NOTICE TO MEMBERS

Subject: Petition No 0320/2021 by J.I.N.M. (Spanish), on behalf of 35 anonymous persons, on the recognition of professional qualifications within the EU

1. Summary of petition

The petitioner says that the Spanish Ministry of Health is implementing measures for entry to the profession of physiotherapist that infringe EU legislation, in that they do not recognise professional qualifications obtained in a study centre and in accordance with the programme in force in Portugal. In decisions on the 35 aforementioned cases, the Ministry uses various arguments to explain these refusals, such as that the teaching given there is not considered to be regulated education and training, or that the mandatory traineeships did not take place in a medical establishment and that, as a result, the students do not have the basic principles necessary to achieve their objectives. However, the Ministry requires the same compensation measures from them all, namely an aptitude test or a 24-month traineeship, something that the petitioner considers contrary to the proportionality principle.

The petitioner also says that the Ministry did decide favourably in the case of an application by a student with Portuguese nationality who has a professional qualification that is exactly the same as that of the others. It is his opinion that the right to professional freedom and the right to non-discrimination, both laid down in the Charter of Fundamental Rights of the European Union, are being breached here, as well as Article 45 (freedom of movement for workers), Article 56 (freedom to provide services) and Article 49 (freedom of establishment) of the TFEU and Articles 13, 14(1) and (5) of Directive 2005/36/EC on the recognition of professional qualifications.

2. Admissibility

Declared admissible on 24 June 2021. Information requested from Commission under Rule 227(6).
3. **Commission reply**, received on 27 September 2021

**The Commission’s observations**

As a preliminary remark, the Commission has received a similar complaint registered under CHAP\(^1\), which is currently under assessment.

From the information provided in the petition, the Commission understands that the professionals concerned are fully qualified to pursue the profession in Portugal. Therefore, Directive 2005/36/EC\(^2\) is applicable (see Article 1 in conjunction with Article 4(1) of the Directive). Here, the petitioner refers to the profession of physiotherapist, which falls under the so-called general system of recognition. In this case, the Directive provides for a set of recognition rules, allowing for a comparison of training and professional experience of the individual applicant and the training requirements in the host Member State that may lead to the imposition of proportionate compensation measures.

In the ambit of application of the general system, Article 13 of Directive 2005/36/EC provides that the host Member State shall permit access to an applicant seeking to pursue a regulated profession in its territory, under the same conditions as apply to its nationals, if they possess an attestation of competence or evidence of formal qualifications from another Member State. Nonetheless, the host Member State can, in accordance with Article 14(1) of the Directive, require compensation measures in duly justified cases. These compensation measures can be required when the training received by the applicant “covers substantially different matters” than those provided in the training of the host Member State or when the profession that the applicant wishes to pursue in the host Member State “comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant’s home Member State”. Article 14(4) explains the meaning of “substantial difference”: the relevant elements are the knowledge, skills and competences that are essential for the pursuit of the profession. Therefore, the host state authorities can only require a compensation measure where they can positively establish a substantial difference in the substance of the training and not in duration.

Where the competent authorities establish substantial differences on the basis of the elements provided in Article 14(4), they should give the applicant a choice between taking either an aptitude test or an adaptation period and adopt a duly justified decision elaborating on the substantial differences and reasons why those cannot be compensated by other qualifications acquired, having regard to the circumstances of each individual applicant. Lastly, when the petitioner refers to a specific case in which similar qualifications have been recognised by the Spanish authorities, it should be borne in mind that the host Member State is required to assess a professional qualification on a case-by-case basis.

**Conclusion**

As already mentioned, the Commission has been informed, through a CHAP complaint (2021)01242, of the situation at stake in this petition, and is currently assessing that complaint.

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\(^1\) CHAP = the central registry where the Commission records complaints and enquiries.

in the context of the above-mentioned rules. In addition, where the Commission finds evidence of consistent general practice in violation of EU law, it may decide to launch an infringement procedure."