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A5-0174/2000

24 June 2000

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council directive amending Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and supplementing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (5103/2000 – C5-0162/2000 – 1997/0345(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Rainer Wieland

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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## PROCEDURAL PAGE

At the sitting of 2 July 1998 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive amending Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and supplementing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (COM(1997) 638 – 1997/0345(COD)).

At the sitting of 30 March 2000 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (5103/3/2000 – C5-0162/2000).

The committee had appointed Rainer Wieland rapporteur at its meeting of 23 September 1999.

The committee considered the common position and the draft recommendation for second reading at its meetings of 24 May, 19 June and 21 June 2000.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, vice-chairman; Rainer Wieland, rapporteur; Janelly Fourtou, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Lord Inglewood, Ioannis Koukiadis, Klaus-Heiner Lehne, Donald Neil MacCormick, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Bill Miller, Astrid Thors, Joachim Wuermeling and Christos Zacharakis.

The recommendation for second reading was tabled on 22 June 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive amending Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and supplementing Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (5103/3/2000 – C5-0162/2000 – 1997/0345(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (5103/3/2000 – C5-0162/2000),
  - having regard to its position at first reading on the Commission proposal to Parliament and the Council (COM(1997) 638)<sup>1</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0174/2000),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 28, 26.1.1998, p. 1.

## (Amendment 1)

## Recital 5a (new) of the common position

**(5a) All the Union's endeavours to achieve better and more transparent law making will fail if the outcome of such law making, i.e. a consolidated version of the legal texts in force at the time, remains hidden from the citizen or is accessible only with an unacceptable degree of effort that even specialists find hard. The institutions are still urged therefore to make available to everyone easily accessible consolidated versions of legal texts.**

Or. de

*Justification:**Self-explanatory.*

## (Amendment 2)

## Recital 6a (new) of the common position

**(6a) The recognition of formal qualifications, examination certificates and diplomas acquired in a third country and of professional experience gained in third countries remains an urgent problem. As this issue has far-reaching implications, the Commission is called on to draw up without delay sectoral studies and to submit appropriate legislative proposals in the light of their findings.**

Or. de

*Justification:*

*The common position records only modest progress on the issue of diplomas, examination certificates, formal qualifications and professional experience gained in third countries (see recital 6). There are no reliable or complete<sup>1</sup> studies of the problem. At the same time, the question of the recognition of diplomas and professional experience gained in third countries is a tricky one in many areas, particularly in the health sector. Sectoral studies should*

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<sup>1</sup> COM(96) 434, 9.9.1996.

therefore first be submitted on the basis of which the Commission can table appropriate legislative proposals.

(Amendment 3)

Recital 8

**(8) *Lifetime learning has been made especially important by the rapid advances in technical and scientific progress in the area of medicine. Continuing training must consequently be a component of qualifications.***

Or. de

(Amendment 4)

Recital 12

**(12) *According to the case-law of the Court of Justice of the European Communities<sup>1</sup>, for reasons of fairness,*** transitional measures should be applied in Italy in respect of certain holders of diplomas, certificates and other evidence of formal qualifications in pharmacy awarded on completion of training that does not fully comply with Directive 85/432/EEC.

**(12) *For reasons of equality of treatment,*** transitional measures should be applied in Italy in respect of certain holders of diplomas, certificates and other evidence of formal qualifications in pharmacy awarded on completion of training that does not fully comply with Directive 85/432/EEC.

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<sup>1</sup> C-307/94 (*Commission/Italy*) [1996] ECR I-1011.

Or. de

*Justification:*

*The wording of the original Commission version in the first part of this paragraph is preferable and more precise.*

(Amendment 5)  
ARTICLE 1(1) of the common position  
Article 1(da) (new) of Directive 89/48/EEC (general system)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ‘(d)a Regulated education and training: any education and training which:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | ‘(d)a Regulated education and training: any education and training which:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| – is directly geared to the practice of a precisely defined profession, and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | – is directly geared to the practice of a precisely defined profession, and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| – comprises a post-secondary course of at least three years’ duration, or an equivalent duration part-time, at a university or establishment of higher education or another establishment of <i>similar</i> level and, where appropriate, the professional training, professional traineeship or professional practice required in addition to the post-secondary course; the structure and level of the professional training, professional traineeship or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose.’ | – comprises a post-secondary course of at least three years’ duration, or an equivalent duration part-time, at a university or establishment of higher education or another establishment of <i>equivalent</i> level and, where appropriate, the professional training, professional traineeship or professional practice required in addition to the post-secondary course; the structure and level of the professional training, professional traineeship or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose.’ |

