

MALTA

**ATT Nru XXV tal-2020**

ATT maħruġ b'ligi mill-Parlament ta' Malta.

**ATT biex jimplimenta d-dispożizzjonijiet tad-Direttiva (UE) 2018/958 tal-Parlament Ewropew u tal-Kunsill tat-28 ta' Ġunju 2018 dwar test tal-proporzjonalità qabel l-adozzjoni ta' regolamentazzjoni ġdida tal-professjonijiet.**

**ACT No. XXV of 2020**

AN ACT enacted by the Parliament of Malta.

**AN ACT to implement the provisions 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.**



Nagħti l-kunsens tiegħi.

(L.S.)

**GEORGE VELLA**  
**President**

29 ta' Mejju, 2020

**ATT Nru XXV tal-2020**

*ATT biex jimplementa d-dispożizzjonijiet tad-Direttiva (UE) 2018/958 tal-Parlament Ewropew u tal-Kunsill tat-28 ta' Ġunju 2018 dwar test tal-proporzjonalità qabel l-adozzjoni ta' regolamentazzjoni ġdida tal-professjonijiet.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'ligi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 dwar Test tal-Proporzjonalità Qabel l-Adozzjoni ta' Regolamentazzjoni Ġdida tal-Professjonijiet. Titolu fil-qosor u bidu fis-sehħ.

(2) Dan l-Att jimplementa d-dispożizzjonijiet tad-Direttiva (UE) 2018/958 tal-Parlament Ewropew u tal-Kunsill tat-28 ta' Ġunju 2018 dwar test tal-proporzjonalità qabel l-adozzjoni ta' regolamentazzjoni ġdida tal-professjonijiet.

(3) Id-dispożizzjonijiet ta' dan l-Att għandhom jidhlu fis-sehħ f'dik id-data li l-Ministru responsabbli għall-edukazzjoni jista' b'avviż fil-Gazzetta jstabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għanijiet differenti ta' dan l-Att.

2. (1) F'dan l-Att kemm-il darba r-rabta tal-kliem ma teħtieġ xort'oħra: Tifsir.

"attivitajiet riżervati" tfisser forma ta' regolamentazzjoni ta' professjoni fejn l-aċċess għal attività professjonali jew grupp

ta' attivitajiet professjonali huwa rizervat, direttament jew indirettament, permezz ta' dispożizzjonijiet leġiżlattivi, regolatorji jew amministrattivi għal membri ta' professjoni regolata li jkollhom kwalifika professjonali speċifika, inkluż meta l-attività hija maqsuma ma' professjonijiet regolati oħrajn;

Kap. 451.

"professjoni regolata" għandu jkollha l-istess tifsira kif mogħtija lilha fl-artikolu 2 tal-Att dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki;

"titolu professjonali protett" tfisser forma ta' regolamentazzjoni ta' professjoni fejn l-użu tat-titolu f'attività professjonali jew fi grupp ta' attivitajiet professjonali huwa soġġett, direttament jew indirettament, bis-saħħa tad-dispożizzjonijiet leġiżlattivi, regolatorji jew amministrattivi għall-pussess ta' kwalifiki professjonali speċifiċi, u fejn l-użu mhux xieraq ta' dak it-titolu huwa soġġett għal sanzjonijiet.

Kap. 451.

L.S. 451. 03.

(2) Fejn applikabbli u kemm-il darba r-rabta tal-kliem ma teħtieġ xort'oħra, it-tifsir li jinsabu fl-Att dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki u fir-Regolamenti dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki Professjonali għandhom japplikaw.

Valutazzjoni *ex ante* ta' miżuri  
għodda u  
monitoraġġ.

**3.** (1) L-ebda dispożizzjonijiet leġiżlattivi, regolatorji jew amministrattivi għodda li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjoni regolata ma jistgħu jiġu introdotti, u l-ebda dispożizzjonijiet leġiżlattivi, regolatorji jew amministrattivi eżistenti li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati ma jistgħu jiġu emendati, qabel il-Ministeru responsabbli għall-imsemmija professjoni regolata jkun wettaq valutazzjoni tal-proporzjonalità b'konformità mar-regoli stabbiliti f'dan l-Att.

(2) L-estent tal-valutazzjoni msemmija fis-subartikolu (1) għandha tkun proporzjonata għan-natura, għall-kontenut u għall-impatt tad-dispożizzjoni.

