be fully mastered by the professional, as poor performance of the act could have damaging consequences for the patient. In addition, the hearing-aid maker must have perfect knowledge of all existing instruments and devices and have very extensive knowledge of deafness, disability, acoustics, anatomy and otoscopy to choose, assemble, settle and adapt the hearing aid.
	<b>Land surveyors (3- or 5-year post-secondary education):</b> The complexity of boundary-marking and delineation activities, for example, necessitates particular knowledge in the field of mathematics, topography, geodesy and civil and administrative law, as well as a sense of conciliation and respect for debate.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

While the example on clinical dental technicians contains detailed explanations, in the examples on hearing-aid makers and dental nurses, the Member States did not at all assess the connection between the reserved activities and the specific required qualifications.

In the example on land surveyors, the complexity of the tasks is linked to the nature of the knowledge and skills required to perform them. However, no explanation is given regarding the connection between the complexity of the tasks and the level and duration of the training, i.e. 3 years of specialised post-secondary education.

**Q6. For requirements concerning qualifications and reserved activities: can the reserved activities be shared with other professions, and if not, why not? (point d of the second subparagraph of Article 7(2) of the Proportionality Test Directive)**

The professional activities reserved to the holders of required qualifications can be **exclusive** (monopoly) or **shared** with other regulated professions (and therefore less restrictive).

In some cases, sharing some activities with other professions will not prevent the achievement of the desired public interest objective. If, for instance, professionals from abroad request partial access to some, but not all, of the reserved activities, this might be an indication of the

need to examine whether the existing regulation, by way of exclusive reserved activities, is still proportionate.

<b>Examples*</b>	<b><u>Real estate agent:</u></b> all activities are exclusively reserved.
	<b><u>Physiotherapist:</u></b> Some of the activities are performed by other professions.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the example regarding real estate agents, the Member State did not at all assess the possibility of sharing activities with other professions.

In the example on physiotherapists, it is not specified which reserved activities have been shared with which professions, and why other activities could not be shared.

A relevant example can be found in Case C-451/03 *Servizi Ausiliari Dottori*<sup>36</sup> (concerning tax advisers), where the Court stated: “Some of the services reserved to CAF [tax advice centres], such as delivery of a copy of the tax declaration and of the tax payment schedule, filing the tax declarations with the tax authorities and informing employers responsible for the collection of tax of the effect of the tax declaration, are essentially simple and do not require any specific professional qualifications”. In this case, the Court concluded that the nature of those services could not justify their provision being limited solely to holders of a particular professional qualification. Such activities should therefore be open to other professionals.

#### 4.3.3.2. Necessity

To meet the requirement of proportionality, a measure should not go beyond what is necessary to attain that objective (Article 7(2)).

When assessing the necessity of the measure, questions 7-11 below would need to be considered.

***Q7. Why are the existing rules of a specific or general nature (e.g. product safety legislation, consumer protection laws, penalties/criminal sanctions in the case of illegal exercise of professional activities) insufficient to protect the public interest objective pursued? (point b of the first subparagraph of Article 7(2) of the Proportionality Test Directive)***

Requirements should be considered necessary only where existing measures, such as product safety law, consumer protection law, or other relevant rules (in the area of construction, competition, public health, etc.) cannot be regarded as suitable or genuinely effective to achieve the aim pursued. Member States should look at the existing safeguards created by other types of applicable *ex ante* or *ex post* regulation, e.g. approval procedures, compliance

---

<sup>(36)</sup> CJEU C-451/03 *Servizi Ausiliari Dottori*, ECLI:EU:C:2006:208.



with technical and safety standards, or inspection mechanisms when considering whether a particular restrictive measure is necessary.

