



COMITÉ PERMANENT DES MÉDECINS EUROPÉENS
STANDING COMMITTEE OF EUROPEAN DOCTORS



Is the «Proportionality Test» proportionate ?

The CPME view



24th ZEVA Symposium
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Standing Committee of Europeans Doctors



Introducing CPME

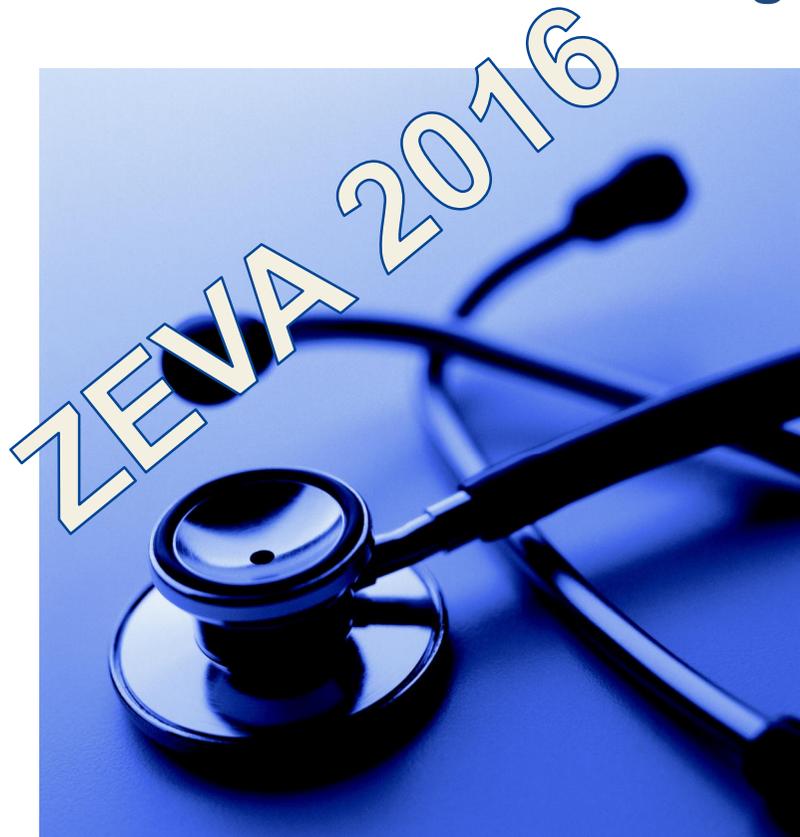
- CPME represents the National Medical Associations of 28 countries in Europe, and also works closely with the National Medical Associations of countries that have applied for EU membership as well as with specialised European medical organisations.
- We are committed to contributing the medical profession's point of view to EU institutions and European policy-making through pro-active cooperation on a wide range of health and healthcare related issues.



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EU initiatives to deregulate professions - Doctors' self-regulation put to the test? -



23th ZEVA Symposium

28-30 September 2016
Sofia, Bulgaria 2016

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Examples

- In the context of the Professional Qualifications Directive, the European Commission has marked national regulations on all professions, including the medical profession, to check if there are any options to reduce rules on access to or practice of a profession. It is foreseen to introduce **harmonised proportionality tests** which Member States have to comply with to justify the regulation of a profession.

→ In September 2016 CPME has confirmed the importance of professional regulation for patient safety and calls on the Commission to respect these principles.

In a joint statement with European dentists and pharmacists, CPME calls for health professions to be **excluded from the future proportionality test**.

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But the Commission moved on....

- January 2017: Proposal for a «Directive on a proportionality test before adoption of new regulation of professions».
- Part of the so-called „Service Package“.
- Proportionality test to be used by Member States before adopting or amending national regulations restricting **access to or pursuit** of regulated professions.
- If medical associations have been tasked with e.g. **ethics and professional conduct**, setting of **professional standards**, **specialty training**, **licensing** or **continuous medical education**, this professional regulation is part of the test.



Political environment

- The European Council reiterated in June 2012, 2014 and 2016 to remove unjustified national barriers in regulation to improve the market of services for the benefit of **economic growth and competition** („deregulation debate“)
- The regulation under scrutiny also covers professional regulation as experienced with the Member States` National Action Plans.
- The Commission was unhappy with National Action Plans and concluded to discipline Member States with an EU-level and horizontal proportionality test for all professions.



Legal environment

- Health is different from business !
- This is recognised in **EU primary and secondary** legislation:
 - The organisation of healthcare including health professional regulation is a Member States` competence.
 - Health services are excluded from the Services Directive.
 - Patients are excluded from the Consumers` Rights Directive.



