



European Economic and Social Committee

SOC/451
**Recognition of professional
qualifications and
administrative cooperation**

Brussels, 26 April 2012

OPINION

of the

European Economic and Social Committee

on the

**Proposal for a Directive of the European Parliament and of the Council amending
Directive 2005/36/EC on the recognition of professional qualifications and the Regulation on
administrative cooperation through the Internal Market Information System
COM(2011) 883 final – 2011/0435 (COD)**

Rapporteur-General: **Mr Metzler**

On 19 January 2012 the European Parliament and, on 27 January 2012, the Council decided to consult the European Economic and Social Committee, under Articles 46 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and the Regulation on administrative cooperation through the Internal Market Information System

COM(2011) 883 final – 2011/0435 (COD).

On 17 January 2012 the Bureau of the European Economic and Social Committee instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

In view of the urgency of the work, the European Economic and Social Committee decided at its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April) to appoint Mr Metzler as rapporteur-general, and adopted the following opinion by 164 votes to 1, with 3 abstentions:

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1. Conclusions and recommendations

- 1.1 Recognition of professional qualifications from other Member States is a key instrument for promoting the mobility of EU citizens and thereby implementing the Single Market. It will strengthen the competitiveness of Member States, support sustainable growth and reduce unemployment. National economies will benefit from the varied professional experiences acquired by their citizens while working in different Member States.
- 1.2 The potential offered by EU citizens interested in working in another Member State has not yet been exhausted. This is a result of various obstacles to recognition of professional qualifications obtained in other Member States. EU citizens see the existing procedures as protracted and unclear.
- 1.3 That is why in principle the EESC welcomes the proposal to amend Directive 2005/36/EC, which should eliminate these problems recognising professional qualifications by simplifying procedures and making them more transparent for EU citizens. The proposal makes a real contribution to achieving the targets for increasing EU citizens' mobility set by Agenda 2020.

- 1.4 The EESC welcomes the European Professional Card as a clear simplification of procedures. However, it considers that certain stipulations could end up putting the safety and health of consumers and patients at risk. The proposed rules for the European Professional Card, in particular, should therefore be revised:
- The generic and main criteria and procedural rules governing introduction of the European Professional Card should be determined in the Directive itself.
 - Abuse of hard copy cards should be ruled out by placing limits on their validity and taking special steps to protect against forgery.
 - The EESC has strong reservations about any provision that sees a European Professional Card deemed valid when a host country fails to issue a decision on the matter. Other forms of legal recourse against unmet deadlines, such as the right to an official decision or compensation, are preferable.
- 1.5 In view of the multitude of systems for recognising qualifications in Europe, the EESC is concerned about overlaps, conflicting regulations or even contradictions. The Directive therefore necessitates clarification of the order of priority of the Directive on the Recognition of Professional Qualifications vis-à-vis the instruments of the European Qualifications Framework and European standards. Moreover, implementation of the European Credit Transfer and Accumulation System (ECTS) needs to be taken further.
- 1.6 The EESC welcomes the increased opportunities for automatic recognition on the basis of common training principles. However, the procedural requirements, the procedures and the criteria used by the Commission to determine common training principles should be stipulated in the Directive. The quorum must be raised to 50% of Member States + 1.

2. Gist of the Commission document

- 2.1 Mobility of qualified professionals is too low in the European Union. There is a great deal of unexploited potential for mobility. Recognition of professional qualifications is key to making the basic freedoms of the Internal Market work effectively for EU citizens. At the same time, mobility should not come at the expense of consumers, for example at the expense of patients who expect adequate language skills from health professionals.
- 2.2 Updating the Directive would also respond to the needs of Member States facing increasing shortages of skilled labour. Mobility of EU citizens within the single market is an important issue in this regard. Labour shortages are projected to not just persist but increase in future, especially in the health and education sectors, and also in growth sectors like construction and business services.
- 2.3 The proposed updating of the existing provisions is driven by the following objectives:

- reducing the complexity of procedures through a European Professional Card which would further exploit the benefits of the already successful Internal Market Information System (IMI);
- reforming the general rules for establishing in another Member State or temporarily moving there for employment;
- updating the system of automatic recognition, notably for nurses, midwives, pharmacists and architects;
- offering a legal framework in the Directive for partially qualified professionals and for notaries;
- clarifying safeguards for patients whose concerns over language skills and risks of malpractice should be better reflected in the legal framework;
- creating the legal requirement for provision of user-friendly and content-driven information on the rules governing the recognition of qualifications, underpinned by comprehensive e-government facilities for the whole recognition process;
- launching a systematic screening and mutual evaluation exercise for all regulated professions in the Member States.