Or. de

*Justification:*

*Parliament’s lawyer linguists have noted discrepancies in the various language versions of the common position. The EN version refers to a ‘similar level’. The DE and SV versions refer to a ‘gleichwertigem Niveau’ (SV: motsvarande). The remaining language versions refer to ‘the same level’ (FR: ‘même’, DA: ‘samme’, ES: ‘mismo’, PT: ‘mesmo’, IT: ‘stesso’, NL: ‘hetzelfde’, EL: ‘idiou’, FI: ‘samankaltainen’). Since Article 1(d)a concerns a **key definition** there is a crucial need to harmonise the terms.*

*In order that this change can be put to the Council, this amendment should be adopted by Parliament together with the justification.*

*There should be no recourse here to Rule 140(1)(d) of the Rules of Procedure in the interests of safeguarding Parliament’s reservation about the legislation. Where this problem arises elsewhere in the relevant directive, this amendment should be construed as a horizontal one.*

(Amendment 6)  
ARTICLE 1(1a) (new) of the common position

Article 1(a) of Directive 89/48/EEC (general system)

Article 1

For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

– which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

– which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of *similar* level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

– which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State, provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognised a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognised by a competent authority in that Member State as being of an equivalent level and if it confers the

Article 1

For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

– which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

– which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of *equivalent* level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

– which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State, Provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognised a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is awarded on the successful completion of education and training received in the Community and recognised by a competent authority in that Member State as being of an equivalent level and if it confers the

same rights in respect of the taking up and pursuit of a regulated profession in that Member State.’

same rights in respect of the taking up and pursuit of a regulated profession in that Member State.’

Or. DE

*Justification:*

*Analogous to the previous amendment*

*The FRENCH version reads as follows:*

*‘Article premier*

*Aux fins de la présente directive, on entend:*

*a) par diplôme, tout diplôme, certificat ou autre titre ou tout ensemble de tels diplômes, certificats ou autres titres:*

*- qui a été délivré par une autorité compétente dans un État membre, désignée conformément aux dispositions législatives, réglementaires ou administratives de cet État,*

*- dont il résulte que le titulaire a suivi avec succès un cycle d’études postsecondaires d’une durée minimale de trois ans, ou d’une durée équivalente à temps partiel, dans une université ou un établissement d’enseignement supérieur ou dans un autre établissement du **même** niveau de formation et, le cas échéant, qu’il a suivi avec succès la formation professionnelle requise en plus du cycle d’études postsecondaires, et*

*- dont il résulte que le titulaire possède les qualifications professionnelles requises pour accéder à une profession réglementée dans cet État membre ou l’exercer,*

*dès lors que la formation sanctionnée par ce diplôme, certificat ou autre titre a été acquise dans une mesure prépondérante dans la Communauté, ou dès lors que son titulaire a une expérience professionnelle de trois ans certifiée par l’État membre qui a reconnu un diplôme, certificat ou autre titre délivré dans un pays tiers.*

*Est assimilé à un diplôme au sens du premier alinéa tout diplôme, certificat ou autre titre, ou tout ensemble de tels diplômes, certificats et autres titres, qui a été délivré par une autorité compétente dans un État membre dès lors qu’il sanctionne une formation acquise dans la Communauté et reconnue par une autorité compétente dans cet État membre comme étant de niveau **équivalent**, et qu’il y confère les mêmes droits d’accès à une profession réglementée ou d’exercice de celle-ci;’.*

(Amendment 7)

Section 2.7: Doctors

ARTICLE 14(8a) (new) of the common position

Article 24(1)(ba) (new) of Directive 93/16/EEC

***(ba) it includes adequate knowledge of general medical practice;***

*Justification:*

*Specialists must also be familiar with the overall picture and be able to recognise inter-related factors, and should be expected to keep pace within their specialisation with, for example, the latest developments in differential diagnostics.*

(Amendment 8)

