



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Sénat for its Reasoned Opinion on the proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions {COM(2016) 822 final}.

This proposal forms part of a broader package of ambitious measures designed to make it easier for companies and professionals to provide services to a potential customer base of 500 million people in the European Union. This fresh boost to the services sector aims at benefitting consumers, jobseekers and businesses, and to contribute to generating economic growth across Europe.

Almost 50 million people – 22% of the European labour force – work in professions to which access is conditional upon the possession of specific qualifications or for which the use of a specific title is protected, e.g. pharmacists or architects. Regulation may well be warranted for a number of professions, for example those linked with public health and safety. However, unnecessarily burdensome and outdated rules can create obstacles for mobility of professionals and can create difficulties for qualified candidates to access these jobs. This is also to the detriment of consumers. The objective of the proposed Directive for a proportionality assessment is not to regulate or deregulate professions – this remains a national prerogative. It aims at ensuring coherent and consistent compliance by all Member States with existing obligations under European Union law that national professional requirements are justified, suitable and necessary. The Commission is proposing to streamline and clarify how Member States should undertake a comprehensive and transparent proportionality test before adopting or amending national rules restricting access to or pursuit of regulated professions.

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The Commission takes seriously the views expressed by the Sénat as regards the principle of subsidiarity, but is nevertheless of the view that the proposal on a proportionality test before adoption of new regulation of professions fully respects the principles of subsidiarity and proportionality.

The legal bases [Articles 46, 53(1) and 62 of the Treaty on the Functioning of the European Union (TFEU)] allow for coordinating measures to reach a certain degree of harmonisation of national regulation regarding access to or exercise of professions, as it has been achieved already with some professions at the level of the European Union. The current proposal does not go as far as to aim at such a harmonisation of rules, but merely coordinates how Member States should assess whether requirements that are to be adopted are in line with the principle of proportionality. It does not in any way prejudge the outcome of the national legislative process. Past experience has demonstrated that non-binding measures did not lead to the desired objective of comparable and transparent assessments. The proposal leaves ample discretion for the Member States to integrate the proportionality test in the existing structures and should therefore not be problematic or burdensome to implement for Member States that have already similar procedures in place.

The Sénat claims that the proposal would extend the scope of control of the proportionality of regulated professions which fall in the scope of Directive 2005/36/EC¹. In particular, the Sénat is concerned that this could have as effect that Member States are not free to regulate professions in the transport, health and tourism sectors.

Pursuant to Article 168 TFEU it is the Member States' competence to regulate their health care systems. The same is valid for the tourism sector under Article 195 TFEU. As already stated above, such provisions, however, do not entail that the basic principles of European Union law, such as the principle of non-discrimination and proportionality, can be disregarded by the Member States. Therefore, already now, for all professions covered by the proposal, which coincides with the scope of Directive 2005/36/EC on the recognition of professional qualifications, Member States have to respect the principles of non-discrimination and proportionality when regulating the access or pursuit of a profession. This applies equally to the health professions and professions in the tourist sector.

Furthermore, in relation to the exclusion of purely economic reasons as public interest objective, the Sénat refers specifically to the transport sector, in particular Article 91 TFEU, which allows for taking economic aspects into account when regulating this sector. The Commission would like to emphasise that the establishment of rules governing the access conditions to this sector are not of purely economic nature as understood in the case law of the Court of Justice of the European Union², since they are put explicitly in the context of the transport sector.

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, p. 22–142.

² See, in particular, Cases C-72/83, *Campus Oil*, EU:C:1984:256 and C-109/04, *Kranemann*, EU:C:2005:187, and the case-law cited there.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council. The Sénat's Opinion has been forwarded to the relevant Commission services and will form part of the briefing files used when they negotiate the proposal with the co-legislators.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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First Vice-President*

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Member of the Commission*