<b>Examples*</b>	<b><u>Architects (protected title):</u></b> Reserved activities were not added to the title protection for architects since there are other instruments in [the Member State] to assess whether buildings meet the safety standards.
	<b><u>Constructors/engineers:</u></b> (reserved activities) have no title protection under public law, but the work they deliver is subject to certain formal criteria (for building projects that need planning permission). Planning permission is granted on the basis of, amongst other things, whether the project meets the health and safety standards in the Building Code.
	<b><u>Electrotechnical installer (reserve of activities):</u></b> The existing regulations on electrical installations (General Regulations on Electrical Installations), product standards and electromagnetic compatibility are not sufficient to minimise the risks. The regulation regarding professional qualifications ensures that people executing the work understand the General Regulations for Electrical Installations and apply those regulations properly. The mandatory inspection of domestic electrical installation does not provide adequate protection against the risks described either. In fact, this inspection only needs to be carried out in a number of specific cases.
	<b><u>Landscape architect / designer (protected title without reserved activities):</u></b> 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.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the example on architects and builders, it is explained that there are other means available in the national system, including planning permission procedures, to ensure that buildings meet the required safety standards. In the example for architects, more concrete details about alternative regulatory means would be helpful.

In the example on electrotechnical installers, the Member State makes an effort to enumerate other existing regulations aimed at guaranteeing the safety of electrical installation works. However, it fails to explain why these regulations are insufficient and need to be supplemented with a reserve of activities for professionals that possess specific qualifications.

In the example on landscape architects, the Member State goes further and attempts to explain why the general legal framework and an existing 'good practices guidance document' have proven not to be suitable to guarantee the necessary protection of service recipients and to contribute to creating an economical, sustainable and carbon-free society. More specifically,

the Member State argues that because the 'good practices guidance document' was not used, the existing framework failed to ensure that local authorities could make informed choices when seeking to contract adequately qualified landscape architects. However, no analysis is provided as to why this failed and what other measures could have been taken to improve take-up of the guidance.

***Q8. Is there a possibility of using less restrictive means to achieve these objectives? (point e of the first subparagraph of Article 7(2) of the Proportionality Test Directive)***

Member States should carry out a comparison between the measure at issue and alternative, less restrictive means that would result in the same objective being attained but which would impose fewer restrictions. According to settled case law of the CJEU, this obligation is, however, not so extensive as to require the Member State to prove, positively, that no other conceivable measure could enable that objective to be attained under the same conditions<sup>37</sup>.

Below, a number of examples of alternatives for, or less restrictive types of, regulation are presented. However, the use of such alternative means should also be carefully assessed on a case-by-case basis, as they could still amount to requirements non-compliant with EU law in the specific case at hand:

- ***Voluntary codes of conduct*** (e.g., as an alternative to introducing requirements by way of legislative, regulatory or administrative provisions): i.e. creation by professional organisations (chambers, orders, etc.) of voluntary rules and standards by way of recommendations that are not of a legally binding nature. However, although the specialised knowledge of professional organisations can, in certain cases, make them better placed to identify the best way to meet the public interest objectives, it is important to consider that a model of compulsory membership of professional organisations with delegated state powers to define and enforce professional rules may also carry the risk of resulting in biased regulation, or might be conducive to anti-competitive or rent-seeking practices.
- ***Voluntary certification schemes*** (e.g., as an alternative to regulating the profession): voluntary certification systems are often used by professions that are not regulated by law. Their main objectives are to demonstrate professional competence, indicate a certain performance standard of services and inform consumers. Article 26 of the Services Directive promotes the development of certification systems and quality labels to enable assessment of the competence of service providers and to ensure high quality of services. Some certification schemes are developed by regulatory bodies appointed by state authorities. These practices aim to improve the transparency of professional activities for consumers and help them choose between different service providers. However, it should be kept in mind that such certification schemes may also create obstacles for access to, or the pursuit of, professional activities. They could, for example, result in the development of dominant professional associations, leading to the isolation of new entrants from other countries. Although access to the professional activities would be unrestricted by law, the market would require such certification. At the same time, due to the absence of state regulation, the system of recognition

---

<sup>(37)</sup> See CJEU C-377/17 *Commission v Germany*, ECLI:EU:C:2019:562, paragraph 64 and case law referred to therein.

provided for in the Professional Qualifications Directive would not apply. Also, it is not unusual that governments subsequently oblige professionals and companies to obtain such a 'voluntary certification' to access certain parts of the market (for example, specific types of works or specific financial schemes for clients).

