

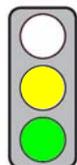
# MODERNISING THE PROFESSIONAL QUALIFICATIONS DIRECTIVE

Status: 15 August 2011

## MAIN ISSUES

**Objective of the Green Paper:** The Commission wishes to simplify the recognition procedure of professional qualifications in regulated professions.

**Parties affected:** Employers and workers, self-employed.



**Pros:** (1) The European professional card facilitates cross-border services and job changes and thus promotes growth and employment.

(2) In general, the objective conditions for recognizing professional qualifications can be verified more efficiently in the Member State of origin.

(3) Joint platforms on which Member states can publish their recognition requirements increase legal certainty and transparency.

**Cons:** If a longer period at school is prescribed as a requirement for vocational training, then the time prescribed by the dual educational system should count.

## CONTENT

### Title

**Green Paper** COM(2011) 367 of 22 June 2011: **Modernising the Professional Qualifications Directive**

### Brief Summary

#### ► Background and current legal position

- The Commission wishes to revise the Directive on the recognition of professional qualifications (Directive 2005/36/EC), whose aim it is to ensure that a qualification gained in one Member State is recognised in all other Member States.
- The current Directive applies only to regulated professions, i.e. professions which may be exercised – either employed or self-employed – only if the professional meets the professional qualifications required statutorily, or by administrative rules.
- The Commission wishes to amend the Directive and invites the parties affected to comment on its amendment plans published within the Consultation.

#### ► Introduction of a “European Professional Card”

- The Commission wishes to introduce a European professional card which can be applied for by professionals wishing to exercise a regulated profession in any other Member State.
- Each Member State is to appoint a central authority issuing the professional card.
- The competent authority in the home Member State is to examine and attest that:
  - the submitted qualifications and all other necessary documents are authentic;
  - the professional qualifications acquired in the Member State of origin comply with the EU-wide minimum requirements, if any;
  - the professional qualifications acquired in the Member State of origin complies with the requirements of the host Member State (“country of origin principle”), unless other EU-wide minimum qualification requirements exist;
  - further requirements exceeding mere professional qualifications, such as the conclusion of a professional indemnity insurance, are observed.
- The European professional card could also replace the prior declaration requirement – which was hitherto necessary in the case of temporary service provision – at the competent authority in the host Member State.
- The issue of the professional card should be refused if a professional is prohibited from exercising their profession in the Member State of origin.
- According to the Commission, consumer protection is also improved if service providers can prove their qualifications by virtue of qualifications.

#### ► Automatic recognition of EU-wide minimum requirements for regulated professions

- Professional training acquired in a Member State automatically enables its holder to exercise such a profession in any other Member State if there are EU-wide minimum training requirements.
- The Directive on professional qualifications contains minimum qualification requirements for doctors, dentists and veterinarians, nurses, midwives, chemists and architects.

