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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on a proportionality test before adoption of new regulation
of professions
- General approach

Delegations will find attached the text of the above-mentioned proposal in subject as it resulted from the meeting of the Permanent Representatives Committee on 10 May 2017.

Presidency text suggestions are in **bold underline**, deletions are in simple strikethrough.

The Council is invited to agree on a General Approach concerning this text.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a proportionality test before adoption of new regulation of professions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46, Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) The freedom to choose an occupation is a fundamental right. The Charter of Fundamental Rights of the European Union guarantees the freedom to choose an occupation, as well as the freedom to conduct a business. The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market enshrined in the Treaty. National rules organising access to regulated professions should therefore not constitute any unjustified and disproportionate obstacle to the exercise of those fundamental rights.
- (2) In the absence of specific provisions harmonising the requirements on access to a regulated profession or its pursuit laid down in Union law, it is the Member States' prerogative to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.
- (3) The principle of proportionality is one of the general principles of Union law. It follows from the case-law³ that national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty should fulfil four conditions: they should be applied in a non-discriminatory manner; they should be justified by public interest objectives; they should be suitable for securing the attainment of the objective which they pursue; and they should not go beyond what is necessary in order to attain it.

³ Case C-55/94 Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano [1995] ECR I-4165.

- (4) Directive 2005/36/EC of the European Parliament and of the Council⁴ established the obligation for Member States to assess the proportionality of their requirements restricting access to or pursuit of regulated professions and to communicate to the Commission the results of the assessment, launching the so-called mutual evaluation process. That process meant that Member States had to carry out a screening of all their legislation on all professions regulated in their territory.
- (5) The results of the mutual evaluation process revealed a lack of clarity as regards the criteria to be used by national competent authorities when assessing the proportionality of requirements restricting access to or pursuit of regulated professions, as well as uneven scrutiny of such measures at all levels of regulation. To avoid fragmentation of the internal market and eliminate barriers to taking-up and pursuit of certain employed or self-employed activities, it is therefore necessary to establish a common approach at Union level, preventing disproportionate measures from being adopted.
- (6) In its Communication of 28 October 2015: ‘Upgrading the Single market: more opportunities for people and businesses’⁵, the Commission identified the need to adopt an analytical proportionality framework for Member States to use when reviewing existing regulations of professions or proposing new ones.
- (7) The activities covered by this Directive should concern the regulated professions falling within the scope of Directive 2005/36/EC. **For the purposes of this Directive, the term “regulated profession” should refer to both existing regulated professions as defined in Directive 2005/36/EC and professions that Member States are considering to regulate with the result that they will fall under the definition of “regulated profession” in 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.

⁴ 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).

⁵ COM (2015)550 final.

(7a) The directive establishes rules which should be applied before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions. Provisions which would not restrict access to or pursuit of regulated professions, for instance editorial amendments or technical adaptations to content of training courses, should not fall within the scope of this directive.

(7b) Where Member States transpose specific requirements concerning the regulation of a given profession established in a separate Union act, the assessment of proportionality as set out in specific provisions of this directive should not be applied. Notwithstanding, provisions pertaining to monitoring, information and transparency requirements as set out in this directive should remain applicable.

(8) Member States should be able to rely on a common regulatory framework based on clearly defined legal concepts concerning the different ways to regulate a profession across the Union. There are several ways to regulate a profession, for instance by reserving access to or the pursuit of a particular activity to holders of a professional qualification. National provisions may also regulate one of the modes of pursuit of a profession in laying down conditions for the use of professional titles.

(9) The burden of proof of justification and proportionality lies on the Member States. The reasons for regulation invoked by a Member State by way of justification should thus be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and by specific evidence substantiating its arguments, **taking account of the specific circumstances of that Member State. Materials accompanying newly introduced or amended provisions should include an explanation sufficiently detailed so as to make it possible to appraise compliance with the principle of proportionality.**

