



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a Directive of the European  
Parliament and of the Council on the recognition of professional qualifications**

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**1 - BACKGROUND**

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|---|--------------------|
| Proposal transmitted to the European Parliament and the Council (document COM(2002)119 final – 2002/0061(COD) on: | 7 March 2002.      |
| European Economic and Social Committee opinion delivered on:  | 18 September 2002. |
| Parliament opinion (first reading) delivered on:  | 11 February 2004.  |
| Amended proposal transmitted on:  | 20 April 2004.     |
| Common position adopted on:   | 22 December 2004.  |

**2 - AIM OF THE COMMISSION PROPOSAL**

Consolidation of the existing directives, facilitation of the provision of services, simplification of the existing rules and improved information and advice for citizens.

**3 - COMMENTS ON THE COMMON POSITION**

**3.1 General comments**

The Commission was able to support the political agreement of the Council of 18 May 2004, which essentially retains the Commission proposal as amended by the amended proposal. The political agreement has been incorporated into the common position adopted on 23.12.2004.

The amendments made by the common position concern in particular the provision of services, the formal reorganisation of the levels of professional qualification underlying the general regime and the reintroduction of provisions from the *acquis communautaire* which were not included in the Commission proposal.

## **3.2 Amendments by the Parliament incorporated into the common position**

### *3.2.1 Amendments integrated into the amended proposal and the common position*

*Recital (36) – Amendment 31:* exclusion from the scope of the Directive of activities of professions which are directly and specifically connected, even occasionally, with the exercise of official authority. The text stating that the Directive is without prejudice to the application of Article 39(4) and Article 45 of the Treaty has been deleted, since this Recital cannot affect the conditions of application of the Treaty as defined by the Court. This Directive therefore remains applicable if a Member State does not reserve to its nationals under Article 39(4) of the Treaty access to activities carried out in the exercise of official authority.

*Recital (37), Articles 2 and 5 – Amendment 55:* exclusion of the profession of auditor from the scope of Title II of the proposed Directive on the freedom to provide services. The common position refers explicitly to the profession of auditor in Recital (37) and states, in broader terms, that the Directive is without prejudice to the application of specific provisions in Community law directly linked with the recognition of professional qualifications.

*Article 4 – Amendments 39, 141 and 189:* migrant professionals are made subject to the same conditions for exercising a profession as the nationals of the host Member State.

*Articles 5, 6 and 7 – Amendment 87:* the common position is close to the existing system with regard to the provision of services by doctors, thus tallying in substance with Amendment 87.

*Article 9 – Amendment 53:* obligation on the service-provider to provide the recipient of the service with proof that he is insured for professional liability. Otherwise, the obligations to provide the recipient of the service with information have been relaxed; this is consistent with the strengthening of the control exercised directly by the host Member State on the service-provider.

*Article 11 – Amendments 192, 193, 216 and 217:* the text of the amended proposal has been incorporated to a large extent with regard to the definition of the levels of qualification. The common position stipulates in Article 11(4b) that the types of training with a special structure which are listed in Annex II refer only to the cases in which the profession is regulated in the Member State concerned, which is a proper reflection of the *acquis*. The other differences are purely editorial: the fifth level has been transferred to Article 13(3), and the definition of regulated training has been moved to Article 3(1d).

*Article 15 and Recital (13) – Amendments 12, 68, 70 and 185:* the common position incorporates in substance the amended proposal, stating that Article 15 does not affect the competence of Member States in regulating the professions and organising education and professional training systems. The common position also incorporates the amended proposal with regard to the representativeness of professional associations and organisations which are competent to submit common platforms (the common position refers to representativeness at national and European level).

*Articles 17 and 18 – Amendment 207:* the common position has integrated for a reduced list of activities the Amendment aimed at increasing the duration of professional experience required for automatic recognition from five to six years.

*Article 22 - Amendments 81, 86, 94, 101, 159 and 160:* for all professions with coordinated training, part-time training is authorised without being considered exceptional and on the basis of simple and uniform wording. The role of continuing training is recognised for the same professions. The content of the amended proposal on these two points has been incorporated.

*Articles 21, 24, 31, 34, 38, 40, 44, 46 and 47 - Amendments 80, 88, 90, 93, 95, 97, 154 and 161:* the text of the amended proposal has been incorporated and the lists of knowledge and skills for professions that have coordinated minimum training conditions have been transferred from the annexes to the body of the Directive without any major changes.

*Articles 42 and 45 – Amendments 96 and 162:* the amended proposal has been incorporated and the lists of professional activities for midwives and pharmacists have been transferred from the annexes to the body of the Directive without substantive changes.