- **Regulating education and training** (e.g., as an alternative to requiring possession of specific professional qualification for access to, or pursuit of, professional activities): training programmes, including apprenticeship periods, can be developed, under the control of the state, to prepare individuals to carry out specific professional activities, without regulating the profession itself. The qualifications delivered act as quality assurance for employers and consumers when access to the profession as such is not regulated and when there is no reserve of activities.
- **Protection of the professional title** (e.g., as an alternative to regulation reserving activities to holders of specific professional qualifications): In this case, a specific qualification is required to use a professional title, but the activity associated with the profession is not reserved to the holders of this title: anybody can exercise the activities, as long as they do not use the title. A protected professional title is a signal to consumers and employers that the holder meets the specific qualifications requirements, while leaving them free to hire professionals who do not hold the title.
- **Regulation only for special modes of pursuit of the profession** (e.g., as an alternative to regulating professions as such): e.g. regulation only for managers, for supervisors/responsible individuals, shareholders, salaried staff, self-employed, for activities subject to reimbursement from social/public funds, for public/private sector, and other. For instance, regulating a profession that is mainly exercised by self-employed professionals could in certain cases be considered as proportionate. However, the situation is different if the profession is mainly exercised by professionals that work as employees in private companies or public entities and where employers have a role to play in checking the competence of newly recruited staff and bear the responsibility in the case of accidents or complaints<sup>38</sup>.
- **System of ex post controls** (e.g., as an alternative to regulating the profession): e.g., processes, output standards, safety controls.
- **Liability rules** that ensure liability of a provider for faulty services and damages caused. Such rules, depending on their design, are likely to create a strong incentive to display a high degree of diligence.
- **Opening the reserved activities to neighbouring professions:** i.e. shared reserved activities instead of exclusively reserved activities.

Where the measures are justified by consumer protection only, and where the risks identified are limited to the relationship between the professional and the consumer and therefore do not

---

<sup>(38)</sup> For example, the engineering profession is not regulated in France where 95% of engineers are employed in a company or in public administration, and recruitment relies heavily on the reputation of the engineering schools (COM/2013/0676 final).

negatively affect third parties, Member States should assess whether their objective could be attained by means that are less restrictive than reserving activities to professionals. For instance, where consumers can reasonably make a choice between using the services of qualified professionals or not, less restrictive means, such as protection of the professional title or enrolment in a professional register, should be used. Regulation by way of reserved activities and protected professional title should only be considered where the measures aim to prevent a risk of serious harm to public interest objectives, such as public health (recital 24).

<b>Examples*</b>	<p><b><u>Urban planner (protected title):</u></b> The current system is designed to <b>protect the title</b> of urban planner. It is functional. On several occasions a system of profession protection with <b>reserved activities</b> was considered. This option was rejected because there are enough instruments that guarantee safety standards. Another option was to make architecture a <b>protected profession</b>, but the general conclusion was that this would amount to over-regulation and would therefore be inappropriate for the disciplines concerned. A system of <b>voluntary certification</b> was also considered by, amongst others, the evaluation report on the [Act]. The report concluded that replacing legal title protection with private certification – as in the case of estate agents – was not appropriate for the four architectural disciplines, for the following reasons: • the individual character of the four disciplines differed significantly from that of estate agent; • the low level of organisation in the architecture sector (30% at that time) compared with estate agents (90%); • instead of one arrangement and one register for all four disciplines at least four certification systems and organisations would be needed, which is not transparent; • if the [Act] were scrapped, everyone would be free to call themselves an urban planner. The certification system would then become far more extensive and cost much more than the current registration system. The number of architects from the four disciplines who would participate in the certification system would be far lower than the number that now applies for registration.</p> <p><b><u>Cook (qualification and reserved activities):</u></b> No alternative mechanism was considered suitable to secure the food chain.</p> <p><b><u>Building contractor (reserve of activities):</u></b> From the perspective of regulations based on minimum expertise for the exercise of a profession, there is no alternative, less demanding, but equally effective system for limiting health and safety risks and risks for consumers. Alternative systems such as <b>voluntary certification, protected titles</b>, etc. leave the door open for exercise of the activity without having the required expertise and do not adequately limit the health and safety risks and risks for the consumer. In addition, systems for voluntary certification, protected titles, etc. are often designed with specific, specialised objectives in mind, making it harder for companies to offer protection to consumers for all of their activities. Moreover, it is often difficult for consumers to understand the meaning and coverage of the different types of certification schemes, titles, etc. and hence their relevance for the particular construction works they are seeking.</p> <p><b><u>Hearing-aid maker:</u></b> extension of the reserve of certain activities to neighbouring professions [is not acceptable as alternative less restrictive means, because]: <u>[t]he patient would then have difficulties in identifying the various professionals and the activities carried out by them.</u> 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.</p>
------------------	---

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the example on cooks, the Member State did not explain how it reached the conclusion that no alternative mechanisms were suitable.