- (10) It is appropriate to monitor the proportionality of the **new or amended** provisions restricting access to or pursuit of regulated professions **after adoption** ~~on a regular basis and with a frequency appropriate to the regulation concerned.~~ A review of the proportionality of restrictive national legislation in the area of regulated professions should be based not only on the objective of that legislation at the time of its adoption, but also on the effects of the legislation, assessed after its adoption. The assessment of the proportionality of the national legislation should be based on developments found to have occurred in the area **of the regulated profession** since the legislation was adopted.
- (11) Member States should carry out proportionality assessments, **including where a profession is regulated indirectly by giving a particular professional body the power to do so,** in an objective and independent manner, ~~including where a profession is regulated indirectly, by giving a particular professional body the power to do so,~~ **taking into consideration objective observations. Member States may obtain such views from any body they consider relevant and capable of providing such views, including existing bodies that are part of the national legislative process.** ~~In~~ **This is particularly important in cases where** ~~particular, while the assessment is made by~~ of the local authorities, regulatory bodies or professional organisations, whose greater proximity to local conditions and specialised knowledge could in certain cases make them better placed to identify the best way of meeting the public interest objectives, **and** ~~there is particular reason for concern in cases where the policy choice made by those authorities or bodies provides benefits to established operators at the expense of new market entrants.~~

(12) Where the taking-up and pursuit of certain employed or self-employed activities are conditional on complying with certain provisions relating to specific professional qualifications, laid down directly or indirectly by the Member States, it is necessary to ensure that such provisions are justified by public interest objectives, such as those within the meaning of the Treaty, namely public policy, public security and public health or by overriding reasons of general interest, recognised as such in the case-law of the Court of Justice **and which may continue to evolve**. It is important to ensure that public interest objectives are adequately identified in order to determine the intensity of the regulation. For example, in order to ensure a high level of protection of public health, Member States should enjoy a margin of discretion to decide on the degree of protection which they wish to afford to public health and on the way in which that protection is to be achieved. It is also necessary to clarify that among the overriding reasons of general interest, recognised by the Court of Justice, are preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; the safeguarding of the proper administration of justice; fairness of trade transactions; combating fraud and prevention of tax evasion and avoidance; ~~road~~ **transport** safety; the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives. According to settled case-law, purely economic reasons, having essentially protectionist aims, as well as purely administrative reasons, such as carrying out controls or gathering statistics cannot constitute an overriding reason of general interest.

(12a) It is for the Member States to determine the level of protection which they wish to afford to the public interest objectives and the proportionate way in which that level is to be achieved. 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.

- (13) Where a Member State intends to regulate a profession or to amend existing rules, account should be taken of the nature of the risks related to the public interest objectives pursued, in particular the risks to consumers, to professionals or third parties. It should also be borne in mind that, in the field of professional services, there is usually an asymmetry of information between consumers and professionals. Professionals display a high level of technical knowledge which consumers may not have and consumers therefore find it difficult to judge the quality of the services provided to them, **which may still be the case despite the potential reduction in the asymmetry of information between professionals and service recipients as a result of scientific and technological developments.**
- (14) To meet the requirement of proportionality, the measure should be suitable for securing the attainment of the objective pursued. A measure should only be considered suitable for securing the attainment of the objective pursued, if it genuinely reflects a concern to attain that objective in a consistent and systematic manner, for instance where similar risks related to certain activities are addressed in a comparable way and where any exceptions to the restrictions involved are applied in line with the stated objective. Furthermore, the national measure should contribute to achieving the objective pursued and therefore, where it has no effect on the ground for justification, it should not be considered as suitable.
- (15) Requirements linked to professional qualifications should be considered as necessary only where existing measures, such as consumer protection law, cannot be regarded as being suitable or genuinely effective to achieve the aim pursued.
- (16) Among the elements to be taken into account by national authorities, the following are of most relevance: the link between the scope of professional activities covered by a profession and the professional qualification required; the complexity of the tasks in particular as regards the level, the nature and the duration of the training or experience required; the existence of different routes to obtain the professional qualification; the scope of the professional activities, reserved to holders of a particular professional qualification, and in particular whether the activities reserved to certain professionals can be shared with other professionals; the degree of autonomy in exercising a regulated profession in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional.

