



## Position Paper

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# Proposed Proportionality Test Directive should respect national sovereignty and ensure consistency in healthcare exemptions

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August 2017

On [10 January 2017](#), the European Commission published an ambitious legislative package aiming at boosting the European services sector, thus completing the Single Market. Part of this legislative proposal is the “Proportionality Test Directive”, which suggests a proportionality assessment of national rules on professional services before legislative action is taken in a Member State.

Whilst the Commission’s intention to ensure a coherent and consistent approach across EU Member States is welcomed, it should be emphasised that the regulation of professions is a national prerogative. What is considered “proportional” can vary from one country to the other, and it is important that the criteria remain flexible enough to ensure national specificities of a profession can be taken into account.

It is also vital to ensure that this proposal does not come as an additional barrier or at the detriment of public health, freedom of movement or efforts made by professional groups across Europe to achieve a recognition of their profession.

ECOO believes that the following elements need to be considered by the EU institutions in their deliberations, some of which are already included in either the Council general approach or the European Parliament IMCO report:

- The proportionality test should remain flexible so as to adapt to the varying national systems, including the educational requirements. As the Council general approach states: *“The fact that one Member State imposes less strict rules than another Member State does not mean that the latter Member State’s rules are disproportionate and therefore incompatible with EU law.”*
- Requirements such as continuous professional development or compulsory chamber membership are an appropriate way to ensure protection of public health / consumer interest.

- The directive should ensure the quality of healthcare services is maintained and promoted. In lights of the proposed exemption of healthcare professions in the IMCO report, it is important to be clear and comprehensive when defining “healthcare”. Opticians and optometrists are considered healthcare professionals in some countries but fall under the handicraft/artisan law or are regulated under the Ministry of the Economy in other countries. We would strongly oppose a situation where the exemption applies only to professionals in some countries and not to others, as this would enhance a scattered professional landscape across Europe.
- Mr Schwab, MEP (rapporteur, IMCO Committee) suggests to define “healthcare professionals” on the basis of Case C-57/12 of the ECJ:

*any activity intended to assess, maintain or restore the state of health of patients, where that activity is carried out by healthcare professionals recognised as such by the Member State concerned, regardless of the ways in which the facilities in which that care is provided are organised and financed or whether they are public or private. It is for the national court to ascertain whether day-care centres and night-care centres are excluded from the scope of that directive, having regard to the nature of the activities carried out by the healthcare professionals in those centres and whether those activities constitute a principal part of the services offered by those centres.*

ECOO believes that this definition is adequate. Nonetheless the inclusion of professions such as opticians and optometrists, who in some countries are handicraft professions, needs to be explicitly stated.

- Healthcare professions in the wider sense (including all optometrists and opticians across Europe) already undergo thorough checks when being recognised and regulated. Adding the proportionality test to existing standards seem to be adding unnecessary bureaucracy. ECOO therefore favours the proposed exemption of healthcare professions from the scope of the directive.
- Generally, the scope of the Proportionality Test needs to be clarified. Only new regulated professions and major changes to existing requirements when undergoing a review should undergo such a Proportionality Test. It will be important to define what a “major change” (or “essential regulatory decisions on regulated professions” as per Mr Schwab’s report) consist of and we would suggest it constitutes any new requirement that has not been part of such assessment in the past and that would require a substantial new assessment.
- The professions of Optometry and Optics represent a fundamental pillar in the primary eye care services. As the first point of contact for patients in the field of eye health, the professionals need to comply with a range of requirements and standards. Recognising and regulating the profession should not be seen as a potential barrier to the functioning of the internal market and the free movement of professionals but as ensuring the integrity of public health services. In fact, the new Recognition of Professional

Qualifications Directive already provides the legal basis and structure for the movement of professionals in the spirit of the single market.

- ECOO strongly believes that all professional associations or bodies who fall under the scope of a profession being regulated should be consulted, as well as other stakeholders that might be impacted by the change.

**About ECOO:**

The European Council of Optometry and Optics (ECOO) is the European organisation which represents the interests of optometrists and opticians from 25 countries. It aims to promote eye health to the public across borders and to harmonise clinical and educational standards of optometric and optical practice throughout Europe.

**Contact:**

***European Council of Optometry and Optics (ECOO)***

President: Peter Gumpelmayer

Secretary General: Fabienne Eckert

Rue de la Loi 227, bte 4

B-1040 Brussels

T +32 (0)2 580 05 32

E-mail: [secretariat@ecoo.info](mailto:secretariat@ecoo.info)

Website: [www.ecoo.info](http://www.ecoo.info)