In the example on building contractors, the Member State discusses alternative, less restrictive means. However, in its assessment, the Member State seems to equate voluntary certification schemes and protected titles, although there are important differences, and both alternatives require a separate analysis. In the example on hearing-aid makers, the Member State invokes the inability of patients to choose a service provider, if the activities were to be shared amongst several professions. Moreover, the Member State implies that professionals would not honestly tell the customer for which activities they are qualified. However, no evidence or argumentation in support of these points of view is produced.

***Q9. For requirements concerning qualifications: are there any alternative routes to obtain the required professional qualification (e.g. other training options, or a combination of training and professional experience)? (point c of the second subparagraph of Article 7(2) of the Proportionality Test Directive)***

When the measure concerns qualification requirements, this question requires Member States to assess how flexible the system is to obtain the required credentials. The more possibilities (pathways) there are, the less restrictive the system would be. For example, if, for a given profession, it is possible to obtain the qualification by either going through vocational training at secondary level, a combination of professional experience and periods of training or the passing of a test, it would be less restrictive compared with a situation where the vocational training at secondary level programme is the only route to obtain the qualification.

While the mere fact that there are no alternative pathways to obtain a qualification would not automatically make the measure disproportionate, the assessment should take due account of this criterion within the context of the specific regulated profession and the complexity of its reserved tasks. While for some professions the relevant competences can reasonably be acquired in various ways, such as formal education, professional experience, and examinations, in other highly complex activities mere professional experience might not be sufficient.

<b>Examples*</b>	<b><u>Accountant:</u></b> Yes, four pathways were introduced to access the profession: 1. pass entry exam + traineeship + final exam; 2. master's degree + traineeship + final exam; 3. PhD, or university professor or Member of Academy, specialisation field in economic studies, plus interview; 4. licensed accountant + final exam on certain disciplines.
	<b><u>Tax adviser:</u></b> No, there is one pathway only (general post-secondary education of minimum 3 years and the state exam, followed by 6 months of professional practice).

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*



While the first example is rather comprehensive, it could provide more details on why those four specific pathways were chosen.

In the second example, the Member State has chosen not to introduce any alternative training routes to access the profession of tax adviser. However, no reasons were provided why only that one pathway would be appropriate for this profession.

***Q10. What would be the overall impact of the measure (taking into account, for instance, its impact on the degree of competition in the market, on the quality of services, on consumer choice, and the impact on free movement of persons and services within the EU)? (point d of the first subparagraph of Article 7(2) of the Proportionality Test Directive)***

Member States should take into account the overall impact of the measure, including its impact on the free movement of persons and services within the EU, on consumer choice, and on the quality of the service provided. On that basis, Member States should ascertain, in particular, whether the extent of restricting access to, or the pursuit of, regulated professions is proportionate to the importance of the objectives pursued and the expected gains (recital 23). For example, a systematic mapping of all significant direct and indirect effects could assist regulators in their assessment of the overall impact of the measure.

Hence, Member States should take into account the regulation's ultimate impact on the users of services. While the protection of consumers by ensuring the quality of professional services could, in theory, be relied upon to justify many measures (always on the condition that the analysis is of a sufficient depth and based on solid facts), other considerations, such as the impact of the regulation on prices, competitiveness, consumer choice or free movement, could counterbalance this.

For instance, in the case of regulation by way of reserved activities subject to the possession of specific required qualifications, Member States cannot limit their analysis to a mere presumption that this will automatically improve consumer protection and the quality of services. Likewise, it cannot simply be assumed that qualification requirements, while leading to the acquisition of specific skills, automatically ensure a high level of quality of the process or output of the service provision. Other aspects should also be taken into account, such as whether such new regulation might reduce the number of service providers active in the market, and if such a reduction in the number of service providers could negatively affect the quality of services, including via a reduced availability of the service to less well-off consumers.