- (17) Where a Member State regulates a profession, account should be taken of the fact that technological developments may reduce the asymmetry of information between consumers and professionals. In view of the speed of technological change and scientific progress, updates in access requirements may be of particular importance for a number of professions.
- (18) The economic impact of the measure, ~~including a cost-benefit analysis~~ with particular regard to the **quality of the service provided**, ~~degree of competition in the market and the quality of the service provided~~, as well as the impact on the right to work and on the free movement of persons and services within the Union, ~~should be duly taken into account by the competent authorities~~ **Member States**. Based on this analysis, Member States should ascertain, in particular, whether the extent of the restriction of access to or pursuit of regulated professions ~~within the Union~~ is proportionate to the importance of the objectives pursued and the expected gains.
- (19) Member States should carry out a comparison between the national measure at issue and the alternative and less restrictive solutions that would allow the same objective to be attained but would impose fewer restrictions. Where the measures are justified by consumer protection and where the risks identified are limited to the relationship between the professional and the consumer without negatively affecting third parties, the objective could be attained by less restrictive means than reserving activities to professionals, ~~such as protection of the professional title or enrolment on a professional register~~. ~~Regulation by way of reserved activities should be used only in cases where the measures aim at preventing a risk of serious harm to public interest objectives.~~ Regulation by way of reserved activities should be used only in cases where the measures aim at preventing a risk of serious harm to public interest objectives.

(20) ~~The national authorities~~ **Member States** should carry out a ~~global~~ **an overall** assessment of the circumstances in which the ~~restrictive measure~~ **requirement** is adopted and implemented and examine in particular the ~~cumulative~~ effect of imposing several requirements **taken together** in addition to the specific professional qualification. The taking-up and pursuit of certain activities may be conditional on complying with certain provisions such as rules relating to the organisation of the profession, compulsory membership of a professional body, professional ethics, supervision and liability. Therefore, when assessing the ~~cumulative~~ effect of the **new or amended** measures, ~~the competent authorities~~ **Member States** should also take into account **the combined effect of those measures with** other existing requirements, such as continuous professional development, compulsory chamber membership, registration or authorisation schemes, quantitative restrictions, specific legal form requirements and shareholding requirements, territorial restrictions, multidisciplinary restrictions and incompatibility rules, requirements concerning insurance cover as well as language knowledge requirements, to the extent necessary to practise the profession. **When doing so, existing requirements which are not being amended would not be subject to a new proportionality assessment.** A measure introduced by a Member State cannot be regarded as necessary to achieve the objective pursued if it essentially duplicates requirements which have already been introduced in the context of other rules or procedures.

(20a) The introduction of additional requirements may provide an added value to the public interest objective and the fact that their combined effect should be assessed does not mean that those requirements are disproportionate. For instance, continuous professional development requirements may be suitable to ensure that professionals keep abreast of developments in their respective areas, while contributing to safe practice in professions with particular risks, and where it covers technical, scientific, regulatory and ethical developments, and motivates professionals to participate in lifelong learning relevant to their profession; while for some professions where it is necessary and suitable to achieve the public interest objective, compulsory chamber membership may be considered to be appropriate to ensure adequate supervision.

(20b) The proportionality criteria as set out in this Directive may be applied to the appropriate extent and degree of intensity during an assessment of proportionality undertaken before introducing new provisions, or amending existing ones. The extent and degree of intensity applied during the assessment should be proportionate to the content of the provision being introduced and its impact.

(21) It is essential for the proper functioning of the internal market to ensure that Member States provide information to ~~citizens~~, representative associations or other relevant stakeholders before introducing new, **or amending existing**, measures restricting access to or pursuit of regulated professions and give them the opportunity to make known their views.

(22) ~~To facilitate~~ **For the purposes of encouraging Member States to share adequate and regularly updated information on the regulation of professions, the Commission should facilitate** the exchange of best practices **among Member States, including the particular way Member States regulate a profession and the effects of such regulation.** ~~each Member State should encourage the relevant competent authorities to share adequate and regularly updated information with other Member States on the regulation of professions.~~

- (23) In order to increase transparency and promote proportionality assessments based on comparable criteria, it is important that the information submitted by Member States be easily accessible in the database of regulated professions to allow ~~all interested parties~~ **Member States** to submit comments.
- (24) Since the objectives of this Directive, namely the removal of disproportionate restrictions on access to or pursuit of regulated professions cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules on a common framework for conducting proportionality assessments before introducing new, **or amending existing**, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ~~or amending existing ones~~, with a view to ensuring the proper functioning of the internal market.

