

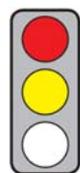
RECOGNITION OF PROFESSIONAL QUALIFICATIONS

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MAIN ISSUES

Objective of the Directive: The Commission wishes to partially facilitate and partially aggravate the recognition of professional qualifications, as well as to adopt EU-wide “common training principles”.

Parties affected: Employers and employees as well as self-employed in regulated professions.



Pros: Facilitated recognition in the sector requiring low-level qualifications is a step towards a barrier-free labour market in the EU.

Cons: (1) Aggravated recognition in the sector requiring high-level qualifications reduces cross-border mobility and weakens the internal market.

(2) The proposed EU training principles create a systematic tendency towards quality erosion. They threaten the dual vocational training system in Germany substantially.

(3) The increased requirements for the healthcare professions can be not met by extending the time spent in general education but by providing better vocational training.

(4) The EU does not have the competence to define the content of training or testing standards.

CONTENT

Title

Proposal COM(2011) 883 of 19 December 2011 for a **Directive** amending Directive 2005/36/EC **on the recognition of professional qualifications** and Regulation on administrative cooperation through the Internal Market Information System

Brief Summary

Note: The articles quoted refer to the Directive 2005/36/EC in the version of the Amendment Proposal.

► Background

- The Commission wishes to facilitate the procedure regarding the recognition of professional qualifications gained in one Member State by another Member State and thus improve the mobility of employees.
- The Directive remains applicable to regulated professions solely (Art. 1). Regulated professions may be exercised only if the statutory and administrative requirements for professional qualifications are complied with. These are, in particular, skilled craft professions, professions in the healthcare sector and liberal professions.

► Introduction of a “European Professional Card”

- For self-employed professionals and employees wishing to exercise a regulated profession in another Member State, an electronic European Professional Card is to be introduced.
- It is to include all the qualifications and documentation of an employee and will be issued by the home Member state upon the request of the employee.
- It is to be created as a file within the Internal Market Information System (IMI) (Art. 4b) and made available to the competent authorities of the home and host Member States as well as the applicant.
- All data necessary for the validation of the professional qualification are entered (Art. 4e). Only the home Member State reviews the authenticity of the employee’s certificates (Art. 4d).

► General recognition procedure for permanent employment abroad

- The host Member State decides whether or not to recognise a qualification or whether to request additional “compensation measures” from the applicant. They must be “duly motivated” and comprise either a maximum of three years adaptation training or a successfully passed aptitude test (Art. 14 (1) and (4)).
- The decision regarding the recognition of the qualification will continue to be made on a case-by-case basis. (Art. 14)
 - In so doing, the host Member State considers five qualification levels to which certain professional qualifications are allocated (Art. 11). Summarised they are:
 - level 1: school leaving certificate;
 - level 2: vocational training or skilled worker qualification;
 - level 3: master craftsman’s diploma;
 - level 4: university degree after at least 3 and a maximum of 4 years’ study (bachelor),
 - level 5: university degree after at least 4 years’ study (master).