When considering the impact of regulation on free movement, both from the perspective of outgoing and incoming professionals/services, Member States should assess if and how the measure in question would affect cross-border EU mobility.

<b>Examples*</b>	<b><u>Assistant nurse (qualification requirements and reserved activities):</u></b> 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].
	<b><u>Physiotherapist (multiple requirements):</u></b> We have not assessed the economic impacts of the measure, but we strongly believe there will be a great benefit for the health system economy.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

In the example for nurse assistants, the Member State analysed possible impacts of the newly introduced nursing profession on the activities of general care nurses benefiting from the automatic recognition based on harmonised minimum requirements under the Professional Qualifications Directive. However, the impacts of the measure on the outbound mobility of nursing assistants have not been analysed.

In the example for physiotherapists, the Member State did not assess the wider impact of the measure.

Another relevant example can be found in Case C-148/15 *Deutsche Parkinson*<sup>39</sup> concerning tariff requirements for pharmacists. In that case, the Court considered the impact on competition and found that setting of fixed prices for prescription-based (Rx) pharmaceuticals had a greater impact on pharmacies established in other Member States (foreign mail-order pharmacies) than on German pharmacies. The Court could not see how this measure could be suitable for the attainment of better geographical distribution of traditional pharmacies in Germany.

***Q11. What are the effects of the notified measure when combined with other existing requirements? How would the notified measure, together with the other existing requirements that pursue the same public interest objective, contribute to that objective and why is this additional measure necessary to achieve the same objective(s)? (point f of the second subparagraph & the third subparagraph of Article 7(2) of the Proportionality Test Directive)***

According to Court of Justice case law, when assessing the proportionality of a restrictive rule, national legislation as a whole should be considered, thus taking into account the various rules that pursue or affect that same objective.

Member States should carry out a comprehensive assessment of the circumstances in which the measure is adopted and implemented and examine, in particular, the effect of the new or amended provisions when combined with other requirements restricting access to, or the pursuit of, the profession. The taking-up and pursuit of certain activities may be conditional on complying with several requirements. Therefore, when assessing the effect of the new or amended provisions, Member States should take into account existing requirements, including continuous professional development, compulsory membership of a professional organisation

---

<sup>(39)</sup> CJEU C 148/15 *Deutsche Parkinson*, ECLI:EU:C:2016:776.

or body, registration or authorisation schemes, quantitative restrictions, specific legal form requirements and shareholding requirements, territorial restrictions, multidisciplinary restrictions and incompatibility rules, requirements concerning insurance cover, language knowledge requirements, to the extent necessary to practise the profession, fixed minimum and/or maximum tariff requirements, and requirements on advertising (recital 27).

Logically, the combined effect of different requirements that are being introduced or amended simultaneously should also be part of this comprehensive assessment. This may be the case, for instance, where several requirements for a given regulated profession are being introduced or amended in parallel (including by different regulatory bodies).

The mere fact that the individual or combined effect of newly introduced or amended requirements should be assessed does not mean that those requirements are *prima facie* disproportionate. However, where the introduction of additional requirements duplicates requirements that have already been introduced by a Member State in the context of other rules or procedures, such requirements cannot be regarded as proportionate to achieve the objective pursued (recital 28). For example:

- The obligation to undergo continuous professional development may be suitable to ensure that certain professionals keep abreast of developments in their respective areas, as long as it does not lay down discriminatory or disproportionate conditions to the detriment of new entrants (recital 28). However, the introduction of this continuous professional development requirement should not duplicate existing qualification requirements.
- Similarly, when limiting the percentage of shares in a company that can be held by shareholders from outside a profession, with the objective of ensuring that the professional service is delivered with the necessary degree of independence, it should be assessed whether this does not duplicate the incentives given by other requirements. For example, the requirement to become member of a professional body that actively supervises professional ethics, including the duty to act independently, could already ensure that a professional feels obliged to exercise his activities in an independent manner.
- Likewise, advertising restrictions that are imposed with the objective to prevent a 'market for lemons'<sup>40</sup>, i.e. a lowering of the average service quality due to the fact that professionals compete only on price because consumers would not be able to assess the quality of complex professional services, might duplicate the effects of other requirements. Indeed, the intended quality incentives and limitation of 'harmful' competitive pressure, might already be created by other requirements such as onerous professional qualification requirements, quantitative restrictions, professional ethics, prices of mandatory professional liability insurance, minimum tariffs, etc.

