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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Directive (EU) 2018/958 of the European Parliament and of
the Council of 28 June 2018 on a proportionality test before adoption of new regulation
of professions**

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1. INTRODUCTION

The key objective of Directive 2018/958/EU ⁽¹⁾ on a proportionality test before the adoption of new regulation of professions (‘the Proportionality Test Directive’ or ‘the Directive’) is to improve the functioning of the single market by preventing the adoption of unjustified and disproportionate restrictions on the access to and exercise of regulated professions. It obliges Member States to assess the proportionality of any new, or the amendment of existing, rules on regulated professions before their adoption. To help Member States, the Directive lays down a common framework with clear criteria for them to use when assessing proportionality. At the time when the Directive was [proposed](#) in 2017, national proportionality assessments carried out in the context of the mutual evaluation exercise under Directive 2005/36/EC ⁽²⁾ were found to be rather weak and did not fully apply the case law of the Court of Justice of the European Union (CJEU). As a result, they fell short of achieving their potential in terms of safeguarding and strengthening the single market. Thus, the Directive aimed to improve this situation.

This report, based on Article 12 of the Directive, takes stock of the current situation against the backdrop of ongoing infringement proceedings concerning transposition of the Directive in Member States, provides examples of national approaches to proportionality assessments, and outlines the key problems in transposition. It also presents preliminary findings on the application and impact of the Directive based on the proportionality assessments reported in the regulated professions database ⁽³⁾, the replies by Member States in a dedicated EU survey, the discussions in the Group of Coordinators’ meetings, and bilateral contacts with Member States.

This report is not a full evaluation of a directive, within the meaning of the Better Regulation guidelines ⁽⁴⁾. Given the ongoing transposition enforcement action (as outlined in Section 2.2 below) and the limited time during which the national transposition measures have been in force, a comprehensive evaluation assessing the effectiveness of the Directive and examining its impact is currently premature. A full *ex post* evaluation would only be possible once the Directive has been fully and correctly transposed and there is enough practical experience and sufficient data on the application of the proportionality test laid down in the Directive.

⁽¹⁾ [Directive \(EU\) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions.](#)

⁽²⁾ [Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.](#)

⁽³⁾ Member States are required to notify the reasons for proportionality of newly introduced or amended requirements via the database ([Regulated Profession Database \(europa.eu\)](#)).

⁽⁴⁾ Commission Staff Working Document – Better Regulation Guidelines (SWD(2017) 350).

2. TRANSPOSITION BY MEMBER STATES

Despite many preparatory discussions and meetings, two thirds of Member States were late in transposing the Directive. Full transposition in all Member States was only achieved 2 and a half years after the set deadline.

In addition, for 23 Member States further enforcement action was necessary to ensure full conformity of their national rules with the Directive. The main issues concerned:

- *failure to subject all relevant rules to the proportionality test obligations, in particular rules introduced by professional bodies and national parliaments;*
- *failure to ensure the independence and objectivity of the assessments;*
- *failure to accurately transpose the substantive criteria of the common assessment framework.*

While most Member States have aligned their national rules by now, eight infringement procedures are still ongoing 4 years after the transposition deadline. This includes the referral of two Member States to the CJEU.

EU directives can only play their role in strengthening the single market if Member States ensure a timely and proper transposition. The enforcement action required in relation to the Proportionality Test Directive highlights the urgent need for a better culture of compliance.

Acknowledging that a proper and timely transposition of the Directive is crucial to the success of the new rules, the Commission took action to support the work of the Member States. The transposition of the Directive into the national legal systems was discussed regularly in the expert group established by Directive 2005/36/EC (i.e. the Group of Coordinators for the Recognition of Professional Qualifications) as well as at many bilateral meetings between the Commission services and the authorities in the Member States.

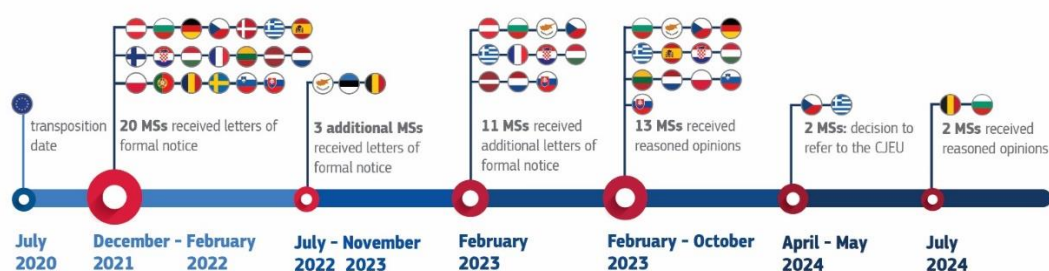
Despite this preparatory work, transposing the Directive correctly and in a timely manner still proved to be challenging for Member States, and the Commission was obliged to follow up with enforcement action.

The following section outlines the different stages of the enforcement action carried out by the Commission as well as the key findings of the in-depth conformity check of the national transposing measures.

2.1. Transposition delays and enforcement action

The transposition deadline for the Proportionality Test Directive lapsed on 30 July 2020. Since most Member States did not complete the transposition by the deadline, infringement proceedings followed shortly with a launch of a series of non-communication cases (18 in total). The last non-communication infringement cases were closed in February 2023.