*Article 50 – Amendments 8, 62 and 63:* the common position goes beyond the amended proposal insofar as it allows the host Member State to carry out certain checks with the home Member State to prevent fraud for training carried out under a franchise agreement. As a result, the common position recognises that training qualifications acquired under a franchise agreement are, as a matter of principle, covered by the Directive.

*Article 56 - Amendments 32, 89 and 110:* the common position incorporates the approach of the amended proposal and stresses the importance of the exchange of information between the competent authorities, particularly in cases of specific serious circumstances with consequences for the practice of the professional activities concerned. This provision is under the title on administrative cooperation, and is therefore applicable in the context of establishment and the provision of services.

*Recital (28) – Amendment 26:* the amended proposal incorporates Amendment 26 with regard to the transparency of the network of contact points and clarifies the role of contact points. This has been adopted by the common position, which also states that the designation of a single contact point does not prevent Member States from setting up several offices.

*Commission statement on the creation and operation of a group of experts – Amendment 181:* in its statement annexed to the common position (see below), the Commission undertakes to set up a group of experts and clarifies the role of professional associations within a flexible consultation mechanism.

### *3.2.2 Amendments incorporated into the amended proposal, but not taken over in the common position*

*Article 2 – Amendment 34:* the common position does not expressly state that the fact that a Member State recognises under its national rules a qualification acquired in a third country does not mean that the beneficiary of that recognition can by extension perform the professional activity in question in another Member State; however, this is acceptable insofar as this lack of extension is clearly indicated in Article 3(3) of the proposed Directive.

*Articles 4 and 52 – Amendments 112 and 139:* the common position has deleted the reference to the possibility for the host Member State to include, in the event of partial access to the profession, a suitable reference in the professional title. This is the result of the deletion of Article 4(3) which addressed partial access to the profession as defined on the territory of the

host Member State. This is acceptable to the Commission insofar as case-law provides adequate guarantees for migrants in this respect (“Säger” judgment, 25.7.91 – Case C-76/90).

*Recital (7b) of the amended proposal – Amendments 9 and 58:* the common position does not follow Recital (7b) of the amended proposal, stipulating that a migrant may not use the recognition of his professional qualifications by a host Member State to obtain in his home State different rights to those resulting from professional qualifications acquired in that State, without having obtained additional qualifications in the host State. However, this practice has always been considered impermissible under the directives on the recognition of qualifications (see in particular the Commission’s answer to written question No 512/03 from Mr Zappalà).

*Article 14 – Amendment 151:* the common position does not follow the amended proposal with regard to the rules on the procedure for derogation from the requirement that the migrant be given a choice between an adaptation period and an aptitude test. However, the common position (re)introduces an automatic derogation from the requirement that the migrant be given a choice in certain cases. This is acceptable for the Commission insofar as it does not represent a step backwards in terms of the *acquis communautaire*.

*Article 21(1) – Amendments 152 and 153:* this amendment introduced by the amended proposal was intended to clarify the text, and has not made any fundamental change to the principle of automatic recognition set out in Article 21.

*Article 56 – Amendments 52, 116 and 117:* the common position does not adopt the term “competent bodies” as a substitute for “competent authorities” in the amended proposal. However, the designation of authorities/bodies vested with authority with regard to the recognition of professional qualifications is a matter of internal organisation for each Member State and the designation of bodies which are not authorities is not therefore excluded.

*Recital (32) – Amendment 29:* the amended proposal specifies that administrative failings attributable to a Member State do not justify deferment of the transposition of the Directive into national law. Although this Recital is not included in the common position, it reiterates a principle established by the Court and applicable in any event.

### 3.2.3 *Points of divergence between the amended proposal and the common position*

*Recital (5) and article 5 – Amendments 4 and 45:* Amendments 4 and 45 deleted the reference to a presumption based on a 16-week period to distinguish between the provision of services and establishment. The common position has incorporated the Parliament’s amendments and deleted the reference to a presumption based on the time criterion of sixteen weeks.

*Article 6 and Recital (8) – Amendments 5, 141, 143 and 189:* the common position is in keeping with Amendments 5, 141 and 189, since it enables the Member States to require *pro forma* registration for all regulated professions in order to facilitate the application of the rules of conduct applying on their territory, as set out in Recital (8) and Article 5(3). This is acceptable insofar as the common position states that it is the responsibility of the competent authority of the host Member State to send a copy of the service provider’s declaration to the professional body, thus preventing any additional administrative burden on the provider.