Legal environment

- Health is different from business !
- This is recognised in **EU primary and secondary** legislation:
 - The ECJ continuously highlighted that restrictive regulation is possible, if the regulation at stake serves the public interest.
 - The protection of health is considered one of the key public interest objectives.
 - Member States have discretion as to which level of protection should be determined.
 - Member States may take precautionary measures and do not need to wait for risks to become real.



Why worry?

- EU legislation and the ECJ rulings confirm the **special nature** of health, health professions and their services.
- Proportionality is a common principle in law and is to be respected in any case.
- The obligation to respect proportionality in regulation is incorporated in the Professional Qualifications Directive („PQD“).
- Why worry about the proportionality test?



CPME position – Health is different from business !

- The economic objectives and assumptions of the Directive are not applicable to doctors in the same way they are applicable to business professions (see legal environment).
- CPME fears that health is equated with business when put under the regime of a “horizontal”, EU-level and business driven directive.
- CPME strongly believes that the doctors’ regulation is in the direct interest of patient safety and quality of care.
- CPME therefore opposes initiatives which challenge regulation for economic reasons, with no regard for the special need to protect patient care.



CPME Position – Rationale not fit for doctors

- The proportionality test also aims to improve labour mobility. Doctors are already the most mobile profession, not least thanks to the automatic recognition process under the PQD.
- The PQD put in place a great degree of scrutiny on doctors, addressing issues such as CPD, language knowledge and liability. These efforts, which were supported by doctors, are questioned by the proportionality test.
- The rationale of the Directive is therefore not applicable to the health professions.



CPME Position – Dismantling or chilling effects

- Opening the door to the reduction of professional regulation on the basis of supposed economic advantages is a potential risk for the quality of medical practice. In a time of mobile doctors and patients such risks can affect all Member States.
- CPME doubts that the proposal for a Directive provides for the right incentive. Member States potentially in need of regulation might refrain from necessary action considering the administrative burden and costs implied by an EU-level proportionality test.



CPME Position – Proportionality test not needed

- CPME highly questions the necessity of an additional legal instrument for the Health Professions, since the PQD already introduces a proportionality requirement and proportionality is a general principle in EU law.
- The ECJ confirmed that Member States have discretion as to which level of protection should be determined.
- By contrast, a “horizontal”, EU-level proportionality test conflicts with this discretion by striving for uniformity in the assessment of the regulation of professions and its outcomes.



Conclusions

- The rationale behind the test, i.e. fostering growth, mobility and competition, is not applicable to health professional regulation.
- The test might have detrimental effects by deterring necessary regulation.
- The test is not needed and disproportionate.
- Definitely, health professional regulation should be excluded from the test!



Who can help?

- **The European Parliament**
 - Has helped in excluding the healthcare sector from the scope of the Services Directive 2006/123/EC.
- **National parliaments and governments**
 - Can defend the role and objectives of health professional regulation, in particular if health ministries become involved.
- **Professional associations in Europe**
 - Can provide arguments to parliaments and governments as to the necessity of sound professional regulation.
- **CPME**
 - Advocates the exemption of health professions from the draft directive in alliance with European dentists and pharmacists.



Other CPME priorities

- **Action on 'Brexit'**
 - Joint letters of European Medical Organisations highlighting impact on medical workforce, research, public health.
 - Meeting with the "Taskforce 50" to present concerns.
 - Close cooperation with the British Medical Association.
 - Informal exchanges with other health stakeholders.
 - EMOs position: ensure no uncertainty or restriction on doctors' free movement to allow continued EU – UK mobility.



Other CPME priorities

- **Action on alcohol**
 - Audiovisual Media Services Directive (AVMSD) negotiations in a coalition with other health stakeholders.
 - campaign for mandatory alcohol labelling.
- **Action on diet, nutrition and physical activity**
 - AVMSD negotiations.
 - new position paper on obesity.
 - EU Platform for Action on Diet, Physical Activity and Health.



Other CPME priorities

- **Action on tobacco**
 - revising the Tobacco Tax Directive reminds that increasing taxes on all tobacco products is one of the most effective means of tobacco control.
- **Action on vaccinations**
 - tackling the vaccine hesitancy problem in Europe.
- **Action on patient safety**
 - working together with EU Member States for the continuation of European cooperation on patient safety.



Other CPME priorities

- **Action on AMR**

- Joint letter to the Deans of medical, dental and veterinary schools across Europe.
- Responding to public consultations on the new EU action plan and EU guidelines on the prudent use of antimicrobials.

- **Action on data protection**

- Endorsement of the WMA declaration of Taipei on ethical considerations regarding health databases and biobanks.

- **Action on eHealth/mHealth**

- Responding to public consultations on digital health.
- Activities under the eHealth stakeholder group.



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Thank you for your attention !

The CPME position on the Proportionality Test and
CPME policies are available [here](#).

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