



COMITÉ PERMANENT DES MÉDECINS EUROPÉENS
STANDING COMMITTEE OF EUROPEAN DOCTORS



Is the proportionality test proportionate ?

The CPME view



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Political environment

- The European Council reiterated in June 2012, 2014 and 2016 to remove unjustified national barriers in regulation to improve the market of services for the benefit of **growth and competition** („deregulation debate“)
- The regulation under scrutiny also covers professional regulation as experienced with the Member States` National Action Plans.
- The Commission was unhappy with National Action Plans and concluded to discipline Member States with an EU-level and horizontal proportionality test for all professions.



Legal environment

- Health is different from business.
- This is recognised in EU primary and secondary legislation:
 - The organisation of healthcare including health professional regulation is a Member States' competence.
 - Health services are excluded from the Services Directive.
 - Patients are excluded from the Consumers' Rights Directive.



Legal environment

- Health is different from business.
- This is recognised by the the European Court of Justice (ECJ):
 - The ECJ continuously highlighted that restrictive regulation is possible, if the regulation at stake serves the public interest.
 - The protection of health is considered one of the key public interest objectives.
 - Member States have discretion as to which level of protection should be determined.
 - Member States may take precautionary measures and do not need to wait for risks to become real.



Why worry?

- EU legislation and the ECJ rulings confirm the special nature of health, health professions and their services.
- Proportionality is a common principle in law and is to be respected in any case.
- The obligation to respect proportionality in regulation is incorporated in the Professional Qualifications Directive („PQD“).
- Why worry about the proportionality test?



CPME Position – Health differs from business

- The economic objectives and assumptions of the Directive are not applicable to Doctors in the same way they are applicable to business professions, see legal environment.
- CPME fears that health is equated with business when put under the regime of a horizontal, EU-level and business driven directive.
- CPME strongly believes that the doctors' regulation is in the direct interest of patient safety and quality of care.
- CPME therefore opposes initiatives which challenge regulation for economic reasons, with no regard for the special need to protect patient care.



CPME Position – Rationale not fit for doctors

- The proportionality test also aims to improve labour mobility. Doctors are the most mobile profession, not least thanks to the automatic recognition process under the PQD.
- The PQD put in place a great degree of scrutiny on doctors, addressing issues such as CPD, language knowledge and liability. These efforts, which were supported by doctors, are questioned by the proportionality test.
- The rationale of the Directive is therefore not applicable to the health professions.



CPME Position – Dismantling or chilling effects

- Opening the door to the reduction of professional regulation on the basis of supposed economic advantages is a potential risk for the quality of medical practice. In a time of mobile doctors and patients, such risks can affect all Member States.
- CPME doubts that the proposal for a Directive provides for the right incentive. Member States potentially in need of regulation might refrain from any necessary action considering the administrative burden and costs implied by an EU-level proportionality test.



CPME Position – Proportionality test not needed

- CPME highly questions the necessity of an additional legal instrument since the PQD already introduces a proportionality requirement and proportionality is a general principle in EU law.
- The ECJ confirmed that Member States have discretion as to which level of protection should be determined.
- By contrast, a horizontal, EU-level proportionality test conflicts with this discretion by striving for uniformity in the assessment of the regulation of professions and its outcomes.



Conclusions

- The rationale behind the test, i.e. fostering growth, mobility and competition, is not applicable to health professional regulation.
- The test might have detrimental effects by deterring necessary regulation.
- The test is not needed and disproportionate.
- Health professional regulation should be excluded from the test!



Who can help?

- The European Parliament:
 - Has helped in excluding the healthcare sector from the scope of the Services Directive 2006/123/EC.
- National parliaments and governments:
 - Can defend the role and objectives of health professional regulation, in particular if health ministries become involved.
- Professional associations in Europe:
 - Can provide arguments to parliaments and governments as to the necessity of sound professional regulation.
- CPME :
 - Advocates the exemption of health professions from the draft directive in alliance with European dentists and pharmacists.



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Thank you for your attention !

The CPME position on the proportionality test is to be found [here](#).

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