Graph 1. Timeline of non-conformity procedures (September 2024)

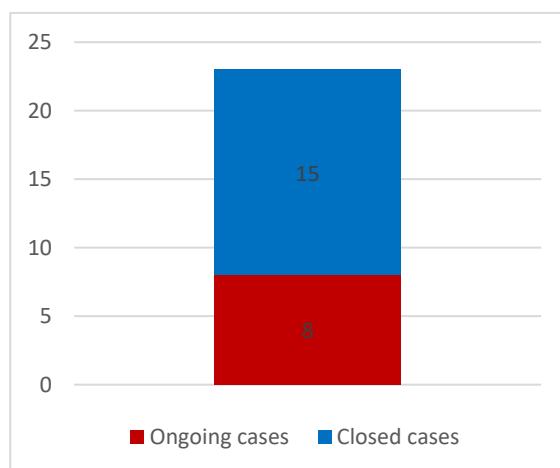


Because of this delay in transposition, the compliance check of the transposing measures could only start at the end of 2021 and resulted in infringement action against 23 Member States in total (see Graph 1). Following exchanges with Member States, further potential problems in the transposition in many Member States were identified, and additional letters of formal notice were sent in February 2023. Currently, non-conformity procedures are ongoing against eight Member States, including decisions to refer two Member States to the CJEU.

2.2. Implementation in Member States: state of play

As shown in Graph 2 below, in nearly two thirds of cases (15 out of 23), Member States have by now addressed all concerns raised in the infringement procedures, and the procedures have been closed. In many of the remaining cases, Member States are working on resolving the concerns raised, and the envisaged amendments are pending for adoption. Only very few issues remain under discussion and concern five Member States.

Graph 2. Number of closed and ongoing non-conformity cases (September 2024)



The Commission's enforcement action has been effective in correcting transposition of the Directive in the majority of Member States. The sections below provide a more detailed overview of the issues tackled. The overview is based on the main findings from the conformity assessments and other available information.

Ensuring the scope of the proportionality assessments

Under Article 2 of the Proportionality Test Directive, all binding measures of general application (i.e., legislative, regulatory, and administrative measures) fall within the scope of the Directive, regardless of the body that adopted those provisions (government, parliaments, or non-governmental bodies, such as professional associations).

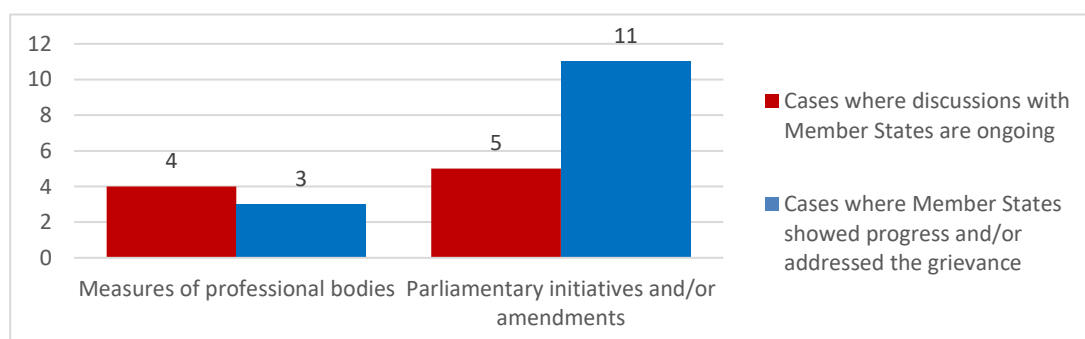
Based on the assessment of national transposition, the Commission identified shortcomings in the transposition of the provisions regarding the scope of the proportionality assessments in almost all Member States involved in the enforcement action (20 out of 23).

The shortcomings mainly concerned the failure to include in the national rules transposing the Directive the measures adopted by the national parliaments (in particular, parliamentary initiatives and/or parliamentary amendments) and/or by professional associations (see Graph 3). The importance of effectively transposing the Directive regarding these types of measures is illustrated by the fact that, in their replies to the EU survey, Member States already reported several instances where they had to carry out proportionality assessments for such measures ⁽⁵⁾.

In some Member States, it turned out to be particularly challenging to ensure that parliamentary initiatives and parliamentary amendments were covered by the scope of the obligation to conduct a proportionality assessment. This was due to concerns about a perceived impingement on the principle of the separation of powers.

However, the Commission's transposition checks across all Member States, as well as discussions with the Member States concerned, revealed that there were possibilities to ensure compliance with the Directive's provisions as regards its scope, while maintaining national procedures and the autonomy of or separation between state bodies. For instance, many Member States opted for introducing an obligation on the government to issue an opinion during the legislative process that also incorporates a proportionality assessment of parliamentary measures or measures introduced by professional bodies. Other Member States opted for adopting national transposing measures that require national parliamentary bodies to carry out proportionality assessments.

