

FACTS.A conceptual image showing a person walking on a giant hand, symbolizing the scale of the EU market and the impact of the Directive.

ENHANCING ACCESS TO CROSS-BORDER SERVICES

PROPORTIONALITY TEST DIRECTIVE

FACTSHEET

HIGHLIGHTS

Access to regulated professions, pursuit or recognition of professional qualifications are essential for accountants and auditors to ensure professional mobility and cross-border service provision.

The Proportionality Test Directive streamlines the proportionality assessments criteria that Member States should undertake before adopting or amending national rules restricting access to or pursuit of regulated professions. It ensures that national measures are proportionate and not hindering access to EU-wide professional activities. The Directive is taking effect from 30 July 2020 onwards.

The freedom of services, core principle of the Single Market, ensures that EU citizens can practise their profession without facing discriminatory and unjustified restrictions. Services are the cornerstone of the EU economy, accounting for more than two thirds of the EU gross domestic product (GDP).

INTRODUCTION

On 28 June 2018, the Directive 2018/958/EU of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions (Proportionality Test Directive) became law. The Directive lays down rules on a common proportionality assessments framework for EU Member States to conduct before introducing new or amending existing professional regulations.

The Proportionality Test Directive requires Member States to implement it as from 30 July 2020. It will cover only newly introduced rules or existing legislation to be amended. Legislation already in place at the time of Directive's application will not be subject to a proportionality test.

This factsheet outlines the main principles the Proportionality Test Directive introduces to facilitate the access to regulated professions or pursuit of professional qualifications.

Having a harmonised framework on proportionality assessments ensures transparency and comparability across EU Member States; it also prevents further market fragmentation and addresses gold-plating practices or rules hindering access to professions.

¹ <https://eur-lex.europa.eu/eli/dir/2018/958/oj>

PROPORTIONALITY TEST DIRECTIVE



The Proportionality Test Directive is part of a set of measures (the Services Package)² the European Commission put forward in January 2017 to strengthen the EU Single Market. The Services Package aims to prevent the creation of cross-border barriers to services provision and to boost the services sector.

It supplements provisions of the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Professional Qualifications Directive)³. The Professional Qualifications Directive⁴ already included an obligation for EU Member States to assess and report on their requirements' proportionality restricting access to or the pursuit of regulated professions.



SCOPE

This Proportionality Test Directive will apply to over 5,500 regulated professions falling within the scope of Professional Qualifications Directive, including accountants and tax advisors.

The corresponding provisions of this Directive shall not apply where specific requirements concerning the regulation of a given profession are established in a separate Union act, leaving Member States with no choice as how those requirements are to be transposed.

Upon reading, article 2 (2)⁵ could be understood as limiting the requirements of the Proportionality Test Directive to accountants and tax advisors only. However, the intended purpose is to expand the scope to regulated professions which are covered by other specific legal acts, including the auditors. To recall, the Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts Text with EEA relevance (the Statutory Audit Directive)⁶ sets out the framework for statutory auditors seeking approval to access the profession in another EU Member State. In particular, the host Member State has the option to choose between a test or an adaptation period, a choice which has to be justified on grounds of proportionality and non-discrimination.

To ensure a harmonised framework for all regulated professions, the Proportionality Test Directive requires Member States to take into account 3 main principles before enacting new or modifying existing legislation:

1. TO BE NON-DISCRIMINATORY

2. TO PROTECT PUBLIC INTEREST OBJECTIVES

3. TO BE PROPORTIONATE AND 'NOT GO BEYOND WHAT IS NECESSARY TO OBTAIN THAT OBJECTIVE'

² See more on Services package in Annex 1

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0036>

⁴ See more on professional qualifications in Annex 2

⁵ Article 2(2): "Where specific requirements concerning the regulation of a given profession are established in a separate Union act which does not leave Member States a choice as to the exact way in which they are to be transposed, the corresponding provisions of this Directive shall not apply."

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0056>



1. NON-DISCRIMINATION PRINCIPLE

The EU Member States need to ensure that the newly proposed or amended legislative, regulatory or administrative provisions do not introduce discriminatory practices on the basis of nationality or residence.

2. PUBLIC INTEREST OBJECTIVES

The justification to introduce new or amend existing legislative, regulatory or administrative provisions must be done on grounds of public interest objectives⁷. Economic or administrative reasons are no longer considered as valid objectives. The European Commission established a non-exhaustive list of public interest objectives, such as:



- policy
- the protection of consumers, of recipients of services and of workers
- ensuring the fairness of trade transactions
- combating of fraud and the prevention of tax evasion and avoidance
- safeguarding of the effectiveness of fiscal supervision



3. PROPORTIONALITY

To better define proportionality, the European Commission also put forward a non-exhaustive list of applicable criteria that competent authorities need to take into consideration while assessing the proportionality of a new or amended regulatory provision, such as:

- the nature of the risks
- the impact on the free movement of persons and services within the Union
- the scope of activities reserved for a profession
- the connection between the scope of activities covered by a profession or reserved to it and the professional qualification required
- obligations to undergo continuous professional development
- rules relating to the organisation of a profession, professional ethics and supervision
- compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification
- the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional
- reserved activities, existing alongside a protected professional title

⁷ A definition of public interest objectives is provided in recital 17

ANNEX 1. SERVICES PACKAGE

The Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (Services Directive)⁸ establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. To support a better harmonisation of the single market, the European Commissions has introduced three new initiatives:

- the proportionality test
- the notification procedure⁹
- the European services e-card¹⁰

The notification procedure obliges Member States to notify the European Commission before introducing new measures affecting regulated service providers. The notification aims to ensure that all new regulatory measures imposed by Member States are non-discriminatory, justified by public interest objectives and proportionate. The obligation to notify will cover also additional key requirements such as authorisation schemes.

ANNEX 2. RECOGNITION OF PROFESSIONAL QUALIFICATIONS

The recognition of professional qualification obtained in an EU Member State allows professional service providers to practice in another EU Member State. The legal regime governing professional qualifications is the Professional Qualifications Directive. The professional qualifications regime applies exclusively to regulated professions.¹¹

The professional qualifications regime covers two cases of mobility:

- establishment of practice in another EU Member State. The professional's qualification needs to be recognised by the competent authority in the host Member State, if the profession is regulated in that Member State
- temporarily or occasionally service provision in another EU Member State (without establishment). The professional may need to inform the competent authority in the host Member State with a so-called prior declaration (if such declaration is required in the relevant Member State), but a recognition of the professional qualification is not required

The Professional Qualifications Directive is generally applicable for accountants¹². For auditors, the Statutory Audit Directive provides for additional measures and requirements which prevail over or complement the Professional Qualifications Directive rules. For a better understanding of how the recognition of professional qualifications works, see our factsheet *Recognition of Professional Qualifications in another EU Member State* (2014).¹³

⁸ <https://eur-lex.europa.eu/legal-content/En/TXT/?uri=celex:32006L0123>

⁹ Proposal for a Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0821>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0823>. The services e-card is not yet applicable to the accountancy profession

¹¹ European Commission's database on regulated professions: <http://ec.europa.eu/growth/tools-databases/regprof/>

¹² Regulated professions: accountants in Belgium, France, Hungary, Luxembourg, Romania and tax advisors in Austria, Belgium, Germany, Slovak Republic as per FEE survey 2012: <http://bit.ly/2NMU3az>

¹³ <https://www.accountancyeurope.eu/publications/factsheet-on-recognition-of-professional-qualifications-in-another-eu-member-state/>