3. General comments

- 3.1 Agenda 2020¹ sets the objective of facilitating and supporting labour mobility within the European Union. In the *Agenda for new skills and jobs: A European contribution towards full employment*², the European Commission identified skills shortages as an obstacle to sustainable growth. Skills shortages in areas of persistent high growth coexist with areas of persistent high unemployment. Geographical mobility is therefore crucial to alleviating regional unemployment. In the *Single Market Act, Twelve levers to boost growth and strengthen confidence*³, the Commission also recognised mobility as one such lever. Increased mobility of skilled labour could make the European economy more competitive. Moreover, in times of skills shortages, opportunities should be increased for bringing employers and skilled labour from different Member States together. The EESC therefore expects the Directive to be a substantial fillip for growth.

¹ See "EUROPE 2020 A strategy for smart, sustainable and inclusive growth", Communication from the Commission, COM (2010) 2020 final, 3.3.2010.

² Communication from the Commission, 23.11.2010, COM (2010) 682 final, point 2.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the *Single Market Act, Twelve levers to boost growth and strengthen confidence*, "Working together to create new growth", COM (2011) 206 final, 13.4.2011.

- 3.2 The current Professional Qualifications Directive still has a number of shortcomings. There are different ways open to EU citizens of having professional qualifications recognised. However, it is difficult for EU citizens to find out which procedures they are entitled to make use of, which authorities they can turn to and which documents they need to provide. These shortcomings in the current Professional Qualifications Directive impede the mobility of EU citizens and with it implementation of the Single Market⁴. Lengthy recognition procedures mean that, often, EU citizens are not able to respond quickly to job offers because they must wait to have their qualifications recognised. Therefore, procedural reform and a more transparent approach to recognising professional qualifications are both needed. Finally, the common platforms have shown themselves to be impractical and ineffective. Not a single common platform has been agreed since they were introduced.
- 3.3 The EESC therefore welcomes the proposal to amend Directive 2005/36/EC. Simplifying procedures for the mutual recognition of professional qualifications and increasing transparency will further promote freedom of establishment, freedom to provide services and the Single Market. The proposal will help to meet the targets laid down by the Commission in Agenda 2020 and in the follow-up documents.
- 3.4 In general, the EESC considers the simplification of procedures through reform a suitable way of promoting EU citizens' mobility within the European Union. This could unleash a new dynamic offering more growth and mobility and creating new jobs following the recent crises.
- 3.5 Younger working people in particular are interested in gaining professional experience in different Member States. In doing so, they bring a variety of professional experiences to other Member States and have an influence on professional practice both in their host country and, following their return, in their home country.
- 3.6 The advantages of mobility outweigh any disadvantages in the form of a "brain drain". Even if the risk of a "brain drain" cannot be ruled out, previous experience has shown that it occurs on a much smaller scale than expected, and that EU citizens often return to their home countries following a period of professional mobility due to cultural and family ties.
- 3.7 Professional mobility across Member States must not undermine social security standards. In particular, any temporary migratory pressure in one Member State must not be taken advantage of to put pressure on social security standards in another.
- 3.8 The European Professional Card will lead to a welcome simplification of procedures. Applicants can refer to the authorities of their country of origin, who are generally better placed than the authorities of other Member States to assess the documents provided. Once checked and added to the IMI file, documents will be available for other verification

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Communication from the Commission, EU Citizenship Report 2010: *Dismantling the obstacles to EU citizens' rights*, COM (2010) 603, 27.10.2010.

procedures. However, the safety of consumers and patients must continue to be safeguarded through recognition of the European Professional Card by host countries.