- To date, the pursuit of a profession can be denied where the qualification level is more than one level below the level demanded by the host Member State (Art. 13 (2)). In future, it will be possible to compensate for this by means of a compensation measure lasting a maximum of three years.
 - In future, the host Member State will be entitled to deny the pursuit of a profession if the applicant does not have the required university degree (Art. 13 (4)). The compensation measure that has existed until now is no longer an option in such a case.
 - If the host Member State fails to take a decision within a period of two months, the qualification concerned is deemed recognised.
- **Automatic recognition based on EU-wide minimum training requirements**
- The professional qualification of physicians, nurses, midwives, pharmacists and architects based on EU-wide minimum training requirements continues to be recognised automatically (Art. 21).
 - The EU-wide minimum training requirements are amended as follows:
 - Doctors of medicine are to be exempted from those parts of a specialist medical training which they have already followed during the completion of another specialist training programme (Art. 25).
 - Admission to training for nurses and midwives is increased from 10 to 12 years of general education. Alternatively, evidence attesting "success in an examination of an equivalent level" suffices (Art. 31 (1)).
 - The minimum training period for architects is increased from currently four university years to either five university years and one year of traineeship, or four university years and two years of traineeship (Art. 46 (1)).
 - The exemption rule, according to which pharmacists with foreign training certificates may be generally denied the establishment of an own pharmacy (Art. 21 (4)), is deleted.
 - New specialist training programmes are automatically recognised once their minimum training requirements are introduced in at least one third (currently 40%) of Member States (Art. 26 (2)).
- **Automatic recognition based on "common training principles"**
- The current "common platforms" concept (Art. 15) is to be replaced by the "common training principles" concept (Chap. III A). These are to apply to professions regulated in at least one third of Member States and for which there are no minimum training requirements.
 - The "common training principles" consist of:
 - a "common training framework", which defines "knowledge, skills and competences" (Art. 49a (2)), and
 - "common training tests", which make it possible to pursue a profession EU-wide (Art. 49b (3)).
 - The common training principles are defined by the Commission in the form of delegated legal acts involving all Member States. (Art. 49a (3) and Art. 49b (3))
 - The "common training principles" supplement national training regimes.
 - All trainees must be allowed to participate in the common training tests; participation must not be dependent on membership of a certain professional association (Art. 49b (2) lit. k).
 - Having passed the "common training test", a trainee is automatically authorised to pursue the tested profession; compensation measures must not be imposed (Art. 49b (1)).
 - A Member State may apply for exemption from the training framework application. The Commission decides on the application. (Art. 49a (5))
- **Recognition of the provision of temporary services**
- Where services are provided only temporarily, the home Member State issues a European Professional Card. Unlike the general recognition procedure, the home Member State and not the host Member State recognises the professional qualification. (Art. 4a (3))
 - Before the initial provision of services, the host Member State may request evidence of (Art. 5):
 - the due establishment of the service provider in a Member State;
 - the pursuit of the profession concerned for at least two years within the previous ten years, and
 - having limited the employment abroad to merely accompanying the service recipients from the home Member State, without contact to consumers in the host Member States, such as tourist guides.
 - In future these rules will also apply to notaries. They will, however, not be entitled to issue public certificates and certifications. (Art. 5 (4))
- **Recognition of services affecting public security and health**
- For services affecting public health or security and for which there are no EU-wide minimum training requirements, the host Member State may:
 - check the professional qualifications themselves and request an aptitude test if the difference is so great that it is "harmful to public health or safety and cannot be compensated for through professional experience or lifelong learning" (Art. 7 (4) sub-para. 4).
 - request evidence that the professional has been neither temporarily nor definitively suspended from exercising their profession and that they do not have any prior criminal convictions (Art. 7 (2) e).
 - Where the host Member State does not request an aptitude test within two months, the service may be provided (Art. 7 (4) sub-para. 5).

► Partial Access

- The host Member State may – according to ECJ C-330/03 – restrict the pursuit of professional activities which are in line with the acquired professional qualifications (“partial access”; Art. 4f).
- Partial access is admitted where:
 - the compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State (Art. 4f (1));
 - the professional activity can “objectively” be separated from other activities falling under the regulated profession in the host Member State and
 - no “reason of general interest” speaks against it (Art. 4f (2)).

► Language skills

For professionals working in the healthcare sectors who have direct contact with patients, the Member States may carry out generally language tests. Otherwise, language checks are only permissible where there is doubt as to whether the professional possesses the language skills necessary for the profession concerned (Art. 53).

► Provision of information

- The points of single contacts introduced by the Service Directive (2006/123/EC) are to provide information in particular on the profession concerned, the related procedures and competent authorities (Art. 57).
- The Commission will set up a public database containing all regulated professions.

Statement on Subsidiarity by the Commission

As the amendment affects an existing Directive, only EU action can be considered.

Policy Context

The Directive was preceded by a Green Paper (COM (2011) 367; see [CEP Policy Brief](#)) and a Consultation.

Legislative Procedure

19 December 2011	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union. Entry into force.

Options for Influencing the Political Process

Leading Directorate General:	DG Internal Market and services
Committees of the European Parliament:	Internal market and consumer protection (leading), rapporteur: Bernadette Vergnaud (S&D Group, FR);
Committees of the German Bundestag:	Labour (leading); Economic affairs
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Both facilitating the recognition procedure of professional qualifications and the “common training principles” help increase the cross-border mobility of qualified professionals and thus are a step towards a barrier-free EU-wide labour market. However, in both approaches **there is a conflict of interests that cannot be resolved between the removal of obstacles to mobility in accordance with the internal market principle** on the one hand, **and maintaining of a high level** of qualifications on the other.