(3) Kwalunkwe dispożizzjoni msemmija fis-subartikolu (1) għandha tkun akkumpanjata minn spjegazzjoni li tkun dettaljata biżżejjed li tippermetti evalwazzjoni tal-konformità mal-prinċipju ta' proporzjonalità.

(4) Ir-raġunijiet biex jitqies li dispożizzjoni msemmija fis-subartikolu (1) hija għgustifikata u proporzjonata għandhom jiġu sostanzjati b'elementi kwalitattivi u, kull meta jkun possibbli u rilevanti, kwantitattivi.

(5) Il-Ministeru responsabbli għall-professjoni regolata msemmija fis-subartikolu (1) għandu jiżgura li l-valutazzjoni

msemmija fis-subartikolu (1) titwettaq b'mod oġġettiv u indipendenti.

(6) Il-Ministeru responsabbli għall-professjoni regolata msemmija fis-subartikolu (1) għandu jagħmel monitoraġġ fuq il-konformità ta' dispożizzjonijiet legiżlattivi, regolatorji jew amministrattivi ġodda jew emendati li jillimitaw l-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati, wara l-adozzjoni, mal-prinċipju ta' proporzjonalità, b'kunsiderazzjoni dovuta għal kwalunkwe żvilupp li jkun seħħ mill-adozzjoni tad-dispożizzjonijiet ikkonċernati 'l hawn. Għal dawn il-finijiet, l-imsemmi Ministeru għandu wkoll ihejji rapport mhux iktar tard minn kull tliet (3) snin mid-data tad-dhul fis-seħħ tal-imsemmija dispożizzjonijiet. Fejn xieraq, l-imsemmi rapport għandu jinkludi proposti rilevanti għal emendi. L-imsemmi rapport għandu jiġi ppreżentat lill-Kabinett.

4. Meta jkunu ser jiġu introdotti dispożizzjonijiet legiżlattivi, regolatorji jew amministrattivi ġodda, li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjoni regolata, jew ikunu ser jiġu emendati dawk eżistenti, il-Ministeru responsabbli għall-imsemmija professjoni regolata għandu jiżgura li dawk id-dispożizzjonijiet ma jkunux diskriminatorji, kemm direttament kif ukoll indirettament, abbażi tan-nazzjonalità jew tar-residenza.

Non-diskriminazzjoni.

5. (1) Il-Ministeru responsabbli għall-professjoni regolata għandu jiżgura li d-dispożizzjonijiet legiżlattivi, regolatorji jew amministrattivi li jirrestringu l-aċċess għal, jew l-eżerċitar ta', l-imsemmija professjoni regolata li jkunu ser jiġu introdotti u li l-emendi li jkunu ser isiru għad-dispożizzjonijiet eżistenti huma ġustifikati minn objettivi ta' interess pubbliku.

Ġustifikazzjoni minhabba objettivi ta' interess pubbliku.

(2) Il-Ministeru responsabbli għall-professjoni regolata għandu jikkunsidra b'mod partikolari jekk id-dispożizzjonijiet imsemmija fis-subartikolu (1) humiex oġġettivament ġustifikati abbażi tal-ordni pubbliku, tas-sigurtà pubblika jew tas-saħħa pubblika, jew minn raġunijiet prevalenti ta' interess pubbliku, bħal preservazzjoni tal-bilanċ finanzjarju tas-sistema tas-sigurtà soċjali; il-protezzjoni tal-konsumaturi, tar-riċevituri ta' servizzi u tal-haddiema; is-salvagwardja tal-amministrazzjoni tajba tal-ġustizzja; l-iżgurar tal-ekwità fi tranżazzjonijiet kummerċjali; il-ġlieda kontra l-frodi u l-prevenzjoni tal-evażjoni u l-evitar tat-taxxa, u s-salvagwardja tal-effikaċja tas-supervizzjoni fiskali; is-sikurezza tat-trasport; il-ħarsien tal-ambjent u l-ambjent urban; is-saħħa tal-annimali; il-proprjeta' intellettuali; is-salvagwardja u l-konservazzjoni tal-wirt storiku u artistiku nazzjonali; l-objettivi ta' politika soċjali; u l-objettivi ta' politika kulturali.

(3) Raġunijiet ta' natura purament ekonomika jew raġunijiet purament amministrattivi ma għandhomx jikkostitwixxu raġunijiet

prevalenti ta' interess pubbliku, li jiġġustifika restrizzjoni fuq l-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati.