Graph 3. Number of Member States concerned by grievances on the scope of proportionality assessments (lack of coverage of certain measures)

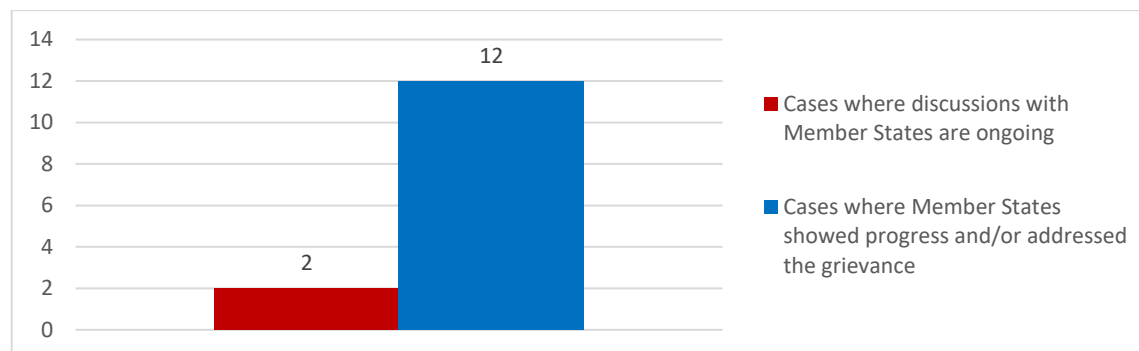


⁽⁵⁾ On 6 April 2023, the Commission services launched a survey asking Member States about their experiences with the application of the Proportionality Test Directive. For the period between 30 July 2020 and 15 May 2023, five Member States reported having carried out proportionality assessments for measures adopted by professional associations. Likewise, five Member States reported having done so for parliamentary initiatives and six for parliamentary amendments.

Ensuring the objectivity and independence of proportionality assessments

Under Article 4(5) of the Proportionality Test Directive, **Member States shall carry out proportionality assessments in an objective and independent manner**. Such objectivity and independence need to be ensured, in particular where regulatory powers are delegated to a professional body. The purpose of this provision is to avoid assessments that would be influenced by an inherent bias and would therefore favour established operators at the expense of new market entrants.

Graph 4. Number of Member States concerned by issues of non-compliance with the requirement for objectivity and independence



The Commission's assessment of national transposition has shown that most Member States failed to put in place specific measures to ensure that proportionality assessments were carried out in an objective and independent manner as required under the Directive, in particular where such proportionality assessments were conducted by professional associations (see Graph 4).

The Commission's transposition checks also revealed some good examples of procedures at national level that can properly ensure the independence and objectivity of proportionality assessments. These good examples include: (i) the review of the proportionality assessment of certain types of draft bills by a supervisory national administrative authority ⁽⁶⁾; (ii) an obligation on the government responsible for carrying out the proportionality assessment to submit the assessment to the national competition authority for an opinion; and (iii) an obligation on professional associations with regulatory powers to submit the proportionality assessment to the government for its views.

Transposition of the assessment criteria

The substance of the analysis required under the Proportionality Test Directive is set out in considerable detail in Articles 5 to 7 of the Directive and reflects the case law of the CJEU on the principle of proportionality. The purpose of this detailed description of the criteria to be assessed in the proportionality test is to ensure completeness and a comparable level of thoroughness of the assessments across Member States.

More precisely, any proportionality assessment must demonstrate that the new or amended provisions restricting access to, or the pursuit of, a regulated profession are non-discriminatory, justified on the grounds of public interest objectives, suitable for securing

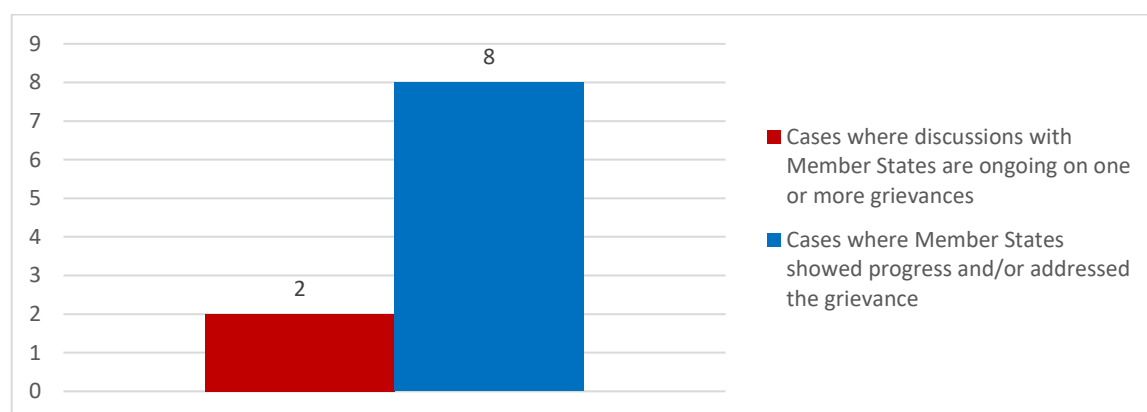
⁽⁶⁾ For instance, a governmental body that acts as legal adviser to the executive branch and/or as the supreme court for administrative justice.

the attainment of the objective pursued, and do not go beyond what is necessary to attain that objective. The Directive indicates in detail, for each of the above-mentioned assessment criteria, what should be examined in the proportionality assessment in terms of the restriction at hand.

The Commission's assessment of the national transposition has not revealed major issues with the implementation of the assessment criteria laid down in Articles 5 to 7 of the Directive (see Graph 5). On the contrary, Member States generally ensured proper implementation of the above-mentioned provisions. Moreover, in some cases Member States went even further and made significant efforts, complementing the main transposition measure, to ensure a proper functioning of the Directive in practice at national level. These efforts include developing questionnaires, decision trees, assessment grids, guidance documents and training aiming to make the obligations laid down in the Directive 'user-friendly' for the national authorities in charge of conducting the proportionality assessment.