- 3.9 The EESC welcomes the Directive's focus on the IMI. Nevertheless, there are already the underpinnings of national professional cards in the Member States. These structures should be included in the process of issuing European Professional Cards in order to avoid needless administrative burden, cost and red tape. In particular, the possibility of using existing national professional cards to issue a recognised hard copy European Professional Card should be looked into. In particular, the directive should specify the criteria in line with Article 58 (Article 4(a)(vi)) as well as the procedures followed by the Commission to determine which professions are eligible for coverage by the European Professional Card. The same applies to responsibility for translation of necessary procedures and documents.
- 3.10 The Bologna Process and the European Qualifications Framework promote transparency and comparability of national educational qualifications, particularly degrees. They must not create overlaps with the provisions of the Professional Qualifications Directive, however. Therefore, the Professional Qualifications Directive must make clear that a professional qualification can only be recognised in accordance with the provisions of the Directive or with those of special directives. The European Qualifications Framework must not make it any easier nor any more difficult to have a professional qualification recognised. The same holds true for the relationship between the Professional Qualifications Directive and European standards.
- 3.11 The Professional Qualifications Directive refers exclusively to professional qualifications obtained in a Member State. In the *Agenda for new skills and jobs: A European contribution towards full employment*⁵, the European Commission made better integration of immigrants in the labour market an objective. This objective should be pursued not least by dismantling obstacles to employment in the form of failure to recognise skills and qualifications. The European Commission is called upon to take steps to simplify recognition of professional qualifications obtained in third countries.

4. **Specific comments**

4.1 **European Professional Card**

- 4.1.1 The EESC welcomes the creation of a European Professional Card as proposed in Articles 4a to 4e. The creation of a European Professional Card in connection with the Internal Market Information System will significantly simplify and speed up the procedure for mutual recognition in many cases.
- 4.1.2 Article 4a(7) enables the levying of fees when issuing the European Professional Card. The Commission is empowered to set criteria for the calculation and distribution of fees in a

⁵ Communication from the Commission, 23.11.10, COM (2010) 682 final, point 2.5.

procedure laid down in Article 58a. However, the costs must not be so high as to act as a disincentive to using the application procedure.

- 4.1.3 The EESC has strong reservations about the condition proposed in Article 4d(5), according to which a European Professional Card shall be deemed valid if no decision is made by the responsible authority within the time limit set in Article 4d(2) and (3). This very tight time limit amounts to one month in most cases, or two months if compensation measures are needed. This may prompt the responsible authorities to refuse recognition if they are not in a position to make a proper judgement due to a backlog of applications or a lack of further information. This will not actually speed up the approval process, but rather protract it because of the legal recourse made available for contesting such a decision.
- 4.1.4 Should there actually be a large number of cases in which European Professional Cards are recognised as valid on the basis of Article 4d(5), the safety and health of consumers and patients will be at risk, because it cannot be ruled out that this mechanism would see some applicants issued with a card inappropriately. It would also be difficult to later invalidate a card having realised that the decision to validate was wrong.
- 4.1.5 In order to satisfy the interests of both applicants and consumers, the Committee proposes a right of appeal under national law. The Directive should oblige the Member States to adopt an appeals procedure of this kind. Possible instruments include the right to an official decision, and the right to compensation. These rights should only obtain if the responsible authorities culpably fail to issue a positive decision or prescribe a compensation measure within the set time limit.
- 4.1.6 In addition, the time limits for decisions should be set in a way that ensures that the process as a whole (assessment of the application in the country of origin and recognition in the host country) does not exceed four months. If the responsible authority in the host country sends a request for information to the country of origin the time limit should, contrary to Article 4d(3)(3), be removed.
- 4.1.7 According to Article 4e(5), the holder of a European Professional Card is to be reminded of his rights under Article 4e(5) every two years after the issuance of the card. This reminder will lead to additional administrative burden without benefiting the holder in any way. It is enough to inform the holder once.
- 4.1.8 In order for these procedures and time limits to be adhered to, the IMI system must function smoothly. Given that the number of applications is expected to be large, this capacity must be guaranteed when the Directive takes effect. A failure of the IMI system could be dealt with much more easily under the system of legal protection proposed here than under the deemed validation system proposed by the Commission, which should be rejected as incompatible with the overall scheme.

