

ENC Statement on EU Services Package & the Directive proposed on Proportionality

The European Nursing Council salutes the European Commission's initiative to cut red tape and simplify procedures and administrative formalities within the Single Market. As an organization aiming to protect European citizens and patients, maintain and promote the health and safety of the public by creating and maintaining the highest standards of competence and conduct by healthcare professionals and indeed nursing professionals, the Commission's new Services Package is a welcome development from our point of view. However, there are still some issues contained within the new Services Package we'd like to point out.

The distinction between the **Services e-card** and the European professional card needs to be further clarified to ensure that there is no overlap between the two, thereby creating needless confusion and administrative complications.

Our organization believes the loss of authority of the State of destination to regulate and provide services within its territory is a critical issue. The State of destination should retain the power to deny the provision of e-cards for reasons of public interest and guarantee the quality and safety of professional services offered. Avoiding the "State of origin" principle is important in this respect.

The **notification procedure** whereby Member States are required to notify draft national rules on services to the Commission is, in our view, disproportionate. This initiative will have the likely effect of impeding and protracting national legislation, and creating unnecessary administrative burdens. This directive risks entailing an excessive influence/interference of the European Commission on the decisions of Member States when it comes to new measures and changes to regulations, which are their own exclusive prerogative. The introduction of a three-months consultation on notified measures, as stated by the proposal, appears to be excessively intrusive in decisions on matters which are the prerogative of the Member States. Finally, the measures included in the proposal could create additional administrative obligations for Member States.

The **Proportionality test's** aims of supporting better regulatory practices and enhancing their outcomes, thus facilitating greater cross-border mobility of professionals within the Union are well intentioned and noble objectives. It is essential to keep in mind the distinct and indeed unique character of the professions of healthcare. It is in fact not a coincidence that the European legislator has chosen to keep these professions outside the scope of the Directive on Services that is currently in full application. As general remarks on the Commission's proposal, we could say that the proportionality test, along with the **assessment of national rules on professions**, should be accompanied by clear guidelines that aid Member States in their implementation within their legislative systems. We believe that the adoption of new legislation that would require Member States to abide with the proportionality test would cause considerable confusion amongst national administrations and professional bodies, bringing about negative consequences for the

Internal Market. Therefore, introducing further legislation runs the risk of complicating and protracting the very procedures we wish to simplify.

It must be stated however that our *Council advocates for the exclusion of health professions from the scope of the current proposal*, as was done for health services in the Services Directive from 2006 (Directive 123). First, the application of such provisions would have inevitably encroach upon national powers over the organization of health systems. Furthermore, the Treaty stipulates that restrictive measures adopted by EU Member states are justified on the basis protect human life and patient safety, which is first and foremost the role of health professionals. In our view these values, along with the quality of care provided to patients, must never be compromised under any circumstances. In sum, the administrative burden of the new provision, as well as the specificity of the sector, would entail considerable difficulty for health regulators when providing evidence on the proportionality of a regulation measure and could disrupt the consistency of the entire system. We feel it is only sensible that they should be excluded from the scope of the present proposals of the European Commission for the very same reason that led to their exclusions from the said Directive.

With respect to the criteria of merit, the initiative appears to overlap with the requirements already laid down in the Qualification Directive, regarding the proportional, necessary and non-discriminatory character of any regulation. Moreover, as is the case with the codification of case-law, there might be an excessive crystallization of principles which, in European jurisprudence, are constantly changing.

The possible weakening of the Member States' decision-making power in relation to regulations, particularly when it comes to the procedure and to the monitoring mechanism on the proportionality test, to be carried out by an independent scrutiny body. In most cases, restrictions on access to professions derive from legislative measures at national or regional level, therefore the test should be articulated during legislative procedures of States and regions, as a constraint to the legislative function.

Finally, as a professional organization, we believe it is crucial for organizations like ours and other stakeholders to be included in the drafting of new regulations. For this reason, we are worried that the Commission has sidelined social partners and professional organizations in this process.

We look forward to working with the Parliament and the Commission in a constructive manner to further this agenda.