Nevertheless, in the context of its compliance checks, the Commission also identified certain issues in relation to how a limited number of Member States transposed the Directive.

Graph 5. Number of Member States concerned by issues of non-compliance with one or more assessment criteria



These issues include the failure to properly transpose: (i) the obligation to justify a restriction on the grounds of public interest objectives (Article 6); (ii) the list of criteria to be assessed when carrying out the proportionality assessment (Article 7(2)); and (iii) the obligation to assess the effect of the new or amended provisions when combined with other new or existing requirements to avoid duplicating requirements with the same objectives (Article 7(3)).

Transposition of other procedural obligations

Article 4(6) of the Proportionality Test Directive **requires Member States to monitor the proportionality of new or amended provisions** restricting access to, or the pursuit of, regulated professions. This monitoring must take due account of the effects of the legislation observed after its adoption and any developments that have occurred since its adoption. This provision aims to ensure that restrictions are maintained in the legislation after their adoption only if they remain necessary and proportionate to achieve specific objectives.

The compliance checks conducted by the Commission have shown that more than half of the Member States have properly transposed Article 4(6) of the Directive by putting in place a clear procedure ensuring a continuous monitoring of new or amended provisions restricting access to, or the pursuit of, a regulated profession (see Graph 6). An example of such a procedure is the obligation for the national coordinator to generally supervise compliance with the principle of proportionality by the relevant authorities and professional associations and draft a report to this effect every two years.

Nonetheless, the Commission has identified shortcomings in transposing the monitoring obligation in 11 Member States, i.e., approximately two fifths (see Graph 6).

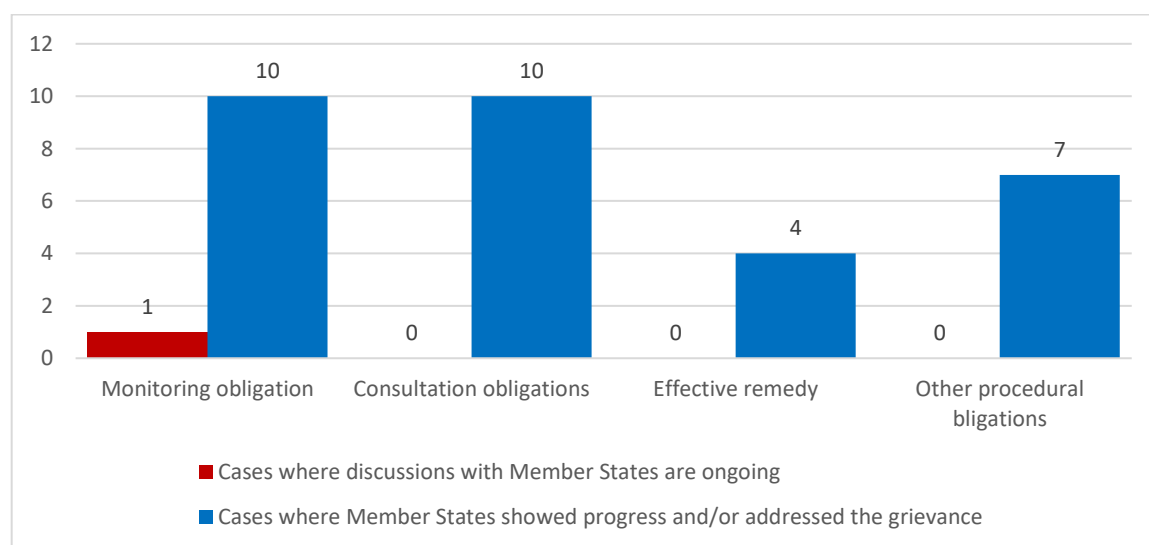
In addition, Article 9 of the Proportionality Test Directive requires Member States to ensure that an **effective remedy** is available for the matters covered by this Directive, in line with procedures laid down in national law.

The Commission's assessment of national transposition has shown that, with only a few exceptions, Member States have successfully implemented this provision (see Graph 6)

Lastly, Article 4(1) to (4) and Article 8 of the Proportionality Test Directive provide for **other procedural obligations** that Member States must comply with when conducting proportionality assessments of new or amended regulations restricting access to, or the pursuit of, a regulated profession. This includes the obligation to: (i) conduct the proportionality test *ex ante* (i.e., before the legislation is adopted); (ii) provide a sufficiently detailed and evidence-based explanation alongside the assessment; and (iii) ensure transparency and sufficient consultation (to inform the public and involve stakeholders in the process).

Around one fourth of Member States (7) failed to properly implement Article 4(1) to (4). Similarly, the Commission identified shortcomings in transposing Article 8 in more than a third of the Member States (10) (see Graph 6). However, to date all Member States concerned have taken the necessary measures to comply or committed to do so by providing the Commission with a clear timetable for adopting the necessary amendments (see Graph 6).

Graph 6. Number of Member States concerned by issues of non-compliance with procedural obligations



3. APPLICATION AND IMPACT

It is too early to draw robust conclusions, but some preliminary findings on the application and impact of the Directive emerge.

Member States seem to recognise the potential of the proportionality test to prevent unnecessary rules and have taken some important first steps in applying it. The Directive has raised awareness about proportionality and pushed authorities to genuinely reflect on the effects of their proposals.

Most Member States reported specific instances where the prior proportionality assessment already contributed to preventing disproportionate rules. The active role played by Member States to ensure the proper application of the proportionality test obligation is laudable.