*Articles 7 and 8 and Recital (7) – Amendments 5, 6, 50, 136, 145 and 146:* the common position is in keeping with the wishes of the European Parliament that the availability of

information for the host Member State be guaranteed and, in line with Amendment 5, states that the declaration must be addressed by the service provider directly to the competent authority of the host Member State for all regulated professions. This initial declaration must be accompanied by a certain number of documents and updated annually in a simpler form (only the proof of professional insurance must also be renewed annually). The administrative cooperation set out in Article 8 is limited, according to the common position, to enabling the host Member State to check whether the information it has is precise. The declaration in advance referred to in Article 7(1) and (2) of the common position does not have the effect of postponing performance of the services, which, in substance, is in keeping with Amendments 146 and 50.

Amendments 6 and 136 introduced a reference to the proof of professional qualifications/skills of the service provider. The common position is in keeping with these Amendments, providing in Article 7(4) the host Member State with the possibility of carrying out an *ex ante* check of the service provider's professional qualifications, but only for professions with implications for public health or safety that do not have coordinated minimum training conditions and only insofar as this check is in proportion to the objective of preventing serious damage to the health or safety of the recipient of the service due to a lack of professional qualifications.

The option for the host Member State of exercising control over the services provided on its territory is acceptable to the Commission insofar as there is provision in a Recital (and in a statement by the Commission appended to the Council minutes, see annex) for the periodical review of the need for such a control in the light of the progress made in administrative cooperation.

*Article 21 – Amendments 75 and 77:* in Article 21(7) the common position introduces notification to the Commission and to the other Member States for diplomas of architects. In an attached statement, the Commission undertakes that where there is doubt as to whether a diploma of architects meets the training conditions of Article 46 of the Directive to submit it to the group of experts that it will set up in order to obtain the necessary expertise to withdraw its publication where necessary. This solution is acceptable insofar as it is closer to the guarantees of established law with regard to the publication of diplomas for professions which have coordinated minimum training conditions.

*Articles 21, 26, 35 and 37 and Recital (17) – Amendments 16, 134, 135, 156, 158 and 179, and also Amendments 127, 132, 133, 178rev/2, and 215:* the common position sets out in Recital (17) and Articles 21(1) and 26 the principle of automatic recognition for medical and dental specialisations common to 2/5 of the Member States. Article 35 therefore takes over the existing coordinated minimum training conditions for specialist dental practitioners, and the acquired rights referred to in Article 37 are adjusted. The related annexes are amended only insofar as they incorporate existing law as updated since the adoption of the proposal by the Commission. This approach is acceptable since automatic recognition is extended without affecting the simplification of the system.

*Article 21 - Amendments 18, 104, 162 and 163:* the common position reintroduces, in Article 21(4), a derogation from the automatic recognition of evidence of training as a pharmacist in cases where a new pharmacy is being established. The Commission can accept this provision since it already exists in current legislation.

*Article 53 – Amendment 114:* the common position, in deleting the references in the amended proposal to the role of the Member States with regard to knowledge of languages and to the express ruling out of systematic examination of such knowledge, tallies with the position of the Parliament. The Commission can accept this, insofar as the provision must in all events be interpreted in the light of case-law.

*Article 55 – Amendment 115:* the common position adopts existing legislation and limits to the professions of doctor and dental practitioner the obligation of Member States not to require migrants to complete a preparatory period of in-service training and/or a period of professional experience in order to be approved by a health insurance fund. The Commission can accept this approach insofar as the provision concerned adopts the legislation in force.

### **3.3 New provisions**

#### *3.3.1 Provisions which were not the subject of amendment and which were reformulated in the common position, or which are an extension of the provisions already set out in the initial proposal*

*Article 10:* the common position clarifies the Commission proposal with regard to the cases of subsidiary application of the general regime of recognition, listing the specific situations concerned which are currently governed either by ad hoc rules, provisions of the Treaty, or the general system of recognition. This clarification does not involve any substantive amendment.

*Article 15:* the common position clarifies the concept of common platforms and the way in which the substantial differences to be overcome are identified. It also expands the possibility of submitting common platforms to the Member States. These clarifications follow the spirit of the proposed Directive, the aim of which was to make the recognition procedure more automatic, since the platform provides a guarantee that applicants who have met the criteria set up in this way are compensated in advance for any substantial differences between the training completed and the training requirements of the host Member State. The common position also adds a new paragraph 6 to Article 15, requiring the Commission to submit to the European Parliament and the Council a report on the operation of this Article and, if necessary, appropriate proposals for amending this Article.

*Articles 20, 25 and 26:* the common position lays down, in Articles 20 and 25(5) and the second subparagraph of Article 26, a framework for the delegation of powers with a view to the amendment of Annexes IV and V, point 5.1.4.