Proporzjonalità.

6. (1) Il-Ministeru responsabbli għall-professjoni regolata għandu jiżgura li d-dispożizzjonijiet leġiżlattivi, regolatorji jew amministrattivi li jirrestringu l-aċċess għal, jew l-eżerċitar ta', l-imsemmija professjoni regolata, li jiġu introdotti, u li l-emendi li jsiru għal dispożizzjonijiet eżistenti, ikunu adattati sabiex jiġgarantixxu l-ilħuq tal-objettiv segwit u ma jmorrux lil hinn minn dak li hu meħtieġ biex jintlaħaq dak l-objettiv.

(2) (a) Għal dak il-għan, qabel ma jiġu adottati d-dispożizzjonijiet imsemmija fis-subartikolu (1), il-Ministeru responsabbli għall-professjoni regolata għandu jikkunsidra:

(i) in-natura tar-riskji relatati mal-objettivi ta' interess pubbliku segwiti, b'mod partikolari r-riskji għar-riċevituri ta' servizz, inklużi l-konsumaturi, għall-professionisti jew għall-partijiet terzi;

(ii) jekk ir-regoli eżistenti ta' natura speċifika jew iżjed ġenerali, bħal dawk li jinsabu fil-liġi dwar is-sikurezza tal-prodotti jew fil-liġi dwar il-protezzjoni tal-konsumatur, humiex biżżejjed biex jintlaħaq l-objettiv segwit;

(iii) l-idoneità tad-dispożizzjoni fir-rigward tal-adegwatezza tagħha sabiex jintlaħaq l-objettiv segwit u jekk din verament tirriflettix dan l-objettiv b'mod koerenti u sistematiku u għaldaqstant tindirizzax ir-riskji identifikati b'mod simili bħal f'attivitajiet komparabbli;

(iv) l-impatt fuq il-moviment liberu tal-persuni u tas-servizzi fl-Unjoni Ewropea, fuq l-għażla tal-konsumatur u fuq il-kwalità tas-servizz ipprovdut;

(v) il-possibilità li jintużaw mezzi inqas restrittivi sabiex jintlaħaq l-objettiv ta' interess pubbliku; għall-finijiet ta' dan il-punt, meta d-dispożizzjonijiet ikunu ġustifikati biss minhabba l-protezzjoni tal-konsumatur u meta r-riskji identifikati jkunu limitati għar-relazzjoni bejn il-professionist u l-konsumatur, u għaldaqstant ma jkunux jaffettwaw b'mod negattiv lil partijiet terzi, il-Ministeru responsabbli għall-professjoni regolata għandu jivvaluta b'mod partikolari jekk l-objettiv jistax jintlaħaq b'mezzi inqas restrittivi mir-rizervazzjoni tal-attivitajiet;

(vi) l-effett ta' dispożizzjonijiet godda jew

emendati meta kkombinati ma' dispożizzjonijiet oħra li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjoni, u b'mod partikolari kif id-dispożizzjonijiet godda jew emendati, ikkombinati ma' rekwiżiti oħra, jikkontribwixxu għall-istess objettiv ta' interess pubbliku, u jekk dawn humiex meħtieġa biex dan jintlaħaq.

(b) Il-Ministeru responsabbli għall-imsemmija professjoni regolata għandu jikkunsidra wkoll l-elementi li ġejjin, meta dawn ikunu rilevanti għan-natura u għall-kontenut tad-dispożizzjoni li tkun qiegħda tiġi introdotta jew emendata:

(i) il-konnessjoni bejn il-kamp ta' applikazzjoni tal-attivitajiet koperti minn professjoni jew riżervati għaliha u l-kwalifika professjonali meħtieġa;

(ii) il-konnessjoni bejn il-kumplessità tal-kompiti kkonċernati u l-ħtieġa li dawk li jwettquhom jkollhom kwalifiki professjonali speċifiċi, b'mod partikolari fir-rigward tal-livell, in-natura u t-tul tat-taħriġ jew l-esperjenza meħtieġa;

(iii) il-possibbiltà li tinkiseb il-kwalifika professjonali permezz ta' possibbiltajiet alternattivi;

(iv) jekk, u għaliex, l-attivitajiet riżervati għal ċerti professjonijiet jistgħu jew ma jistgħux ikunu maqsuma ma' professjonijiet oħra;

(v) il-grad ta' awtonomija fl-eżerċitar ta' professjoni regolata u l-impatt tal-arranġamenti organizzattivi u superviżorji fuq l-ilħuq tal-objettiv segwit, b'mod partikolari meta l-attivitajiet relatati ma' professjoni regolata jkunu mwettqa taħt il-kontroll u r-responsabbiltà ta' professjonist kwalifikat kif suppost;

(vi) l-iżviluppi xjentifiċi u teknoloġiċi li jistgħu effettivament inaqqsu jew iżidu l-asimetrija tal-informazzjoni bejn il-professjonisti u l-konsumaturi.