Two thirds of Member States consider that the common framework has improved the quality of the proportionality assessments. A preliminary evaluation of the assessments reported in the regulated professions database show that Member States have indeed produced more elaborate and ‘richer’ assessments.

The Commission supported Member States’ efforts by publishing guidelines on proportionality assessments and by offering tailor-made training on implementing the Directive in several Member States. However, the assessments also show that Member States still have some difficulties in applying the common framework and would benefit from further support and guidance.

Moreover, in a few Member States there is a need to clarify that the Directive is a tool to help policymakers design ‘fit-for-purpose’ rules rather than an additional administrative task or process.

To reap the full benefits of the Directive, it is essential to ensure that it is properly applied in the Member States. Therefore, in addition to the regular exchanges in the Group of Coordinators, the Commission published in November 2022, its *Guidance on the assessment of proportionality pursuant to Directive 2018/958 on a proportionality test before adoption of new regulation of professions*. The guidance, available in 24 official languages ⁽⁷⁾, aims to support Member States in their efforts to correctly apply the core provisions of the Directive.

In addition, in 2024 the Commission services launched a series of bilateral training courses in Member States, providing tailor-made workshops on applying the Directive ⁽⁸⁾.

As already mentioned, it is too early to draw robust conclusions about the application and impact of the Directive due to the late transposition of the Directive by Member States and the gaps and/or inaccuracies subsequently identified in most national legal frameworks. However, some preliminary findings can already be made. The initial insights presented in this report were drawn from:

⁽⁷⁾ [Guidance on the assessment of proportionality pursuant to Directive 2018/958 on a proportionality test before adoption of new regulation of professions - Publications Office of the EU \(europa.eu\)](#).

⁽⁸⁾ Workshops have already taken place in Italy, Lithuania, Malta, Romania, Germany, and Finland.

- (1) a dedicated survey asking Member States about their experiences so far ⁽⁹⁾;
- (2) a qualitative evaluation of the proportionality assessments reported in the regulated professions database following the Directive's entry into force ⁽¹⁰⁾;
- (3) other input and available information, such as Member States' feedback shared in the Group of Coordinators' meetings and bilateral contacts.

This very preliminary assessment of the impact and effectiveness of the Directive focuses on both the *procedural aspects* of the quality of the assessments and the *output aspects* of the quality of the adopted regulation.

The Commission is not in a position to check the accuracy of the evidence gathered via the survey. Furthermore, only a limited qualitative evaluation of these assessments could be made given: (i) the small number of proportionality assessments reported in the database since the Directive's transposition deadline; and (ii) the ongoing infringement proceedings for non-conformity of the national transposition measures.

3.1. A promising start

Despite the difficult transposition of the Directive, the replies to the survey indicate that Member States recognise the potential of the proportionality test to prevent unnecessary rules and that they have taken some important first steps in applying it. In the survey, Member States expressed an overall positive view of the Directive's impact so far on their regulatory processes and their outcome. Several Member States reported that the Directive has **raised awareness** among authorities with powers to regulate about the need to take into account the principle of proportionality and its role in preserving the single market fundamentals. This effect is sometimes said to extend beyond the domain of regulated professions. More generally, the Directive is credited by many for contributing to better regulation by pushing authorities to **genuinely reflect on the impact** of their proposals instead of relying on intuition or producing some formalistic 'tick-the-box' impact assessments. The explicit obligation to conduct *ex ante* proportionality assessments seems to have also led to **more exchanges on the substance of drafts** between authorities with powers to regulate and expert bodies, such as national coordinators, ministries and supervisory national administrative authorities. The active role played by several Member States to ensure the proper application of the proportionality test obligation is laudable. In addition, stakeholder consultation seems to have increased. This broader reflection is likely to have had a positive impact on the regulation adopted.

The Commission also welcomes the first concrete results in terms of 'output' or impact on the quality of the adopted regulation that were revealed in the survey. For example, half the Member States that replied to the survey (12 out of 24) reported specific instances where the obligation to perform the prior proportionality assessment has contributed to **preventing the adoption of disproportionate rules**. These include proposals that were: (i) blocked due to the absence of a (proper) proportionality assessment; (ii) modified based on the outcome of the test or while preparing the test; or (iii) not introduced due to the obligation to conduct a prior assessment. Three of these Member States reported that the