- 4.1.9 The European Professional Card should not only be made available as a file in the IMI system. Upon recognition, applicants should also receive a hard copy version of the card. These hard copies could be used as proof of recognition in legal proceedings, which is why they should be made to meet minimum standards to protect against forgery.
- 4.1.10 In addition, hard copies of the European Professional Card should not remain valid indefinitely. Otherwise they may be abused, even when professional activities have been prohibited on the basis of information shared between Member States under the first paragraph of Article 56(2) or by way of the alert mechanism described in Article 56a. The hard copy of the card should therefore remain valid for only ten years, and in the case of health professions for only five years, with holders required to reapply. However, these conditions should not affect the electronic copy of the European Professional Card in the IMI system, which may remain valid indefinitely. If a card holder is prohibited from practising a profession, the hard copy of the card should also be withdrawn.
- 4.2 **Partial access**
- 4.2.1 The codification of partial access in Article 4f adopts the conditions imposed by the European Court of Justice in case C-330/03. Any restriction of this would contravene Articles 45 and 49 of the TFEU.
- 4.2.2 The scope for practical application of partial access is limited. Codification must not lead to social dumping.
- 4.3 Effective measures must also be taken to prevent abuse in the cases mentioned in Article 5(1)(b). To this end, the EESC proposes a more rigorous monitoring mechanism.
- 4.4 The fifth paragraph of Article 7(4) retains the provision from the previous Directive, according to which a service may be provided if the competent authority fails to respond. As with Article 4d(5), other legal remedies are preferable as a way of encouraging a decision from the authorities (see point 4.1.3 et seq. above).
- 4.5 Article 11 defines five levels of qualification subject to the Professional Qualifications Directive. These levels have no connection with the European Qualifications Framework (EQF) or the European Credit System for Vocational Education and Training (ECVET). The definition of the minimum requirements provided in Chapter III of Title III makes reference to ECTS points. In order to ensure greater transparency for applicants and responsible authorities, the Commission should come up with a procedure that makes it possible to integrate the five qualification levels into the EQF, the ECVET, the European Quality Assurance in Vocational Education and Training (EQAVET, previously EQARF), the Bologna Process and the Copenhagen Process, and to eliminate discrepancies and overlapping.

- 4.6 In the case of an aptitude test as per Article 14(1), Article 14(7) says that the Member States are to carry out the test at least twice a year. This obligation could place a burden upon smaller Member States, in particular, and in general upon professions with very few applicants. Preferable to this would be a provision obliging the Member States to guarantee that no applicant waits more than six months to take part in an aptitude test after being instructed to undergo one.
- 4.7 The amendment to Article 31(1) makes a general education of 12 years obligatory for training of nurses responsible for general care. The same applies for training of midwives under Article 40(2). The EESC notes that this must not lead to younger, less qualified people being denied access to training. It calls on the European Commission to take care to ensure that the high levels of quality required are commensurate with the demands of the profession in question.
- 4.8 Article 24(2) shortens the minimum period of basic medical training by a year from six to five years, whilst leaving the minimum number of training hours at 5 500. Even though the minimum number of training hours is left unchanged, shortening the minimum period to five years will force the training to be streamlined, which means that students will acquire less theoretical and practical knowledge. For the protection of patients, therefore, the minimum period of training should be left unchanged. Dentists consider five years and 5 000 hours to be appropriate.
- 4.9 **Chapter IIIA – Automatic recognition on the basis of common training principles**
- 4.9.1 Recognition on the basis of a common training framework or a common final examination is to be welcomed, because it promotes the mobility of service providers whilst also guaranteeing the quality of services by way of a uniform level of training.
- 4.9.2 In accordance with a procedure laid down in Article 58a, the Commission will specify a common set of knowledge, skills and competences as well as the qualifications which can be obtained under the common training framework (Articles 49a(3) and 49b(3)). However, this must not amount to lowering the level of qualifications to the lowest common denominator in the Union. The procedural requirements, the procedures and the criteria used by the Commission to determine the common set of knowledge, skills and competences must be stipulated in the Directive.
- 4.9.3 The quorum of Member States with which the set of knowledge, skills and competences must correspond (Article 49a(2)(c)), which is currently set at a third of Member States, is too small. It carries the risk that the minimum standards for the duration and quality of training will fall to the lowest common denominator. The quorum should be raised to at least 50% of Member States + 1. This will eliminate the risk of a minority of Member States forming a relative majority, and ensure that the common training principles are accepted.

- 4.9.4 In contrast with the previous system of common platforms, the Commission has an exclusive right of initiative in the process specified in Article 58a. The right of initiative for the common training principles should remain with the Member States or with professional associations or organisations representing their members at national or European level.
- 4.9.5 Article 55a makes it easier to have a remunerated traineeship completed abroad recognised in the trainee's country of origin. The EESC welcomes this provision, which will promote graduate mobility between Member States.
- 4.10 Under Article 57a(4), all time limits commence at the point when an application has been submitted to the point of single contact. Given the tight deadlines set in the Directive (see point 4.1.3 above), it seems that it will be very difficult for the responsible authorities to properly process applications. However, the EESC recognises the desire for compliance with the Services Directive.

Brussels, 26 April 2012

The President
of the
European Economic and Social Committee

Staffan Nilsson