(3) Għall-finijiet tas-subartikolu (2)(a)(vi), il-Ministeru responsabbli għall-imsemmija professjoni regolata għandu jivvaluta l-effett tad-dispożizzjoni ġdida jew emendata meta kkombinata ma' rekwiżit wiehed jew aktar, filwaqt li jitqies il-fatt li tali effetti jistgħu jkunu kemm pożittivi kif ukoll negattivi, u b'mod partikolari dawn li ġejjin:

A 520

Kap. 451.

(a) attivitajiet riżervati, titolu professjonali protett jew kwalunkwe forma oħra ta' regolamentazzjoni relattiva għal professjoni regolata fis-sens tal-artikolu 2 tal-Att dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki;

(b) obbligi biex jitwettaq żvilupp professjonali kontinwu;

(ċ) regoli relatati mal-organizzazzjoni tal-professjoni, l-etika professjonali u s-supervizjoni;

(d) shubija obbligatorja ma' organizzazzjoni jew korp professjonali, skemi ta' reġistrazzjoni jew awtorizzazzjoni, b'mod partikolari fejn daww ir-rekwiżiti jimplikaw il-pussess ta' kwalifika professjonali speċifika;

(e) restrizzjonijiet kwantitattivi, b'mod partikolari r-rekwiżiti li jillimitaw l-għadd ta' awtorizzazzjonijiet għall-prattika, jew li jiffissaw numru minimu jew massimu ta' impjegati, manigġers jew rappreżentanti li għandhom kwalifiki professjonali speċifiċi;

(f) rekwiżiti ta' forma legali speċifika jew rekwiżiti relatati mal-parteeċipazzjoni azzjonarja jew il-ġestjoni ta' kumpanija, sa fejn dawn ir-rekwiżiti huma marbuta direttament mal-eżerċitar tal-professjoni regolata;

(g) rekwiżiti li jirrestringu l-eżerċitar ta' professjoni regolata b'mod kongunt jew bi shab, kif ukoll regoli ta' inkompatibbiltà;

(h) rekwiżiti li jikkonċernaw il-koperatura tal-assigurazzjoni jew mezzi oħra ta' protezzjoni personali jew kollettiva li jirrigwardaw ir-responsabbiltà professjonali;

(i) rekwiżiti ta' għarfien tal-lingwa, sal-punt meħtieġ biex tiġi prattikata l-professjoni;

(j) rekwiżiti tariffarji fissi minimi u/jew massimi;

(k) rekwiżiti dwar ir-reklamar.

(4) Qabel l-introduzzjoni ta' dispożizzjonijiet godda, jew l-emendar ta' daww eżistenti, il-Ministeru responsabbli għall-professjoni regolata relattiva, barra minn hekk, għandu jiżgura l-konformità mal-prinċipju ta' proporzjonalità ta' rekwiżiti speċifiċi relatati mal-forniment temporanju jew ta' kultant ta' servizzi, previsti skont it-Tieni Parti tar-Regolamenti dwar ir-Rikonoxximent Reċiproku ta'

L.S. 451.03.



Kwalifiki Professjonali, inklużi:

(a) reġistrazzjoni awtomatika temporanja jew sħubija pro forma ma' organizzazzjoni jew korp professjonali, imsemmija fil-paragrafu (a) tar-regolament 8 tar-Regolamenti dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki Professjonali; L.S. 451. 03.

(b) dikjarazzjoni li għandha ssir bil-quddiem skont ir-regolament 9(1) tar-Regolamenti dwar ir-Rikonoxximent Reċiproku ta' Kwalifiki Professjonali, dokumenti meħtieġa skont ir-regolament 9(2) tal-imsemmija regolamenti jew kwalunkwe rekwiżit ekwivalenti ieħor; L.S. 451. 03.