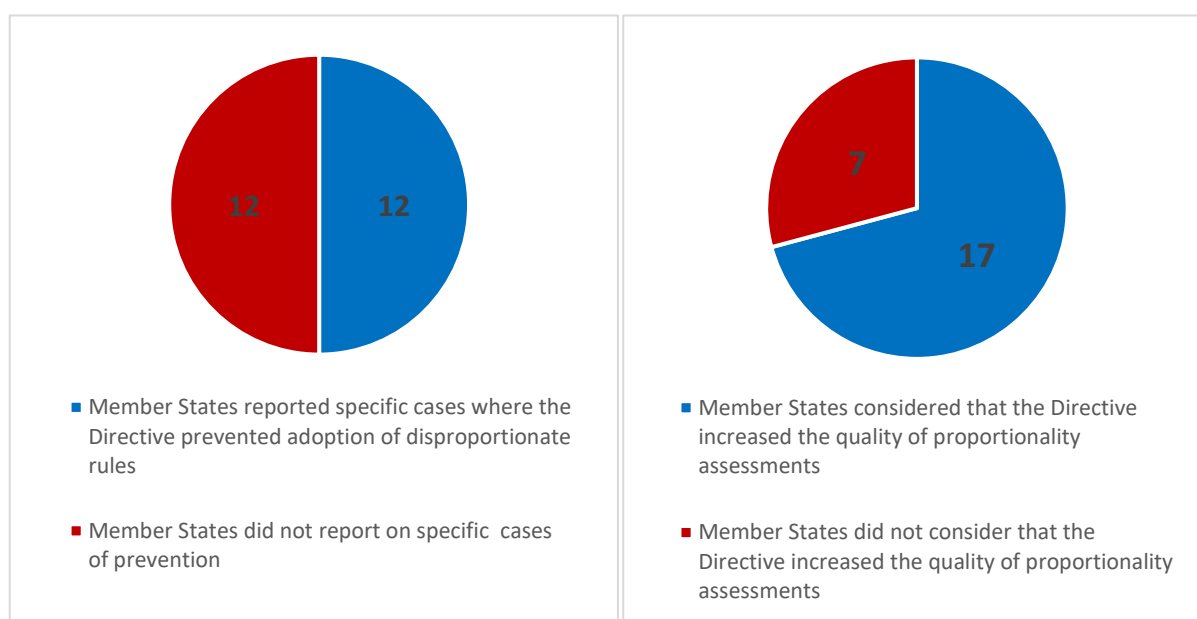
⁽⁹⁾ 24 Member States replied to the survey launched on 6 April 2023.

⁽¹⁰⁾ This concerns proportionality assessments for 112 new or amended requirements between 31 July 2020 and 31 December 2023.

opinion of a body other than the authority with powers to regulate was at the origin of this blockage or modification.

When asked whether they considered that the obligation to conduct prior proportionality assessments in line with the Directive's framework had **increased the quality of assessments**, more than two thirds of the Member States that replied to the survey (17 out of 24) replied positively ⁽¹¹⁾. In addition, three of the Member States that replied to the survey indicated that there were discussions to **extend the proportionality test framework beyond the regulated professions in their countries**.

Graph 7. Reported instances of prevention of disproportionate rules and the number of Member States reporting an increase in the quality of assessments



Based on a preliminary evaluation of the proportionality assessments reported in the database, it can also be concluded that the common framework set out in the Directive has led Member States to produce more elaborate and 'richer' assessments. When comparing the assessments in the database before the Directive's entry into force with new assessments of the same requirements but amended, it was found that **in about 63% of the cases, the new assessments made in line with the Directive's framework showed improvement in terms of focus, detail and structure**.

⁽¹¹⁾ When several authorities in the same Member State replied, the most common response was considered. Of the seven Member States that replied 'no', two had reported no proportionality assessments since the transposition deadline, one explained its 'no' as reflecting its impression that authorities had not yet properly applied the framework, and another replied 'no' although the explanation given shows a 'yes' was intended.

3.2. Work still in progress

While the groundwork seems to have been laid for stronger national proportionality evaluations, further action of Member States and Commission is essential to reap the full benefits of the Directive.

On challenges faced when applying the Directive, in their reply to the EU survey only two Member States out of the 24 Member States who participated in the survey expressed concerns about the **administrative burden** created by the Directive. In particular, one Member State considered the criteria of the common proportionality test to be **too detailed** and **difficult to understand**. Two Member States reported that some authorities expressed concerns that the Directive might have a ‘**chilling effect**’ on the modernisation of professions, since it would discourage any amendments to existing rules, even for simple changes, such as updating training curricula. In a similar way, some Member States regretted the **lack of a ‘de minimis rule’**, *i.e.* a rule limiting the proportionality assessment obligation to provisions that surpass a certain threshold in terms of restrictiveness.

To respond to these concerns, the Commission has clarified on several occasions, including in the guidance on the assessment of proportionality and at the Group of Coordinators’ meetings, that Article 4(2) of the Directive sets out that assessments should be proportionate to the nature, content and impact of the provision, thus allowing for variation in the comprehensiveness of the assessment based on the degree or significance of the modification in question. Moreover, recital 9 of the Directive explicitly states that provisions that do not restrict access to or the pursuit of regulated professions (such as editorial amendments, technical changes to the content of training courses, or the modernisation of training) do not fall within the scope. This means that, for example, changes to curricula that have no effect or only a small effect on the level of restrictiveness of the training requirement will require no assessment or only a very limited one. On the lack of a ‘de minimis rule’, the Treaty provisions on the fundamental freedoms do not allow for such a threshold and any restriction must be proportionate, even if it is of limited scope or minor importance ⁽¹²⁾.

On the perceived additional administrative burden on authorities, it should also be kept in mind that the ultimate aim of this ‘additional effort’ is to reduce the burden on companies and professionals operating in the single market by preventing unnecessarily restrictive regulation.

Furthermore, a couple of Member States expressed concerns about the **lack of clarity of the scope** of the Directive, both in terms of the types of measures covered and activities falling within the definition of a regulated profession. While the guidance on the assessment of proportionality explains in detail the scope of the measures covered and should assist Member States in this regard, the guidance could be further enriched, for example by further clarifying what constitutes a regulated profession.

On the Directive’s application, the assessments reported in the database so far indicate an improvement in quality. Yet they also show that **Member States would benefit from further support and guidance** on how to better apply the common framework and procedural requirements set out in the Directive.