- The Commission sees various problems with this automatic recognition that it would like to see addressed:
  - If professionals wish to exercise their profession in another Member State only temporarily, they must prove that they are not subject to any professional prohibition in their own Member State of origin. However, should they wish to settle permanently in another Member State, such evidence is not required. Nonetheless, the Commission suggests that evidence should be requested at all times.
  - For some professions, the duration of training is expressed in terms of years or training hours without clarifying whether or not they constitute two different options. The Commission proposes prescribing the cumulative application of these minimum requirements.
  - Study and training courses are subject to permanent change. Courses of studies have also changed under the Bologna process. Graduates of new or amended training courses could face problems when moving to another Member State, as the content of their new training might still be unknown there. By reporting requirements, the Commission wishes to ensure that other Member States are informed on time regarding any such changes and thus are enabled to adjust their recognition criteria.
- ▶ **Improving the general recognition procedure: establishing an EU-wide platform for single regulated professions without EU-wide minimum requirements**
  - With regard to the recognition of regulated professions without any EU-wide minimum requirements, the host Member States are currently deciding case-by-case. They may prescribe compensatory measures, such as aptitude tests or training, if they deem the qualifications acquired in the home Member State insufficient.
  - The Commission proposes establishing a joint platform on which Member States may determine for regulated professions whether they recognise the qualifications acquired in other Member States and/or whether they demand compensatory measures.
  - In so doing, the focus should be on the professional experience gained after training and, if possible, be preferred to other compensatory measures. In the areas of craft, trade and industry, professional experience is already key.
  - Instead of expensive case-by-case decisions, the Commission propagates the use of platforms as a basis for an automatic recognition of professional qualifications if the requirements are met.
  - The platforms could be established by the Commission in cooperation with professional associations through delegated acts, if at least a third of Member States agrees.
- ▶ **Partial access to regulated professions**
  - The principle of partial access to regulated professions has hitherto been shaped by the jurisdiction of the European Court of Justice (C-330/03).
    - The host Member State can in exceptional cases restrict access to regulated professions to those activities which are in line with the professional qualifications acquired in the Member State of origin (partial access).
    - This is permitted where the compensatory measures for unlimited access to a profession would be so comprehensive “that in reality a full programme of education and training is required, unless the refusal for that partial taking-up is justified by overriding reasons based on the general interest.”
    - Partial access can be refused if it is reasonable to require that professionals close the gap in their qualifications by taking “compensatory measures”, such as aptitude tests and additional courses.
  - The Commission wishes to adjust the Directive to this jurisdiction.
- ▶ **Communication between and with authorities**
  - The communication between and with the competent authorities of the Member State of origin and the host Member State is to be effected electronically.
  - The Commission wishes to:
    - further develop the electronic Internal Market Information system (IMI) for the communication between public authorities,
    - enable professionals to process the recognition procedure regarding their professional qualification electronically.
  - The process of recognizing professional qualifications is to be facilitated. In this respect, the Commission presents two options:
    - Option 1: The competent authority provides only necessary information to professionals (guide function).
    - Option 2: The “single contacts” which have already been established under the Services Directive are to serve as central portals contributing to a faster recognition procedure.
- ▶ **Temporary service provision**

Until now, service providers who are active only temporarily in another Member State have had to provide prior declaration of this. The Commission wishes to abolish this declaration requirement for those service providers who have no contact to consumers in the host Member State, e.g. tourist group guides.

### ► Requirements to single professions and groups of profession

The Commission is considering amending the requirements for individual professions and professional groups. In particular, it addresses the following issues:

- Should health care professionals need to comply with a minimum requirement for foreign languages?
- Should medical specialists be subject to automatic recognition if only one third (currently 40%) of Member States offer this training?
- Should doctors be entitled to be exempted from those parts of medical specialization which they have already completed during a different medical specialisation?
- Should a minimum requirement of twelve years of general school education become a precondition for training as a nurse or midwife?
- Should the job description of pharmacists be expanded to include "pharmaceutical care", "community pharmacy" and "pharmacovigilance"?
- To date, host Member States are entitled to refuse pharmacists the taking-up of their profession in the exceptional case that they are going to start a new pharmacy. Should this exceptional provision be deleted?
- Should the current minimum training period for architects of four academic years and one year's professional experience be increased to five years studying plus one practice year or four years of studies plus two practice years?

### Statement on Subsidiarity by the Commission

The Commission does not address the issue of subsidiarity.

### Policy Context

Since January 2011, a steering group (composed of representatives of competent authorities, different professions and trade unions) has been examining the benefit of a professional card for selected professional groups, its possible legal effects, practical implementation issues and its reliability. The results will be presented at the Single Market Forum, which will take place on 3-4 October 2011 in Krakow, Poland. In addition, the Commission will be holding a conference on 7 November 2011 and submitting a proposal amending the Directive in December 2011.

### Options for Influencing the Political Process

Leading Directorate General: DG Internal Market and Services

Consultation procedure: Each citizen may place a comment until 20 September 2011:

[http://ec.europa.eu/internal\\_market/consultations/2011/professional\\_qualifications\\_directive\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/professional_qualifications_directive_en.htm)

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

The lack of recognition of professional qualifications is a substantial obstacle to the cross-border mobility of qualified workers. Therefore, the Commission's plan to facilitate the recognition of professional qualifications is to be strongly supported. Thus workers can offer their labour where skilled personnel is missing. This strengthens the internal market.