(ċ) il-ħlas ta' dritt jew kwalunkwe ħlasijiet meħtieġa għall-proċeduri amministrattivi, relatata mal-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati li l-fornitur ta' servizz iġarrab:

Iżda dan is-subartikolu ma għandux japplika għal miżuri mfassla biex jiżguraw il-konformità mat-termini u l-kundizzjonijiet tal-impjeg applikabbli li Malta tapplika skont id-dritt tal-Unjoni Ewropea.

(5) Meta d-dispożizzjonijiet imsemmija f'dan l-artikolu jikkonċernaw ir-regolamentazzjoni tal-professjonijiet fis-settur tal-kura tas-saħħa u jkollhom implikazzjonijiet fuq is-sikurezza tal-pazjenti, il-Ministeru responsabbli għall-professjoni regolata relattiva għandu jqis l-oġettiv li jiġi żgurat livell għoli ta' protezzjoni tas-saħħa tal-bniedem.

7. (1) Il-Ministeru responsabbli għall-professjoni regolata għandu, b'mezzi xierqa, jagħmel l-informazzjoni disponibbli għaċ-ċittadini, għar-riċevituri ta' servizz u għall-partijiet ikkonċernati rilevanti oħra, inklużi dawk li mhumiex membri tal-professjoni kkonċernata, qabel ma jiġu introdotti dispożizzjonijiet legiżlattivi, regolatorji jew amministrattivi godda, jew jiġu emendati dawk eżistenti, li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati.

Informazzjoni u involviment tal-partijiet ikkonċernati.

(2) Il-Ministeru responsabbli għall-professjoni regolata għandu jinvolvi kif xieraq lill-partijiet ikkonċernati kollha u għandu jagħtihom l-opportunità li jesprimu l-fehmiet tagħhom qabel ma jiġu introdotti dispożizzjonijiet legiżlattivi, regolatorji jew amministrattivi godda, jew jiġu emendati dawk eżistenti, li jirrestringu l-aċċess għal, jew l-eżerċitar ta', professjonijiet regolati. Meta jkun rilevanti u xieraq, l-imsemmi Ministeru għandu jwettaq konsultazzjonijiet pubbliċi u għandu jagħti minimu ta' tliet (3) ġimghat mill-bidu tal-konsultazzjoni pubblika sabiex il-pubbliku jagħmel ir-rappreżentazzjonijiet tiegħu.

A 522

Rimedju. **8.** Persuna aggravata bi ksur ta' xi dispożizzjoni ta' dan l-Att tista' tfittex rimedju billi tibda proċeduri skont u soġġett għar-rimedji eżistenti fil-Liġijiet ta' Malta.

L-iskambju ta' informazzjoni bejn l-Istati Membri. **9.** Il-Ministeru responsabbli għall-professjoni regolata jew id-delegat tiegħu għandu jieħu l-miżuri meħtieġa biex jiskambja l-informazzjoni ma' Stati Membri oħra dwar kwistjonijiet koperti minn dan l-Att, dwar il-mod partikolari li Malta tirregola professjoni, u dwar l-effetti ta' tali regolamentazzjoni.

Trasparenza. **10.** Ir-raġunijiet biex jitqies li dispożizzjonijiet, valutati skont dan l-Att, huma ġustifikati u proporzjonati, flimkien mad-dispożizzjonijiet, iridu jiġu kkomunikati lill-Kummissjoni Ewropea mill-Ministeru responsabbli għall-professjoni regolata relattiva fi żmien sitt (6) xhur mill-adozzjoni tad-dispożizzjonijiet, u għandhom jiġu registrati mill-Ministeru responsabbli għall-professjoni regolata relattiva jew mid-delegat tiegħu fil-bażi tad-data tal-professjonijiet regolati disponibbli pubblikament, imwaqqaf u miżmum mill-Kummissjoni Ewropea. L-Istati Membri u partijiet interessati oħra għandhom jithallew jissottomettu kummenti dwar l-imsemmija dispożizzjonijiet u dwar ir-raġunijiet għaliex ġie meqjus li dawn huma ġustifikati u proporzjonati.

Setgħa biex isiru regolamenti. **11.** Il-Ministru responsabbli għall-edukazzjoni jista' jagħmel regolamenti biex jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-Att, u mingħajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, jista', permezz ta' dawn ir-regolamenti, jipprovdi għal kull materja konsegwenzjali, inċidentali għal jew konnessa mad-dispożizzjonijiet ta' dan l-Att.

