

Case handler: Bernhard Zaglmayer  
Tel: +32 2 286 1897  
e-mail: bza@eftasurv.int

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Norwegian Ministry of Education and Research  
Postboks 8119 Dep  
N-0032 Oslo  
Norway

Dear Sir/Madam,

**Subject: Request for information concerning a conformity assessment of Directive 2018/958 on a proportionality test before adoption of new regulation of professions in Norway**

The EFTA Surveillance Authority (“the Authority”) is currently carrying out a conformity assessment of the implementation into the national legal order of Norway of the Act referred to at point 1c of Annex VII to the EEA Agreement, *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* (“the proportionality test Directive” – “PTD”).

The Directive entered into force in the EFTA States on 1 February 2023. Norway notified full implementation of the Act by letter dated 6 December 2023. The notification contains references to the following measure implementing the Directive:

- Regulation 22 December 2017 No 2384 on recognition of professional qualification (*Forskrift om godkjenning av yrkeskvalifikasjoner*) (“Regulation No 2384”)

In addition, the Authority received a completed Table of Correspondence (ToC) from Norway on the same day. The national measures indicated in the ToC as implementing measures also include the following:

- Public Administration Act - Chapter VII (*Forvaltningsloven*)
- Regulation on Financial Management in Central Government (*Regulering av økonomistyring i staten*)

In order to be able to fully assess the case, the Norwegian Government is invited to provide information to the following questions:

1. **The choice of implementation tool:** The Directorate observes that the Directive was essentially implemented by two national regulations and one Act. The Norwegian Government is invited to confirm that this choice of measures extends to, thus binds, the relevant parties when it comes to new regulations of professions, i.e. the relevant Ministries and Directorates, agencies and authorities at national, regional and local level, and, where applicable, the parliament and non-governmental organisations, such as professional organisations<sup>1</sup>, in so far as they act as regulatory bodies for professions. The coverage should even include initiatives by citizens, such as referenda or people’s initiatives, with the purpose of creating new regulation of professions.

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<sup>1</sup> This term is used in this letter as including all bodies which are given the power from the State to regulate a profession but are independent from the State (“indirect regulation”), such as professional chambers.

2. **Article 2 PTD – the scope of application of the Directive:**

- a. **Article 2(1) PTD** specifies that it applies to all professional activities covered by the definition of regulated profession in Article 3(1)(a) of Directive 2005/36/EC on the recognition of professional qualifications.<sup>2</sup> This would at least include all the professions listed by Norway in the European Commission's data base of regulated professions, including the ones that are also based on sectoral EEA legislation like the legal or transport sector. The submitted ToC indicates that Article 2(1) PTD is implemented in §10-1 of Regulation 22 December 2017 No 2384 on recognition of professional qualification. §10-1, however, only refers to the Law on professional qualifications and legislation in relation to health and animal health professions. Please explain how this regulation would also extend to other professions, which are not covered by those explicitly referred national acts/regulations, in particular, the legal professions, which are, according to the information provided by Norway in the Commission's data base, regulated in the Courts Act (*Lov 13. august 1915 nr. 5 om domstolene*)?
  - b. **Article 2(2) PTD** specifies further that a proportionality test does not have to be made where specific requirements concerning the regulation of a given profession are established in a separate EEA act, which does not leave the States a choice as to the exact way in which they are to be transposed, in other words, which harmonises specific requirements. This means that as regards requirements that go beyond a minimum harmonisation, a proportionality test has still to be made. It seems, based on the information contained in the ToC, that this provision has not been implemented into Norwegian legislation and it, thus, remains unclear how a proportionality test is applied to professions that are only partly harmonised on EEA level, such as the sectoral professions in Directive 2005/36.
  - c. §10-2 of Regulation No 2384 is indicated in the ToC to implement **Article 4(1) PTD** and states that the "the responsible authority" (*Den ansvarlige myndigheten*) should carry out a proportionality test. Would this term also cover professional associations, in so far as they are competent to regulate, or the parliament, in cases where a legislative initiative is taken up from a member of parliament, since these are strictly speaking not national "authorities"?
3. **Article 4(5) PTD** lays down the principle that the proportionality assessment is carried out in an "objective and independent manner". Although §10-3 of Regulation No 2384, implementing Article 4(5) PTD according to the submitted ToC, states that such assessment should be done objectively, there is no specification on *how* this will be guaranteed in practice. Are there any guidelines or jurisprudence available in Norway that could further clarify what is understood under such "objective assessment" in the Norwegian legal system? If not, could you please explain how that principle of objectivity would be maintained in practice? This is especially important where professional organisations have the competence to regulate aspects of a profession.<sup>3</sup>
4. **Article 4(6) PTD** states that the EEA States shall monitor the compliance of new or amended regulation. In the ToC reference is made to Section 16 of the Regulation of Financial Management in Central Government. Could you please explain how

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<sup>2</sup> See Guidance on the assessment of proportionality pursuant to Directive 2018/958 as published on the website of the European Commission. <https://op.europa.eu/en/publication-detail/-/publication/b4e7b108-6a34-11ed-b14f-01aa75ed71a1/language-en>.

<sup>3</sup> See, in particular, the above-mentioned Guidance document at point 3.3. on pages 10 and 11.

this provision would apply to professional regulation, since it seems that it would only apply to financial review and justification of spending the allocated budget? Would this also cover professional organisations that act as indirect regulators, since they are not necessarily governmental bodies?

5. **Article 7(3) PTD** contains a non-exhaustive list of requirements subject to assessment. According to the submitted ToC, this provision is implemented in §10-7 of Regulation No 2384. Although, all the mentioned items are listed there (letters a-l), it is not clear from the formulation of the provision that the list is open ended. Could you please confirm based on the wording of the provision that, for example, also a limitation of the use of on-line medical consultations/telemedicine and the use of artificial intelligence (AI) for professional purposes forming a requirement restricting the pursuit of a mode of a professional activity would be covered by the implementing measure and, thus, be subject to a proportionality assessment?
6. **Article 7(4) PTD**: According to the submitted ToC, Article 7(4) PTD is implemented by §10-7 of Regulation No 2384. However, that provision does neither mention the specific requirements set out in Article 7 of Directive 2005/36 on the recognition of professional qualifications that lays down the rights and obligations of temporary and occasional cross-border service providers and the competent authorities in the host State nor does it refer to the national implementing measure of Article 7 of Directive 2005/36. Could you please clarify how the regulatory authorities would be aware of the individual aspects subject to the proportionality test of regulation of temporary service providers coming to Norway without such specifications?
7. According to the submitted ToC, **Article 8 PTD** is implemented by Chapter VII of the Public Administration Act (PAA). Article 8 PTD requires to make information available to citizens, service recipients and other relevant stakeholders, including those who are not members of the profession concerned, before new measures are adopted. According to the formulation of §37 of the PAA, it seems, however, that only concerned parties or parties with a specific interest are always consulted. Other parties are consulted only when considered necessary. Moreover, §37, paragraph 2, PAA also foresees exceptions according to which such public consultation may not take place. Such limitations/exceptions are however not foreseen in Article 8 PTD. Are there any precedents/case law/ administrative practice on how these limitations/exceptions are applied in practice?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *15 March 2024*.

Yours faithfully,

Maria Moustakali  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Maria Moustakali.*