**The European professional card** generally **facilitates cross-border services and job changes in regulated professions**. The resulting simplification of the recognition procedure increases the mobility of qualified workers in the EU. For the **checks required for recognition can generally be much more effectively carried out in the country of origin** than in the host Member State, due to a faster access to information. This includes checking the authenticity of the qualification documents or any possible employment bans.

For professions with EU-wide minimum training requirements, the European professional card could in future suffice as evidence of qualifications and be issued by the Member State of origin. In the case of temporary cross-border services, it could also replace the prior declaration requirement, whereby controls should also remain possible in future.

The European professional card should equally apply to professions not subject to an EU-wide minimum training requirement and which are therefore not subject to automatic recognition. For such a purpose, the Member States would, however, have to first determine which requirements they set to professional qualifications and whether and which compensatory measures they demand from professionals from other Member States.

**Establishing joint platforms**, on which Member States can publish their professional qualification requirements and compensatory measures for certain professions, may well support this and **provides for more legal certainty and transparency of decisions**.

On the European professional card, Member States of origin could confirm, at least for the professions covered by the platforms, that the requirements of the host Member States are complied with. Thus cross-border mobility and professions without EU-wide minimum training requirements would be improved tremendously. The decision as to the terms and conditions under which professional qualifications are recognized in a host Member State must, however, remain under the domain of the host Member State, unless minimum requirements exist. Otherwise Member States with a high training level, such as Germany with its dual education system, are threatened by a downgrade to mediocrity.

The competent national authorities for the recognition of professions are linked through the Internal Market Information system (IMI). **The obligatory use of IMI** allows for an expedited cooperation between the competent authorities and thus helps **further speed up the recognition procedure**. A further essential contribution to the acceleration of the procedure is the Commission's proposal to integrate "single contacts". Thus professionals can process all formalities for the recognition of professional qualifications in their own mother tongue.

Granting only partial access to regulated professions is appropriate in principle. However, this can also lead to an erosion of fully grown professional profiles in host Member State. As such professional profiles are anchored in people's minds, they possibly fail to understand which tasks of a certain profession the foreign professional may accomplish and which not. Therefore, the name of the profession used in the Member State of origin should be maintained.

**Prescribing a minimum requirement of twelve years of school for nurses and midwives** would further aggravate the human resource scarcity in these areas. Moreover, such a rule would **ignore that the dual educational system provides for vocational school terms**. These terms should at least count.

#### Impact on Efficiency and Individual Freedom of Choice

Improving the mobility of qualified workers increases the freedom of choice of both the employers and of employees. Moreover, it increases overall economic efficiency in that the demand for skilled workers is met more quickly. However, this only applies where the simplified procedure of recognition does not lead to a downgrade of the professional qualification level in the host Member State.

#### Impact on Growth and Employment

**Removing obstacles to the mobility of workers** generally **promotes growth and employment**, for growth is impeded where no suitable applicants can be found for vacant jobs. A high level of internal market mobility helps remove short-term bottlenecks in the availability of skilled workers. The removal of mobility barriers creates further incentives to invest in a country's own education so that the overall educational level increases. However, even high internal market mobility cannot cover the long-term scarcity of qualified workers, as the total European labour force is declining. Therefore, the targeted immigration of qualified workers from third countries is necessary.

#### Impact on Europe as a Business Location

An essential criteria for decisions regarding business locations is the availability of qualified personnel. A high internal market mobility of qualified workers thus also increases the attractiveness of Europe as an investment location.

## Legal Assessment

### Legislative Competency

The EU is entitled to adopt directives regarding the recognition of professional qualifications (Art. 53 TFEU). Rules ensuring the free movement of workers can be directly based on Art. 46 TFEU and those ensuring the freedom to provide services on Art. 62 TFEU.

### Subsidiarity

Unproblematic.

## Conclusion

The demanded introduction of a European professional card facilitates cross-border services and job changes in regulated professions. The therewith related removal of mobility obstacles for workers promotes growth and employment. The objective preconditions for the recognition of professional qualifications can in general be examined more easily in the Member States of origin. Establishing joint platforms on which Member States can publish their requirements for recognition increases legal certainty and transparency. If a longer time spent at school is prescribed as a professional requirement, the vocational terms provided for by the dual educational system should count.