The general recognition procedure: in the low-level qualification sector the conflict of interests is decided in favour of the internal market principle. Where qualification levels no longer have to be achieved in order to receive a professional qualification (levels 1-3), the danger is that the training in host Member States be devaluated and that the discrimination of nationals occurs. For in future, a foreign professional who has only a primary school degree but who has passed a three-year compensatory measure will have to be allowed to manage a licensed craft undertaking. Lifelong learning and professional experience as an alternative to formal training is accorded greater weight. However, **this is perfectly justifiable, as** in this segment the healthcare and security aspect are of less relevance; besides, **craft undertakings have the freedom to decide** whom to employ and the customer has the freedom to decide who to commission.

Conversely, the conflict of interests in the high-level qualification sector is decided at the expense of the internal market principle. This has unjustifiable consequences: The new possibility to deny the professional permit at levels 4 and 5, instead of prescribing compensatory measures if the foreign professional does not have the required university degree, leads to a situation in which the German orthopaedic technician (level 3) is not allowed to work in Great Britain in the same profession (there level 4).

Common training principles: Although EU-wide standardised training principles for regulated professions may facilitate the cross-border pursuit of professions, the Directive does not say anything about the level of education that must be attained. Therefore, the political compromise-finding process threatens in general to lower training requirements to the lowest common denominator. **The right of each trainee to take the less demanding “common” training test instead of the national test** and yet still have the same chance to enter the profession **creates a systematic tendency towards quality erosion in countries with a higher education level. This poses a serious threat to high-quality** and therefore relatively expensive **training systems, such as the dual vocational training in Germany. For it puts pressure on them to lower their own training standards**, especially when price competition dominates over quality competition, as is so often the case. Countries with a high level of training cannot escape this trend, for the Commission decides whether or not a Member State must apply the common training principles.

EU-wide minimum training requirements: The precondition of twelve years of elementary education for nurse or midwife training is not appropriate. **The increased requirements for healthcare professions can only be met through better vocational training**, during which the necessary specialist knowledge relating to the profession is conveyed, **and not by extending the period of time spent in general education**, for it is not the job of schools to teach specialist knowledge.

Impact on Efficiency and Individual Freedom of Choice

The recognition procedure is made significantly more efficient: The Electronic European Professional Card enhances transparency and expedites the recognition procedure. The legal fiction in the general recognition procedure, according to which qualifications are automatically deemed recognised after two months in the absence of a decision, helps avoid delays and creates legal certainty for professionals.

Also, overall economic efficiency is improved, for greater cross-border mobility of labour forces would facilitate a reduction of both the skilled workers shortage in some EU regions and the high unemployment rate dominating other EU regions. This boost in efficiency is, however, undermined where the qualification level is reduced by EU-wide training principles.

Impact on Growth and Employment

The removal of obstacles to employee mobility fosters growth and employment in general. For growth is impeded where vacancies are not filled by suitable applicants.

Impact on Europe as a Business Location

An essential criterion for the choice of a business location is the availability of qualified personnel. The removal of cross-border mobility obstacles facilitates EU-wide recruitment and thus strengthens the EU as an investment location. A reduced qualification level, however, reduces it.

Legal Assessment

Competency

The EU is entitled to regulate the recognition procedure of diplomas and certificates (Art. 53 TFEU). **The definition of the contents training and of testing standards** for professions which are regulated in one third of the Member States, however, **constitutes a competency infringement**. For the EU is obliged to fully respect “the responsibility of the Member States for the content and organisation of vocational training” (Art. 166 (1) TFEU).

Compatibility with EU Law

The definition of the contents of training and testing standards through delegated acts infringes Art. 290 TFEU, as it affects essential contents: the adoption of a delegated act is subject to the substantiation of “non-essential provisions” of the basic legal act.

Compatibility with German Law

The recognition of foreign qualifications is subject to the new German *Berufsqualifikationsfeststellungsgesetz* (BQFG – Professional Qualification Recognition Act), entering into force on 1 April 2012. It would have to be revised.

Conclusion

There is an unsolvable conflict of interests between the establishment of a barrier-free labour market in the EU and maintaining high qualification levels. Facilitating the recognition of foreign diplomas in the low-level qualification sector is justifiable; the impermeability of the high-level qualification sector, however, is not. The proposed EU training principles create a systematic tendency towards quality erosion; they threaten the German dual vocational training system substantially. The EU does not have the competence to define the contents of training or testing standards. The increased requirements for the healthcare professions are met not by extending the amount of time spent in general education but by providing better vocational training.