



On 8 April 2017, the CPME Board adopted the ' CPME Position on the Proposal for a Directive of the European Parliament and of the Council on a proportionality test for adoption of new regulation for professions COM(2016) 822 final' (CPME 2016/009 FINAL).

CPME Position on the Proposal for a Directive of the European Parliament and of the Council on a proportionality test for adoption of new regulation for professions COM(2016) 822 final

The Standing Committee of European Doctors (CPME) represents national medical associations across Europe. We are committed to contributing the medical profession's point of view to EU institutions and European policy-making through pro-active cooperation on a wide range of health and healthcare related issues.¹

CPME welcomes the opportunity to comment on the proposal for a Directive on a proportionality test for adoption of new regulation for professions. We wish to highlight the following key concerns:

Special status of medical profession

- CPME strongly believes that the regulation of doctors' access to and practice of the profession 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.
- The economic objectives and assumptions of the Directive are not applicable to doctors in the same way they are applicable to professions commercial/business services. This has been acknowledged in existing legislation, for example healthcare services are excluded from Directive 2006/123/EC, which is one of the drivers of the single market strategy.
- The proposal for a Directive also aims to improve labour mobility. However doctors are already the most mobile regulated profession, not least thanks to the automatic recognition process under Directive 2005/36/EC as amended, which enables a doctor to move abroad be it temporarily or permanently.
- Directive 2005/36/EC furthermore recognises the importance of creating a regulatory environment which foresees a greater degree on scrutiny on doctors than other professions, addressing issues such as continuing professional development, language knowledge and liability

¹ CPME is registered in the Transparency Register with the ID number 9276943405-41.



insurance in the specific context of the medical profession. These efforts are now questioned by the proposal.

- The rationale of the Directive is therefore not applicable to the health professions.

Legal concerns

- Directive 2005/36/EC already introduces a proportionality and reporting requirement in Art. 59. Also, proportionality is a general principle of EU law. In view of the subsidiarity principle CPME highly questions the necessity of an additional legal instrument.
- The European Court of Justice has repeatedly confirmed Member States' competence "to determine the degree of protection which it wishes to afford to public health and the way in which that degree of protection is to be achieved" (see Case C-322/01 *Deutscher Apothekerverband*, paragraph 103; Case C-141/07 *Commission v Germany*, paragraph 51; C-169/07 *Hartlauer*, paragraph 30), and further finds that "Member States must be allowed discretion [...] and, consequently, the fact that one Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate" (see Case C-141/07 *Commission v Germany*, paragraph 51 and quoted case law). The proposal for a Directive by contrast seeks "to establish a common approach at Union level, preventing disproportionate measures from being adopted" (Recital 5). In the context of health professions therefore, the proposal for a Directive contravenes the competence of Member States by striving for uniformity in the assessment of the regulation of professions and its outcomes.

Political implications

- CPME is furthermore concerned as to the political implications of the approach taken by the proposal for a Directive. 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 as prescribed by the proposal for a Directive.

For these reasons, we believe that the medical profession should be excluded from the scope of the Directive.



Proposed amendments

Recital 7a new

Commission proposal	CPME amendment
<p>(7) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. This Directive should apply in addition to Directive 2005/36/EC and without prejudice to other provisions laid down in a separate Union act concerning access to, and the exercise of a given regulated profession.</p>	<p>(7) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. This Directive should apply in addition to Directive 2005/36/EC and without prejudice to other provisions laid down in a separate Union act concerning access to, and the exercise of a given regulated profession.</p>
	<p><i>(7a) The provisions of this Directive are not appropriate to health professionals which should be therefore excluded from its scope. Health professional is defined in that Directive as a doctor of medicine, a nurse responsible for general care, a dental practitioner, a midwife or a pharmacist within the meaning of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC or a person considered to be a health professional according to the legislation of the Member State of treatment.</i></p>
<p style="text-align: center;"><i>Justification</i></p> <p>The European legislator and the European Court of Justice have repeatedly highlighted the special nature of health professions. In line with the reasoning of the Services Directive and the Consumers' Rights' Directive, health professionals are excluded.</p>	



Article 2

Commission proposal	CPME amendment
<p>1. This Directive shall apply to requirements under the legal systems 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 Directive 2005/36/EC.</p>	<p>1. This Directive shall apply to requirements under the legal systems 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 Directive 2005/36/EC.</p>
	<p><i>2. This Directive shall not apply to health professionals providing healthcare to patients, regardless of how it is organised, delivered and financed.</i></p>
<p>2. Where specific arrangements concerning the regulation of a given profession are established in a separate Union act, the corresponding provisions of this Directive shall not apply.</p>	<p>2. 3. Where specific arrangements concerning the regulation of a given profession are established in a separate Union act, the corresponding provisions of this Directive shall not apply.</p>
<p style="text-align: center;"><i>Justification</i></p> <p>The European legislator and the European Court of Justice have repeatedly highlighted the special nature of health professions. In line with the reasoning of the Services Directive and the Consumers' Rights' Directive, health professionals are excluded.</p>	