Section 2.7: Doctors

ARTICLE 14(9b) (new) of the common position

Article 31(1)(b) of Directive 93/16/EEC

***(b) It shall be a full-time course lasting at least three years, and shall be supervised by the competent authorities or bodies.***

*Justification:*

*Good health is one of mankind's greatest assets. Every human being is therefore entitled to top-quality medical care provided in particular by suitably well trained doctors. The quality of a doctor increases with his or her experience gained during their time in training and under supervision. The proposed amendment will raise the minimum training time from 2 to 3 years.*

(Amendment 9)

Section 2.7: Doctors

ARTICLE 14(9a) (new) of the common position

Article 30 of Directive 93/16/EEC

***Each Member State which dispenses the complete training referred to in Article 23 within its territory shall institute specific training in general medical practice meeting requirements at least as stringent as those laid down in Articles 31 and 32, in such a manner that the first diplomas, certificates or other evidence of formal qualifications awarded on completion of the course are issued not later than three years after the entry into force of this directive.***

*Justification:*

*The innovations contained in Amendments 5 and 7 require a separate implementation date.*

*The existing version of Article 30 contained a time limit that had to be complied with by 1 January 1990. Since all Member States have fulfilled this requirement, Article 30 can through its references take on the function of incorporating the implementation date for Amendments 6 and 8.*

(Amendment 10)

Section 2.7: Doctors

ARTICLE 14(9b) (new) of the common position

Article 31(1)(e) (new) of Directive 93/16/EEC

***In addition, evidence must be produced of regular participation in periods of continuing training, the intervals between which must be consistent with progress in medicine.***

Or. de

*Justification:*

*Self-explanatory.*

(Amendment 11)

Section 2.6: Pharmacists

Article 2 of Directive 85/432/EEC

As a transitional measure and by way of derogation from paragraphs 3 and 5, Italy, whose laws, regulations and administrative provisions prescribed training which was not brought fully into line with the training requirements laid down in this Article by the deadline stipulated in Article 5 of this Directive, may continue to apply those provisions to persons who commenced their training in pharmacy on 31 October 1993 at the latest.

Each host Member State shall be authorised to require that holders of diplomas, certificates and other evidence of formal qualifications in pharmacy awarded in Italy on completion of training commenced before 11 November 1993 produce, together with their qualifications, a certificate stating that, for at least three consecutive years during the five years prior to the issue of the certificate, they were effectively and lawfully engaged in one of the activities referred to in Article 1(2)

As a transitional measure and by way of derogation from paragraphs 3 and 5, Italy, whose laws, regulations and administrative provisions prescribed training which was not brought fully into line with the training requirements laid down in this Article by the deadline stipulated in Article 5 of this Directive, may continue to apply those provisions to persons who commenced their training in pharmacy on 31 October 1993 at the latest ***and concluded it not later than 31 October 2003.***

Each host Member State shall be authorised to require that holders of diplomas, certificates and other evidence of formal qualifications in pharmacy awarded in Italy on completion of training commenced before 1 November 1993 ***and concluded before 31 October 2003,*** produce, together with their qualifications, a certificate stating that, for at least three consecutive years during the five years prior to the issue of the certificate, they were effectively and lawfully engaged in one

insofar as such activity is regulated in Italy.

of the activities referred to in Article 1(2)  
insofar as such activity is regulated in Italy.

Or. de

*Justification:*

*Self-explanatory.*

## EXPLANATORY STATEMENT

### PROCEDURE

#### *The procedure so far*

The legislative proposal (COM(97) 638) dates from 3 December 1997.

Mrs FONTAINE was rapporteur during the fourth electoral term.

Parliament adopted its amendments at first reading on 2 July 1998 on the basis of the report by the Committee on Legal Affairs and Citizens' Rights (A4-0232/98).

The Commission has not tabled an amended proposal.

#### *The common position*

The common position under consideration was adopted by the Council on 20 March 2000.

The common position, the Council's statement of reasons and the Commission's communication were forwarded to Parliament on 27 March 2000.

#### *Subsequent procedure*

As the common position was forwarded on 27 March 2000, the three-month time limit available to Parliament is due to expire on 27 June. However, Parliament has, in application of Article 251(7) of the EC Treaty, requested the automatic extension of this time limit by a fourth month.