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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 334 tal-25 ta' Mejju, 2020.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

29th May, 2020

**ACT No. XXV of 2020**

*AN ACT to implement the provisions 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.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**1.** (1) The short title of this Act is the Proportionality Test Before Adoption of New Regulation of Professions Act, 2020. Short title and commencement.

(2) This Act implements the provisions 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.

(3) This Act shall come into force on such date as the Minister responsible for education may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

**2.** (1) In this Act, unless the context otherwise requires: Interpretation.

"protected professional title" means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;

A 524

Cap. 451. "regulated profession" shall have the same meaning assigned to it in article 2 of the Mutual Recognition of Qualifications Act;

"reserved activities" means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

Cap. 451. S.L. 451. 03. (2) Where applicable and unless the context otherwise requires, the definitions of the Mutual Recognition of Qualifications Act and the Recognition of Professional Qualifications Regulations shall apply.

*Ex ante*  
assessment of  
new measures  
and monitoring.

3. (1) No new legislative, regulatory or administrative provisions restricting access to, or the pursuit of, a regulated profession may be introduced, and no existing legislative, regulatory or administrative provisions restricting access to, or the pursuit of, a regulated profession may be amended, before the Ministry responsible for the said regulated profession shall have undertaken an assessment of proportionality in accordance with the rules laid down in this Act.

(2) The extent of the assessment referred to in sub-article (1) shall be proportionate to the nature, the content and the impact of the provision.

(3) Any provision referred to in sub-article (1) shall be accompanied by an explanation which is sufficiently detailed to make it possible to appraise compliance with the principle of proportionality.

(4) The reasons for considering that a provision referred to in sub-article (1) is justified and proportionate shall be substantiated by qualitative and, wherever possible and relevant, quantitative elements.

(5) The Ministry responsible for the regulated profession referred to in sub-article (1) shall ensure that the assessment referred to in sub-article (1) is carried out in an objective and independent manner.

(6) The Ministry responsible for the regulated profession referred to in sub-article (1) shall monitor the compliance of new or amended legislative, regulatory or administrative provisions restricting access to, or the pursuit of, the said regulated profession, after adoption, with the principle of proportionality, having due regard to any developments that have occurred since the provisions concerned were adopted. For such purposes, the said Ministry shall also prepare a report not later than every three (3) years from the date of entry into force of the said provisions. Where appropriate, the said report shall include relevant proposals for amendment. The said report shall be

submitted to Cabinet.

4. When new legislative, regulatory or administrative provisions restricting access to, or the pursuit of, a regulated profession are to be introduced, or existing legislative, regulatory or administrative provisions restricting access to, or the pursuit of, a regulated profession are to be amended, the Ministry responsible for the said regulated profession shall ensure that those provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.

Non-discrimination.

5. (1) The Ministry responsible for a regulated profession shall ensure that the legislative, regulatory or administrative provisions restricting access to, or the pursuit of, the said regulated profession, that are intended to be introduced and that the amendments that are intended to be made to existing provisions are justified by public interest objectives.

Justification on grounds of public interest objectives.

(2) The Ministry responsible for the regulated profession shall consider in particular whether the provisions referred to in sub-article (1) are objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as preserving the financial equilibrium of the social security system; the protection of consumers, of recipients of services and of workers; the safeguarding of the proper administration of justice; ensuring the fairness of trade transactions; the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision; transport safety; the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage; social policy objectives; and cultural policy objectives.

(3) Grounds of a purely economic nature or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to, or the pursuit of, a regulated profession.

6. (1) The Ministry responsible for a regulated profession shall ensure that the legislative, regulatory or administrative provisions restricting access to, or the pursuit of, the said regulated profession, that are introduced, and that the amendments that are made to existing provisions, are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.

Proportionality.

(2) (a) To that end, before the provisions referred to in sub-article (1) are adopted, the Ministry responsible for the regulated

profession shall consider:

(i) the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients, including consumers, to professionals or to third parties;

(ii) whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient for the attainment of the objective pursued;

(iii) the suitability of the provision as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus addresses the risks identified in a similar way as in comparable activities;

(iv) the impact on the free movement of persons and services within the European Union, on consumer choice and on the quality of the service provided;

(v) the possibility of using less restrictive means to achieve the public interest objective; for the purposes of this point, where the provisions are justified by consumer protection only and where the risks identified are limited to the relationship between the professional and the consumer, and therefore do not negatively affect third parties, the Ministry responsible for the said regulated profession shall assess in particular whether the objective can be attained by means that are less restrictive than reserving activities;

(vi) the effect of new or amended provisions, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the new or amended provisions, combined with other requirements contribute to and whether they are necessary for the achievement of the same public interest objective.