Article 2

Scope

1. This Directive shall apply to **the legislative, regulatory or administrative provisions** ~~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~~.
2. **To the extent Member States transpose** ~~Where specific arrangements~~ **requirements** concerning the regulation of a given profession **as detailed** ~~are established in a separate Union act, the corresponding provisions~~ **Articles 4, 5 and 6, with the exception of Article 4 (4),** of this Directive shall not apply. **The paragraph shall not apply to requirements established in Union law that leave Member States a choice as to their exact way of transposition.**

Article 3

Definitions

For the purpose of this Directive, the definitions of Directive ~~2005/36/EC~~ shall apply **with the understanding that the term “regulated profession” shall refer to both existing regulated professions and professions Member States are considering to regulate.**

In addition, the following definitions shall apply:

- (a) "protected professional title" means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject to a particular professional qualification in the relevant field by virtue of legislative, regulatory or administrative provisions, either directly, or indirectly, and where the improper use of this title is subject to sanctions ~~or other measures~~.

- (b) "reserved activities" means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession, including where the activity is shared with other regulated professions.

Article 4

*Ex ante assessment of new measures **and monitoring***

1. Member States shall ~~ensure that~~ **undertake an assessment of proportionality in accordance with the rules laid down in this Directive** before introducing new, **or amending existing,** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ~~or amending existing ones, the relevant competent authorities undertake an assessment of their proportionality in accordance with the rules laid down in this Directive.~~
2. Any provision referred to in paragraph 1 shall be accompanied by a ~~detailed statement~~ **an explanation** making it possible to appraise compliance with the principle of proportionality.
3. The reasons for considering that a provision is justified, ~~necessary~~ and proportionate shall be substantiated by qualitative and, wherever possible **and relevant,** quantitative ~~evidence~~ **means, taking account of the specific circumstances of that Member State.**
4. Member States shall monitor the proportionality of **new or amended** legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions ~~on a regular basis~~ **after adoption,** ~~and with a frequency appropriate to the regulation concerned,~~ having due regard to any developments that have occurred since the measure concerned was adopted.

5. Member States shall take the necessary measures to ensure that the assessment of proportionality referred to in paragraph 1 is carried out in an objective and independent manner ~~including through~~ **taking into consideration** involvement of independent **objective** ~~scrutiny bodies~~ **observations**.

Article 5

Justification on grounds of public interest objectives

1. Member States shall ensure that legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions they intend to introduce and amendments they intend to make to existing provisions are justified by public interest objectives.
2. ~~The relevant competent authorities~~ **Member States** shall consider in particular whether those provisions are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, the safeguarding of the proper administration of justice, fairness of trade transactions, combating fraud and prevention of tax evasion and avoidance, ~~road~~ **transport** safety, the protection of the environment and the urban environment, the health of animals, intellectual property, the safeguarding and conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives.
3. Grounds of a purely economic nature ~~having essentially protectionist aim or effects~~ or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to or pursuit of regulated professions.

Article 6

Proportionality

1. Before introducing new, **or amending existing**, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions ~~or amending existing ones~~, Member States shall assess whether those provisions are ~~necessary and~~ suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.
2. When **Member States assess** ~~assessing~~ the necessity and the proportionality of the provisions, the **extent of the assessment shall be proportionate to the content and the impact of the provision.** ~~relevant competent authorities shall consider in particular:~~

Member States shall consider:

- (a) the nature of the risks related to the public interest objectives pursued, in particular the risks to ~~consumers~~ **service recipients including consumers**, to professionals or third parties;
- (b) the suitability of the provision ~~namely as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus, addresses the risks identified in a similar way as in comparable activities;~~
- (ba) whether the provision genuinely reflects the objective pursued in a consistent and systematic manner;**
- (c) the necessity of the provision and in particular whether existing rules of a specific or more general nature, such as product safety legislation or consumer protection law, are insufficient to protect the objective pursued;

- (ca) the economic impact of the measure, with particular regard to the degree of competition in the market and the quality of the service provided, as well as the impact on the free movement of persons and services within the Union;**
- (cb) the possibility to use less restrictive means to achieve the public interest objective; where the risks identified are limited to the relationship between the professional and the consumer without negatively affecting third parties, the Member States shall assess in particular whether the objective can be attained by other means than reserving activities;**
- (cc) the effect of the new or amended provisions when combined with other requirements restricting access to or pursuit of the profession, and in particular how the new or amended provisions, combined with other requirements, contribute to and whether they are necessary to achieve the same public interest objective.**

Member States shall also consider the following elements where relevant to the provision being introduced or amended:

- (d) the ~~link~~ **connection** between the scope of activities covered by a profession or reserved to it and the professional qualification required;
- (e) the ~~link~~ **connection** between the complexity of the tasks and the necessary possession of specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required, ~~as well as the existence of different routes to obtain the professional qualification;~~
- (ea) the possibility to obtain the professional qualification through alternative routes;**

- (f) ~~the scope of the professional activities reserved to holders of a particular professional qualification, namely whether and why the activities reserved to certain professions can or cannot be shared with other professions;~~
- (g) 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;
- (h) the scientific and technological developments which may **effectively** reduce the asymmetry of information between professionals and consumers;
- (i) ~~the economic impact of the measure, with particular regard to the degree of competition in the market and the quality of the service provided, as well as the impact on the free movement of persons and services within the Union;~~
- (j) ~~the possibility to use less restrictive means to achieve the public interest objective;~~
- (k) ~~the cumulative effect of restrictions to both access to and pursuit of the profession, and in particular how each of those requirements contributes to and whether it is necessary to achieve the same public interest objective.~~

3. ~~For the purposes of paragraph 2(j), where the measures are justified by consumer protection and where the risks identified are limited to the relationship between the professional and the consumer without negatively affecting third parties, the relevant competent authorities Member States shall assess in particular whether the objective can be attained by protected professional title another form of regulation without reserving activities.~~

4. For the purposes of paragraph 2(~~kcc~~), ~~the relevant competent authorities~~ Member States shall assess ~~in particular~~ the cumulative effect of the new or amended provision when combined with one or more ~~of imposing any of the following requirements,~~ in particular the following:

(a) reserved activities, ~~existing alongside protected professional title;~~

(aa) protected professional title;

(b) obligations to undergo continuous professional development requirements;

(c) rules relating to the organisation of the profession, professional ethics and supervision;

(d) compulsory chamber membership, registration or authorisation schemes, in particular where those requirements imply the possession of a particular professional qualification;

(e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding particular professional qualifications;

(f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;

(g) territorial restrictions, ~~in particular~~ including where the profession is regulated in parts of a Member State's territory in a different manner;

(h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;

(i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;

(j) language knowledge requirements, to the extent necessary to practise the profession.

Article 7

Information and involvement of stakeholders

Member States shall, by appropriate means, ~~inform~~ **make information available to** citizens, service recipients, ~~representative associations and~~ **other** relevant stakeholders **including those who are not** ~~other than the~~ members of the profession before introducing new, **or amending existing**, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, ~~or amending existing ones~~, and give them the opportunity to make known their views. **To this purpose, Member States may use national procedures.**

Article 8

*Exchange of information between ~~competent authorities~~ **Member States***

1. For the purposes of the efficient application of this Directive, ~~before introducing new legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, or amending existing ones~~, Member States **the Commission** shall encourage **facilitate** the exchange of information with **among** ~~competent authorities of other Member States~~ on matters covered by this Directive, ~~such as well~~ as the particular way they regulate a profession or the effects of **such** regulation ~~identified in similar sectors of activities, on a regular basis, or, where appropriate, on an ad hoc basis.~~
2. Member States shall inform the Commission of the ~~competent~~ **public** authorities responsible for transmitting and receiving information for the purposes of applying paragraph 1.

Article 9

Transparency

1. The reasons for considering that provisions, assessed in accordance with this Directive, are justified, ~~necessary~~ and proportionate, and which are communicated to the Commission pursuant to paragraphs 5 and 6 of Article 59 of Directive 2005/36/EC, shall be recorded by ~~the relevant competent authorities~~ **the Member States** in the database of regulated professions, referred to in Article 59 paragraph 1 of Directive 2005/36/EC, and thereafter made publicly available by the Commission **except at the express request of the Member State concerned not to make those reasons publicly available. Any such request shall be supported by reasons.**
2. Member States ~~and other interested parties~~ may submit comments **on the provisions and the reasons for considering that those provisions are justified and proportionate** to the Commission or to the Member State which has ~~notified~~ **communicated** the provisions.

Article 10

Review

1. By 18 January 2024 and every five years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the implementation and performance of this Directive, including, among other aspects, its scope and its effectiveness.
2. Where appropriate, the report referred to in paragraph 1 shall be accompanied by relevant proposals.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **24 months** at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 12

Entry into force

This Directive shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President