According to Rule 80 of the Rules of Procedure the admissibility of amendments on second reading is confined essentially to the reinstatement of positions adopted by Parliament on first reading. In addition, Parliament can respond to parts of the common position that were not yet contained in the Commission proposal. Further scope for tabling amendments exists where new facts or legal situations arise and in the event of elections between the first and second readings.

### COMMENTS ON CONTENT OF COMMON POSITION

#### 1. Which diplomas and professions are potentially affected by the changes?

- **Post-secondary diplomas** concluding a training course of at least three years' duration ('General system', = Directive 89/48/EEC)
- **Other diplomas, certificates and formal qualifications** that are covered neither by the general system nor by special directives ('Second general system', = Directive 92/51/EEC) - the exact field of application of this directive has to be deduced from a laborious analysis of the complicated annexes.
- Nurses,
- Dental practitioners,
- Veterinary surgeons,

- Midwives,
- Architects,
- Pharmacists,
- Doctors.

## 2. What changes are being sought?

The common position seeks primarily to bring about changes affecting the *procedure* for recognising diplomas. This covers:

- automatic recognition subject to certain conditions (nurses, dental practitioners, veterinary surgeons, midwives, pharmacists, medical specialists (new Article 4 of Directive 93/16/EEC),
- discretionary recognition (architects),
- recognition after additional training (other specialised medical diplomas (new Article 8(3) of Directive 93/16/EEC)),
- recognition with a differing role for professional experience (general system, second general system),
- examination of professional experience gained outside the EU (nurses, dental practitioners, veterinary surgeons, midwives, architects, pharmacists, doctors),
- need to state reasons and right of appeal where applications are rejected (nurses, dental practitioners, veterinary surgeons, midwives, architects, pharmacists, and doctors).

*A number of conditions relating to the content of* diploma recognition are also regulated such as the length and nature of professional experience acquired, financial standing and the recognition of professional liability insurance taken out in other Member States.

A special problem is the introduction of the term '*regulated education and training*' in Directive 89/48/EEC (Article 1(1) of the common position). While this term and its ensuing legal consequences (abolition of the requirement for two years' professional experience in certain cases of access to a profession (see Article 3(b), subparagraph 1a (new) of Directive 89/48/EEC)) are to be welcomed in themselves, no uniform definition is given of the term because of *linguistic divergences*. An amendment harmonising the different language versions has accordingly been tabled by the rapporteur. Further details are to be found in the justifications to amendments 4 and 5.

## 3. Explanatory remarks on selected amendments

All the rapporteur's amendments have been provided with detailed justifications.

3.1. Particular importance is attached to the – still open – question of the treatment of *diplomas*, certificates and formal qualifications *obtained in third countries* and of professional experience gained in third countries. The common position makes only modest progress here (see recital 6) that is applicable to nurses, dental practitioners, veterinary surgeons, midwives, architects, pharmacists and doctors.

The innovation consists of the fact that the Member States are to *examine* the diplomas, certificates and other formal qualifications acquired in third countries where they have already been recognised in one Member State as well as the training courses completed in a Member

State and/or the professional experience gained there. The decision must be taken within three months.

Thought should be given here to unorthodox approaches leading in a somewhat more binding and direct form to recognition whether already in the first Member State to grant recognition or in the subsequent Member States grant recognition. To this end, the Commission is urged to submit studies on the problem.

3.2. On first reading, Parliament called for better qualifications for general medical practitioners by increasing the *minimum length of the 'specific training in general medical practice'* (Title IV of Directive 93/16/EEC) from 2 to 3 years.

In addition, Parliament has also placed greater emphasis on adequate knowledge of general medical practice specifically for specialised medical professions (Amendment 6).

This demand should be upheld. Indeed, good health is one of mankind's greatest assets. Every human being is therefore entitled to top-quality medical care provided in particular by suitably well trained doctors. The quality of a doctor increases with his or her experience gained while in training and under supervision.

3.3. The legal situation is extremely complex and fragmentary as is already clear from the title. The 14 directives listed in the title have for their part been amended on average between three and five times, not counting the accession treaties.

The legal situation can therefore be grasped only with difficulty by lawyers and the public.

Precisely this specific example illustrates clearly once again the need to produce manageable consolidated versions of much altered legislation for the benefit of the general public and those applying the law.

The Community institutions are accordingly called on in Amendment 1 – in a general aside as it were – to make available easily accessible consolidated versions for everyone.