*Article 51:* the common position reintroduces in Article 51(2) the four-month period given to the host Member State for recognition in the case of professions that do not have coordinated minimum training conditions.

#### *3.3.2 New substantive provisions*

*Article 3:* the common position is in line with the *acquis* when it reintroduces in Article 3(1) and (2) a number of definitions which are already in existing directives. The definition of “regulated profession” is transferred from Article 11 to Article 3(1).

*Articles 11 and 13:* although the Commission had proposed that Annexes II and III (corresponding to the current Annexes C and D of Directive 92/51/EEC) should be indicative,

the common position introduces in Article 11(4b) and the third subparagraph of Article 13(2) in line with the *acquis* a comitology procedure in accordance with Council Decision 1999/468/EC. The Commission feels that until the Directive is adopted the amendments to the annexes should follow the specific procedures currently in force.

*Article 14:* the common position reintroduces in Article 14(3) some elements of the *acquis* (automatic derogation from the migrant's choice for professions requiring precise knowledge of national law and in which the provision of advice and/or legal assistance constitutes an essential aspect; special system of automatic derogation for activities covered by Directive 1999/42/EC), and the possibility of automatic derogation from the migrant's choice for cases not currently covered by the general system of recognition and which, by virtue of Article 10 of the proposal, will in future be covered by the general regime.

*Articles 23, 33, 37, 39, 43 and 49:* the common position introduces the provisions relating to acquired rights of the Accession Treaty of Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Slovakia and Slovenia.

*Articles 33 and 43:* Poland has adopted national legislation enabling nurses responsible for general care and midwives whose training does not meet minimum training conditions to upgrade their training level through supplementary training. The common position adds derogations resulting in acquired rights to ensure automatic recognition for members of the profession who have completed this supplementary training.

*Article 45:* the common position reintroduces in Article 45(4) the derogation currently applied to Luxembourg with regard to the recognition of professional experience acquired in another Member State for the purposes of granting a State concession to operate a pharmacy open to the public.

*Article 59:* in Article 59(2) the common position stipulates that the Commission will draw up a report on the implementation of this Directive every five years.

#### **4 - CONCLUSIONS**

The Commission takes the view that the common position reflects overall the key elements of its initial proposal and of the amendments of the European Parliament as set out in its amended proposal. With regard to the provision of services, the Commission regrets that the common position does not further facilitate the conditions imposed on the service provider, but accepts the principle of control by the host Member State. The Commission finds that in view of the current level of administrative cooperation between the Member States, the common position strikes an acceptable balance between making the provision of services easier and enabling the host Member State to verify the services provided on its territory. The Commission therefore supports the common position adopted by the Council by qualified majority.



## Annex

### Statement by the Commission on the freedom to provide services

The Commission considers that the need for specific requirements for the provision of services by qualified professionals, including the notification of a declaration to the Member state where the service is to be provided, as agreed by the Council, shall be reviewed periodically in the light of the progress made in establishing a Community framework for administrative cooperation between Member States. Furthermore this agreement should not detract from efforts to realise the significant potential of the internal market in services for improving the EU's competitiveness.

### Commission Statement on the creation and the operation of an Expert Group, in particular in the context of Articles 58, 15 and 21(7)

The Commission intends to create an Expert Group, the role of which should be to provide information and advise the Commission on all issues relevant to the operation of the Directive. In particular, it is envisaged that the Group should have the opportunity to discuss matters which are under consideration by the Commission concerning the exercise of powers delegated to it by the Community legislator before any proposal for action is made to the Committee created under the Directive.

The Expert Group should comprise members appointed by the Commission from competent authorities in the Member States, without prejudice to the possibility for the experts where appropriate to be accompanied by other participants with a particular expertise on specific issues on the agenda.

The Expert Group should be the framework for a flexible, modern method of consultation with European representative bodies of professional associations and educational institutions, in particular with respect to the professions subject to minimum co-ordination of training leading to automatic recognition of titles. Where suggestions for action, communicated by interested parties, appear on the agenda of a meeting, representatives of these interested parties may be invited to present the suggestions made and to answer questions.

The Expert Group will also be consulted on the common platforms submitted to the Commission in accordance with article 15(2) of the Directive with the purposes of obtaining the views of the experts from those Member States which do regulate the profession subject matter of the platform.

If a Member State has serious doubts as to whether an evidence of formal qualification of architect, published in accordance with Article 21(7) of the Directive, meets the criteria laid down in Article 46 of the Directive, the Commission intends to bring the matter before the Expert Group. The Expert Group will provide the Commission with the expertise necessary for the Commission to withdraw if appropriate the relevant evidence of formal qualification of architect.