---

<sup>(40)</sup> George A. Akerlof, The Market for 'Lemons': Quality Uncertainty and the Market Mechanism, *The Quarterly Journal of Economics*, Vol. 84, No 3 (Aug., 1970), pp. 488-500.



<b>Examples*</b>	<b><u>Cook (qualifications and reserved activities):</u></b> Due to the fact that the current regulatory framework lays down only one measure on this profession, no cumulative effect can be mentioned.
	<b><u>Health profession (qualifications, reserved activities, registration):</u></b> The requirement for the professional to sign up to the register increases transparency towards both the government and consumers. While the obligation to possess certain qualifications before entering the profession already ensures the required standard of skills, a register further helps to increase trust among consumers and makes it possible for government to actively control/supervise those inside the profession. Hence, the requirements in place are designed with different objectives and do not duplicate each other.
	<b><u>Hearing-aid maker (qualifications, reserved activities, title protection, and registration):</u></b> All the measures complement each other, the aim being to protect public health and, a fortiori, patients. Removing any one of these measures would significantly affect patient care. [...]  By reserving the [activities and the use of title] to professionals holding a diploma, the national legislation ensures that all the active hearing-aid makers possess the qualifications, skills and knowledge that are necessary and sufficient to protect patients. It also allows patients to identify the qualified professional.  Moreover, mandatory registration, which is a procedure free of charge, makes it possible to guarantee the authenticity of diplomas or the authorisation for exercise.
	<b><u>Automotive expert (professional qualifications, reserved activities and conflict of interest rule):</u></b> 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.
	<b><u>Engineer:</u></b> There is no cumulative effect. Our measures are very clear and well established and are not redundant in their effect.  ... we haven't reviewed the cumulative effects of the measures. The current system is working as intended. It is not considered that it would be beneficial to change the system.

*\*The examples are selected to illustrate how authorities conduct assessments. Their listing does not reflect any judgment as regards the proportionality of the requirement assessed.*

The first four examples attempt to analyse and explain the combined effects or lack thereof. In the example on automotive experts, however, the Member State does not genuinely analyse why additional measures (no conflict of interest rules) are deemed indispensable for this profession. In the last example, the Member State did not at all assess any combined effects.

## 4.4. Non-exhaustive list of requirements subject to analysis

Article 7(3)-(4) of the Proportionality Test Directive contains a non-exhaustive list of requirements subject to assessment. Below, a more elaborate, yet still open-ended, description of requirements that can restrict access to, or the pursuit of, a regulated profession, is provided. As shown in the table below, the requirements subject to assessment are not limited to those concerning the possession of professional qualifications. Therefore, all requirements falling within the Directive's scope should be assessed as to their compatibility with the principle of proportionality, irrespective of whether they have an impact on professional qualifications.

### Market entry requirements

<b>Regulatory approach</b>	<b>Protected title</b> – a professional title is reserved by the state to the holders of specific professional qualifications.
	<b>Reserved activities</b> – some professional activities are reserved by the state to the holders of specific professional qualifications.
	<b>Reserved activities and protected title</b> – both a professional title and some professional activities are reserved by the state to the holders of specific professional qualifications.

It should be noted that the professional activities reserved to the holders of required qualifications can be **exclusive** (monopoly) or **shared** with other regulated professions (and therefore less restrictive).

<b>Competency requirements</b>	<b>Qualification requirements</b> (mandatory minimum education, examinations and training, professional traineeships, professional experience) to get access to the professional <i>activities reserved</i> to the holders of required qualifications or to the use of a professional title.  Qualification requirements might also be imposed for part of the professional activities or for certain modes of pursuit, for instance on self-employed or salaried professionals, for the purpose of benefiting from reimbursement schemes, or on the managers or legal representatives of undertakings, especially where the activity is pursued by a legal person in the form of a professional company.
	<b>Continuous professional development</b> – when it is mandatory for the pursuit of a regulated profession.
	<b>Language requirements</b> – requirements for the knowledge of language(s) necessary for practising a regulated profession.

