



ROYAL NORWEGIAN MINISTRY OF  
EDUCATION AND RESEARCH

EFTA Surveillance Authority  
Avenue des Arts 19H  
1000 Brussels  
BELGIUM

Your ref

Our ref

Date

17/187-

22 June 2024

## Conformity assessment of Directive 2018/958 on a proportionality test before adoption of new regulated professions in Norway

Dear Sir/Madam,

Reference is made to your letter 12 February 2024, concerning a conformity assessment of Directive (EU) 2018/958 on a proportionality test before adoption of new regulations of professions (the proportionality test Directive – the “PTD”), your case 91650.

### 1. The choice of implementation tool

The PTD is implemented in the Norwegian regulation 22 December 2017 No 2384 relating to the recognition of professional qualifications ([Forskrift om godkjenning av yrkeskvalifikasjoner](#)) (the “Regulation”). Some of the provisions in the PTD are not implemented explicitly in the Regulation. It is our assessment that these provisions are already implemented in existing legislation or regulations, such as the Norwegian Public Administration Act ([Forvaltningsloven](#)) and the Regulation on Financial Management in Central Government ([Reglement for økonomistyring i staten](#)). In the Table of Correspondence, the Ministry has pointed out which of the provisions that follow from existing legislation or regulations.

### 2. Article 2 PTD – the scope of application of the Directive

#### a) Article 2(1) PTD

In Norway, the Professional Qualification Directive (“PQD”) is implemented in one act and three regulations. The Norwegian Professional Qualifications Act ([yrkeskvalifikasjonsloven](#)<sup>1</sup>) and the Regulation implement the PQD for all regulated professions, except health and animal health professions. This implies that professions which are regulated in the

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<sup>1</sup> Link to an unofficial translation of the law ([yrkeskvalifikasjonsloven](#)) The translation is not updated.

Norwegian Courts of Justice Act (*domstolloven*) are covered by the Professional Qualifications Act and the Regulation. New regulations or amendments of existing regulated professions under the Courts of Justice Act, must undergo a proportionality test.

The reference to “Helsepersonelloven, spesialistforskriften og dyrehelsepersonelloven” in the Regulation section 10-1, underlines that the professions in question are covered by the Regulation. This was done because the Regulation initially did not include these professions.

We can see however that the wording of the Regulation could be misunderstood. We will therefore look into this more in detail.

#### *b) Article 2(2) PTD*

In the public consultation, the Ministry underlined that the Directive does not apply to professional regulatory provisions where EU legislation gives no choice as to how those provisions are applied in Norway. However, if the EU legislation represents minimum harmonisation and the regulatory authority goes beyond the minimum harmonisation, the Directive applies, and the regulatory authority must perform a proportionality test before adopting the regulation.

In the Ministry’s view, it is not necessary to regulate this specifically in the Regulation. This will only be applicable for a few professions. Further, the ministries or the directorates that regulate the professions in question are aware of the need to undergo a proportionality test if they propose requirements that go beyond the minimum harmonisation in the EU legislation.

#### *c) Article 4(1) PTD*

In the Regulation section 10-2 it is stated that the responsible authority should carry out a proportionality test. This includes all regulatory authorities, i.e., public authorities or private organisations that have regulatory powers to regulate a profession. According to the Public Administration Act, a private organisation that has received delegated powers is regarded as a public authority according to the Act. Therefore, it is not necessary to state specifically in the Regulation that it includes private organisations.

The Ministry made it clear in the public consultation that the requirement for a proportionality test will apply regardless of which authority or body that proposes to regulate a profession. This also applies if the right to regulate is delegated to private organisations or if the Parliament itself decides to regulate a profession.

### **3) Article 4(5) PTD**

In the letter, the Authority points out that the Regulation does not specify how an assessment could be done objectively. Further, the Regulation does not specify how such assessment could be guaranteed in practice. The Authority also points out that there are no guidelines on how an objective assessment should be done.

In the public consultation prior to adopting the changes in the Regulation implementing the PTD, the Ministry described how a proportionality assessment should be conducted and underlined that the assessment should be done in an objective manner.

It can be derived from the principles of good administrative practice that a regulatory authority should perform its tasks in an objective manner. Thus, according to Norwegian legislative practice, it is not necessary to include a description in the Regulation concerning how a proportionality test should be done objectively.

The Guidance from the European Commission states that the objectivity and independence need to be ensured in particular where the regulatory powers are delegated to a particular professional body. In Norway, it is not common to delegate the power to regulate a profession to a professional body. However, if this is done, the professional body still needs to fulfil the requirements concerning objectivity and independence in the Regulation section 10-4 letter d.

In practice, a proposal for a law and/or a regulation is submitted to the various ministries for comments prior to a public hearing. Upon reception of proposals for new regulations of professions, the Ministry evaluates the proportionality test and how the test is done.

#### **4) Article 4(6) PTD**

If a private organisation has been given delegated authority to regulate a profession, it must comply with the different regulations for public authorities. This includes both the [Public Administration Act](#) and the Regulation of [Financial Management in Central Government](#).

In the letter, the Authority asks whether the regulation of Financial Management in Central Government only applies to financial review and justification of spending the allocated budget. This is not the case. According to the guidance on the evaluation of laws ([Veileder, evaluering av lover, med tilsvarende anvendelse på forskrifter og andre rettsregler](#)) published by the Ministry of Justice and Public Security, point 2.2, the Regulation of Financial Management in Central Government section 16 also includes evaluation on laws and regulations in general.

#### **5. Article 7(3) PTD**

In the letter, the Authority writes that it is not clear whether the list in section 10-7 is open ended or not. The Ministry can confirm that list is open ended. Section 10-7 states that the regulatory authority in its proportionality assessment shall “in particular” take into consideration a number of circumstances. This means that circumstances other than the listed ones also may be taken into consideration in the proportionality assessment.

#### **6. Article 7(4) PTD**

According to the Table of Correspondence, Article 7(4) is implemented in section 10-9 of the Regulation, not in section 10-7 as written in the letter from the Authority. In section 10-9 it is stated that if a proposal for a regulation result in a restriction on the right to exercise a

profession temporarily, the regulatory authority must conduct a proportionality assessment of the restriction.

## **7. Article 8 PTD**

In the letter, the Authority asks whether the obligation to send a regulation on a consultation according to section 37 of the Public Administration Act only applies to concerned parties with a specific interest and that other parties are consulted only when considered necessary. Further, if there are any administrative practice on how the limitations in section 37 paragraph 2 are applied in practice.

According to the Guidance notes on the Instructions for Official Studies of Central Government Measures ([utredningsinstruksen](#)) section 3-3, proposed laws and regulations shall normally be circulated for consultation. Such consultations shall be open to input from anyone.

According to the Public Administration Act section 37, paragraph 2, circulation for consultation may be omitted if it would not be practicable, if consultation might complicate implementation of the measure, or if it is considered obviously unnecessary. In the Official Studies of Central Government Measures point 3.3.6, there are guidelines with examples of when a consultation may be omitted.

In the Ministry's view, the limitations in section 37 are rarely used and will not be applicable for proposals for regulations that are covered by the PTD.

Yours sincerely

Therese Sofie Aasen  
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*This document is signed electronically and has therefore no handwritten signature*