(b) The Ministry responsible for the said regulated profession shall also consider the following elements, when relevant to the nature and the content of the provision being introduced or amended:

(i) the connection between the scope of activities covered by a profession or reserved to it and the

professional qualification required;

(ii) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required;

(iii) the possibility of obtaining the professional qualification by alternative routes;

(iv) whether, and why, the activities reserved to certain professions can or cannot be shared with other professions;

(v) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;

(vi) the scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

(3) For the purposes of sub-article (2)(a)(vi), the Ministry responsible for the said regulated profession shall assess the effect of the new or amended provision when combined with one or more requirements, bearing in mind the fact that such effects might be positive as well as negative, and in particular the following:

(a) reserved activities, protected professional title or any other form of regulation relating to a regulated profession within the meaning of article 2 of the Mutual Recognition of Qualifications Act; Cap. 451.

(b) obligations to undergo continuous professional development;

(c) rules relating to the organisation of the profession, professional ethics and supervision;

(d) compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;

(e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding specific professional qualifications;

(f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;

(g) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;

(h) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;

(i) language knowledge requirements, to the extent necessary to practise the profession;

(j) fixed minimum and/or maximum tariff requirements;

(k) requirements on advertising.

(4) Before the introduction of new, or the amendment of existing, provisions, the Ministry responsible for the relative regulated profession shall, in addition, ensure the compliance with the principle of the proportionality of specific requirements related to temporary or occasional provision of services, provided under Part II of the Recognition of Professional Qualifications Regulations, including:

S.L. 451. 03.

(a) automatic temporary registration with or pro forma membership of a professional organisation or body, referred to in paragraph (a) of regulation 8 of the Recognition of Professional Qualifications Regulations;

S.L. 451. 03.

(b) a declaration to be made in advance pursuant to regulation 9(1) of the Recognition of Professional Qualifications Regulations, documents required pursuant to regulation 9(2) of the said regulations or any other equivalent requirement;

S.L. 451. 03.

(c) the payment of a fee, or any charges, required for the administrative procedures, related to the access to, or the pursuit of, the regulated profession which the service provider incurs:

Provided that this sub-article shall not apply to measures designed to ensure compliance with applicable employment terms and



conditions that Malta applies in accordance with European Union law.

(5) Where provisions referred to in this article concern the regulation of healthcare professions and have patient safety implications, the Ministry responsible for the relative regulated profession shall take account of the objective of ensuring a high level of human health protection.

7. (1) The Ministry responsible for a regulated profession shall, by appropriate means, make information available to citizens, service recipients and other relevant stakeholders, including those who are not members of the profession concerned, before the introduction of new, or the amendment of existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, the said regulated profession.

Information and involvement of stakeholders.

(2) The Ministry responsible for a regulated profession shall appropriately involve all parties concerned and shall give them the opportunity to make their views known before the introduction of new, or the amendment of existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, the said regulated profession. Where relevant and appropriate, the said Ministry shall carry out public consultations and shall allow the public a minimum of three (3) weeks from the commencement of the public consultation to make representations.

8. Any person aggrieved by a breach of any provision of this Act may seek redress by instituting proceedings in accordance with and subject to the existing remedies in the Laws of Malta.

Remedies.

9. The Ministry responsible for a regulated profession or its delegate shall take the necessary measures to exchange information with other Member States on matters covered by this Act, on the particular way that Malta regulates a profession, and on the effects of such regulation.

Exchange of information between Member States.

10. The reasons for considering that provisions, assessed in accordance with this Act, are justified and proportionate, together with the provisions, shall be communicated to the European Commission by the Ministry responsible for the relative profession within six (6) months from the adoption of the provisions, and shall be recorded by the Ministry responsible for the relative profession or its delegate in the publicly available database of regulated professions set up and maintained by the European Commission. Member States and other interested parties shall be allowed to submit comments on the said provisions and on the said reasons for considering that they are justified and proportionate.

Transparency.

VERŻJONI ELETTRONIKA

A 530

Power to make  
regulations.

**11.** The Minister responsible for education may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, provide for any matter consequential, incidental to or connected with the provisions of this Act.

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Passed by the House of Representatives at Sitting No. 334 of the  
25th May, 2020.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*



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