<b>Other entry requirements</b>	<b>Compulsory registration or membership</b> with a chamber, professional association or state body.
	<b>Quantitative and other restrictions:</b> <ul style="list-style-type: none"> <li>– Limits on the number of licences granted.</li> <li>– Fixing a minimum or maximum number of employees, managers or representatives holding specific professional qualifications.</li> <li>– Territorial restrictions (requirements that restrict a professional's right to exercise the profession on the entire national territory. This may be the case where the licences are granted with specific geographical boundaries).</li> <li>– Age restrictions regarding access to exercise a profession.</li> </ul>
	<b>Other authorisation requirements:</b> <ul style="list-style-type: none"> <li>– Authorisation procedures or requirements for accessing a profession (this captures all 'other' types of admission requirements, e.g. check of criminal records, financial standing, compliance with business premises requirements).</li> <li>– Authorisations for the exercise of specific activities within the scope of the profession (e.g. a requirement for an engineer to have a specific authorisation to work on electrical infrastructures that are part of the national grid).</li> </ul>

#### Requirements specific to temporary or occasional provision of services

<b>Prior declaration &amp; documents (Article 7 of the Professional Qualifications Directive)</b>	Mandatory <b>prior declaration</b> might be required when the service provider first moves into the country. It can be subject to annual renewal, require submission of specific information and be subject to a fee.
	Accompanying <b>documents</b> (documents required to be provided with the declaration as set out in Article 7(2) of the Professional Qualifications Directive, including requirements for translations and/or certified copies).

#### Exercise requirements

<b>Requirements on specific corporate forms, incompatibilities</b>	<b>Corporate form requirements:</b> specific legal form requirement(s), to the extent they are directly linked to the exercise of the regulated profession (can the professionals organise their practice under any corporate form or are there restrictions on the type of entity?)
	<b>Restrictions related to shareholding and/or voting rights:</b> specific requirement(s) relating to shareholding and/or voting rights in a company, to the extent they are directly linked to the exercise of the regulated profession (e.g. an obligation to have a minimum percentage of shares or votes to be held by professionals with specific qualifications).

	<b>Prohibitions on joint exercise of professions:</b> restriction(s) on the exercise of a regulated profession jointly or in partnership with other types of professions or activities.
	<b>Incompatibility rules:</b> this concerns situations where the professional himself may not exercise certain activities (e.g. tourist guide cannot be a travel agent at the same time, a lawyer cannot be a civil servant).
<b>Professional indemnity insurance requirements</b>	Mandatory insurance cover or other means of personal or collective protection with regard to professional liability.
<b>Tariff requirements</b>	Requirements that define the level of the fees or prices charged by the professional to the service recipient.
<b>Restrictions on advertising</b>	Restrictions on advertising by professionals in one or more given media, as regards the content and method of commercial communication.

## GETTING IN TOUCH WITH THE EU

### In person

All over the European Union there are hundreds of Europe Direct centres. You can find the address of the centre nearest you online ([european-union.europa.eu/contact-eu/meet-us\\_en](https://european-union.europa.eu/contact-eu/meet-us_en)).

### On the phone or in writing

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696,
- via the following form: [european-union.europa.eu/contact-eu/write-us\\_en](https://european-union.europa.eu/contact-eu/write-us_en).

## FINDING INFORMATION ABOUT THE EU

### Online

Information about the European Union in all the official languages of the EU is available on the Europa website ([european-union.europa.eu](https://european-union.europa.eu)).

### EU publications

You can view or order EU publications at [op.europa.eu/en/publications](https://op.europa.eu/en/publications). Multiple copies of free publications can be obtained by contacting Europe Direct or your local documentation centre ([european-union.europa.eu/contact-eu/meet-us\\_en](https://european-union.europa.eu/contact-eu/meet-us_en)).

### EU law and related documents

For access to legal information from the EU, including all EU law since 1951 in all the official language versions, go to EUR-Lex ([eur-lex.europa.eu](https://eur-lex.europa.eu)).

### EU open data

The portal [data.europa.eu](https://data.europa.eu) provides access to open datasets from the EU institutions, bodies and agencies. These can be downloaded and reused for free, for both commercial and non-commercial purposes. The portal also provides access to a wealth of datasets from European countries.