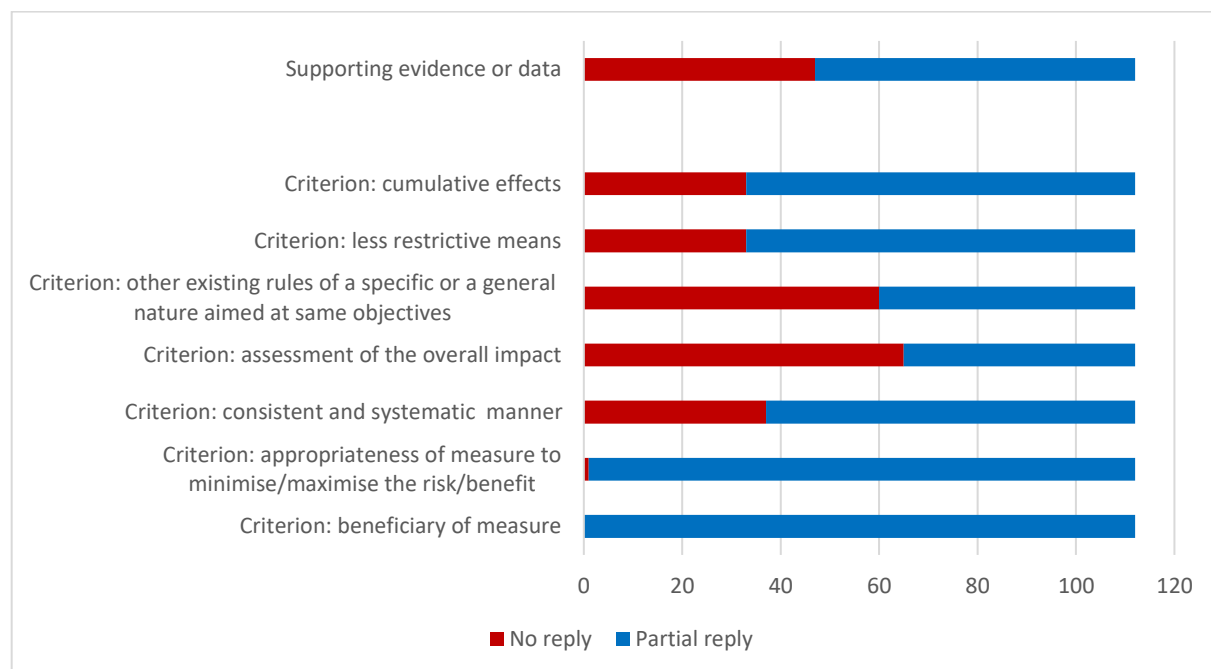
⁽¹²⁾ Judgment of 3 December 2014, *De Clercq and Others*, C-315/13, ECLI:EU:C:2014:2408, paragraph 61; Judgment of 11 November 2021, *BJ and OV v Mrs M and Others*, C-168/20, ECLI:EU:C:2021:907, paragraph 105.

In this respect, first, although clearly identifying the objective of a regulatory action is an essential condition for any successful policy, Member States often struggle with indicating the exact **public interest objective(s)** being pursued. This could be due in part to their lack of knowledge of the interpretation given by the CJEU to a particular objective. However, pinpointing the precise public interest objective(s) is more than just a formalistic exercise: it is a precondition for being able to assess whether a measure pursues its objective(s) in a proportionate manner.

Second, it appears that assessments still **fail to address certain criteria** or Member States lack a good understanding of what certain criteria entail. This is, in particular, the case for the criteria of: (i) pursuing a public interest objective in *a consistent and systematic manner*; (ii) the assessment of *cumulative effects* with other requirements (and what would be the added value of the new or amended requirement given the public interest objective); (iii) the consideration of *less restrictive means* to achieve the same public interest objectives; (iv) the evaluation of *whether existing rules of a specific or a general nature are insufficient to guarantee the public interest objective*; and (v) the *overall impact* of the proposed regulation, e.g. on the degree of competition in the market, the quality of services, consumer choice and the free movement of persons and services within the EU.

Third, the assessments frequently **lack supporting evidence** or data underpinning the regulatory choices. While the Directive and case law do not oblige Member States to produce a specific type of evidence, Member States are under an obligation to substantiate the analysis by means of qualitative, and wherever possible and relevant, quantitative elements.

Graph 8. Assessment of certain criteria by Member States (as reported in the database on regulated professions between 31 July 2020 and 31 December 2023) ⁽¹³⁾



⁽¹³⁾ In exceptional cases, some of these criteria might not be relevant for the assessment, and this could explain the lack of a reply from a Member State. For instance, this is the case for the cumulative effect when there are no additional requirements beyond qualifications and reserved activities/protected titles. However, it would be good practice to briefly explain why a given criterion was not evaluated or discussed.

Lastly, when several requirements are introduced or amended at the same time, Member States often do not provide a specific **assessment per requirement**. The templates or questionnaires drawn up at national level should clearly reflect the need for this ‘per requirement assessment’.

4. POINTS TO CONSIDER

As the last transposition efforts are close to being solved in most Member States, in light of the first experiences in applying the proportionality test as described in sections 2 and 3 above, the following additional points could be considered.

It is clear that for this preventative instrument to have a real impact, continued commitment from Member States and the Commission is essential.

To this end, the Commission services will keep up their regular targeted exchanges with Member States in the Group of Coordinators and will continue to invite Member States to share any difficulties, questions or best practices they may have. Furthermore, the Commission services will continue to provide training for Member States and authorities by means of tailor-made bilateral training sessions as well as if feasible, other formats, such as an online training ⁽¹⁴⁾. Member States could contact all relevant authorities to identify whether and how they could benefit from such training. Member States could increase internal/national efforts to highlight that the Directive is intended to help policymakers when deciding on which action to take by ensuring that any rules they propose are effectively fit for purpose. Thorough proportionality assessments, as intended under the Directive, significantly reduce the likelihood of any enforcement action due to disproportionate rules.

Moreover, considering the very positive reception of the guidance on assessment of proportionality the Commission services stand ready to update and improve this document. Providing further examples of good practices will be possible as the Commission and Member States gain experience from applying the Directive. The Commission services are also working to facilitate and improve the transparency tools to be used by Member States. Indeed, the regulated professions database was migrated to the Internal Market Information system (IMI), a tool which has proven very successful. Following this migration, the Commission services expect the more structured and complete forms to better guide Member States through their reporting obligations. Improvements to this platform will continue to be made based on user feedback.

Member States could facilitate the work of their authorities by developing questionnaires, decision trees, flow charts etc., with further explanations of the different criteria. These could even be tailor-made to the specific policy domain/level. In this context, Member States should make clear that authorities are expected to perform a distinct assessment for each amended or newly introduced requirement related to access to or exercise of a regulated profession, which assumes that individual requirements are clearly identified.

Moreover, Member States should pay particular attention to the measures and proportionality assessments drawn up by non-governmental bodies, such as professional associations, and should ensure that such bodies comply fully with the Directive. In addition, Member States should also monitor how the Directive is applied to parliamentary initiatives or amendments concerning regulation of professions.

Furthermore, given the frequent lack of reporting of supporting evidence or data in the regulated professions database, Member States could consider taking action to facilitate evidence-based assessments. They could, for instance, provide the relevant authorities with an overview of the specific national sources and resources available to perform such

⁽¹⁴⁾ This could, for example, take place in the context of the EU Academy, which provides authoritative e-learning content from the EU institutions on various policy areas.

quantitative and qualitative assessments. A good practice would also be to require that any reform is accompanied by empirical data, gathered both before and after such reforms. Such data could then also be used to guide and substantiate future policymaking.

In addition, consideration could be given to the views shared by some Member States in the survey as well as via other channels, to extend the proportionality test framework, for instance, also for regulation of services not falling within the scope of Directive 2005/36/EC, and their requests to prevent barriers in the single market in particular in relation to the freedom to provide services ⁽¹⁵⁾.

Lastly, where necessary and appropriate, the Commission will continue safeguarding the proper application of the Directive by taking further enforcement action against those Member States that fail to comply with their obligations.

(¹⁵) For instance, Swedish non-paper ‘An Action Plan for the Services Sector’ (2021); Finnish non-paper ‘The views of Finland on the development of the single market - resilience and twin transition’ (2022); Non-paper of Croatia, Czechia, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden on a new horizontal Single Market Strategy (2024).

5. CONCLUSION

Given the late transposition by many Member States and the ongoing infringement proceedings for non-conformity of the national transposition laws, it is too early for a comprehensive evaluation of the Directive's effectiveness and impact.

Following the transposition deadline on 30 July 2020, the Commission took legal action for late transposition of the Directive against two thirds of Member States, with the last case only being closed in February 2023. This late transposition delayed the compliance check of the national transposing measures, and therefore enforcement action for non-conformity could only start at the end of 2021. More than two thirds of Member States were involved in proceedings relating to non-compliant national transposition measures. While most Member States have by now aligned their national rules, infringement procedures against a third of Member States are still ongoing.

Nevertheless, based on Member States' feedback and the first proportionality assessments reported in the regulated professions database, some preliminary conclusions can be drawn on the Directive's impact so far. The main takeaway is that the Directive has placed the principle of proportionality firmly on the radar of authorities with powers to regulate. The mandatory common assessment framework is credited for having pushed authorities to start genuinely reflecting on the impact of their proposals, notably on the functioning of the single market. And while it is often difficult to measure the effectiveness of prevention measures, such as the *ex ante* proportionality test, it is worth noting that Member States already reported several instances where applying the Directive led authorities with powers to regulate to modify or abandon disproportionate proposals.

Although a few Member States complained about additional administrative tasks, there should be greater awareness in Member States that the Directive is intended to help policymakers design rules that are truly fit for purpose, ultimately benefiting the single market and reducing the need for remedial enforcement action.

Member States' largely positive reception of the Directive does not mean that the goal has been reached. The proportionality assessments reported in the database so far seem to indicate that Member States still have some difficulties when applying the common framework and would benefit from further support and guidance. While the proper application of the Directive remains a work in progress and will require continued efforts by both Member States and the Commission, it is a learning experience that can have positive spill-over effects on other policy areas. The Directive's 'assessment toolkit' is one that could be adapted by both the Commission and the Member States to domains beyond regulation of professions, as already suggested by some Member States.

To sum up, while it is too soon to present a comprehensive evaluation of the Directive's effectiveness, the preliminary findings suggest that the Directive has increased authorities' focus on the impact of their rules and, in some cases, concretely avoided disproportionate proposals. However, further support and guidance may be needed to improve its application and maximise its effectiveness.