



EUA Briefing Note on the Commission's proposed amendments to Directive 2005/36/EC on the Recognition of Professional Qualifications

1 In late December 2011, the European Commission published **proposals to amend Directive 2005/36/EC**. The full text of COM(2011)883 (final) is available at http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf

2 The Directive had by then been in operation for five years and a review was under way. Extensive consultation took place throughout 2011 and, together with comprehensive ex post impact assessments undertaken by Competent Authorities, formed the basis of a set of proposed amendments. These are intended to chime with the **re-launch of the Single Market**, deemed by the Commission to be a precondition of economic recovery. They are designed to meet a number of policy imperatives:

- to raise the level of cross-border service delivery
- to increase cross-border professional mobility, particularly where patterns of demand have been significantly changed by demographic factors, notably in healthcare
- to reduce the level of professional protectionism
- to bring the Directive into closer alignment with Directive 2006/123/EC on Services in the Internal Market

3 The proposals also demonstrate the Commission's awareness of the Bologna Process and of the structural features of the European Higher Education Area [EHEA]. They are significant in this regard. This briefing note focuses on this aspect and is directed in the first instance to **higher education institutions and to national rectors' conferences** in EU Member States and in EEA countries. The Commission's own press release and FAQ sheet, aimed at a wider audience, are available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1562&format=HTML&aged=0&language=EN&guiLanguage=en> and at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/923&format=HTML&aged=0&language=EN&guiLanguage=en>

4 The proposals impinge on a range of **core HEI activities** – strategic management, curriculum design, learning and teaching, quality assurance, employability provision and careers counselling – as well as on the activities of related external agencies and stakeholders. The HE-relevant proposals are summarised under the following headings:

- updating the sectoral professions: medical doctor, general care nurse, dentist, veterinary surgeon, midwife, pharmacist, architect
- continuing professional development (CPD)
- recognition of prior learning (RPL)
- accreditation and quality assurance
- the 'general system'
- 'common training framework'
- mutual evaluation by Member States
- remunerated traineeships
- 'partial access'
- 'regulated education'
- The European Professional Card (EPC)

Many of the proposed changes depend on the operation of the **new comitology** brought in under the Treaty of Lisbon. This is dealt with in section 16 below.

5 **Updating the sectoral professions.** The Commission has responded to anxiety regarding ambiguities in the existing Directive, to diminishing confidence in its specifications of bodies of knowledge, and to doubts surrounding the efficacy of the notification of new qualifications. It has also included an option to use ECTS as a measurement of full-time course duration; this is something which the European Parliament urged in 2003, but which the Commission rejected at the time.

5.1.1 **Medical doctor.** Revised Article 24.2 states that basic training shall consist of 'at least five years of study' *and* 'at least 5,500 hours of theoretical and practical training'; 'and' here replaces 'or', which had proved contentious and confusing. The five years 'may be expressed' as ECTS points.

5.1.2 A new Article 24.4 and an amended Article 25.5 allow the Commission to use delegated acts (for the new comitology, see section 16 below) to alter the manner in which the adequacy of knowledge, the sufficiency of understanding, and the adaptation of training courses to scientific progress are established. Delegated acts may also be used to incorporate into Annex V **new medical specialties** which are common to at least one third of Member States (revised Article 26).

5.2.1 **General care nurse.** An amended Article 31.1 increases from ten to twelve years the general education requirement for admission to training courses. This proposal does not go so far as to make general care nursing a graduate profession.

5.2.2 A new Article 31.3 cites the **minimum course duration** as 'at least three years of at least 4,600 hours', thus eliminating the 'or' as in para.5.1.1 above. There is no mention of ECTS – because not everywhere is nursing located in higher education – nor any mention of EC-VET, which has not yet reached the same stage of development as ECTS.

5.2.3 Just as for medical doctors, a new Article 31.7 and an amended Article 31.2 allow the Commission to use **delegated acts** to alter the manner in which the adequacy of knowledge, the sufficiency of understanding, and the adaptation of training courses to scientific progress are established.

5.3.1 **Dentist.** An amended Article 34.2 allows the use of ECTS to confirm the minimum duration of five years; an amended 35.2 does likewise for 3-year specialist courses.

5.3.2 A new 34.4 echoes the provision regarding medical doctors, and which allows the Commission to use comitology to modify the manner in which the adequacy of knowledge, the sufficiency of understanding, and the adaptation of training courses to scientific progress is established. A new 35.4 similarly allows for delegated acts to increase the number of recognised dental **specialties**.

5.4 **Veterinary surgeon.** A new Article 38.1 allows the 5-year courses to be expressed as ECTS and, together with a new 38.4, enables the new comitology to specify how the adequacy of professional knowledge is to be ascertained.

5.5 **Midwife.** A new Article 40.2 raises the prior general education requirement from 10 to 12 years, in line with the general care nurse. An amended 40.1 and a new 40.4 allow the new comitology to be triggered. In respect of course duration, an amended 41.1 removes the ambiguity noted elsewhere; as in the case of the general care nurse, and for the same reason, there is no mention of ECTS.

5.6 **Pharmacist.** A new Article 44.2 enables the use of ECTS and, by way of clarification, requires that the 6-month traineeship follow the 4-year training course. It also, together with a new 44.4, foresees delegated acts to control the measure of the adequacy of knowledge. A new 45.4(h) adds a further function to the list of those to be carried out by the qualified pharmacist: 'to report adverse reactions of pharmaceutical products'.

5.7 **Architect.** An amended Article 46.1 makes it clear that the six-year course of training may consist of 4+2 or 5+1 (full-time study + remunerated traineeship); a new 46.3 stipulates that the traineeship must follow the period of study. A new 46.4 contains the comitology provision.

6 **Continuing professional development (CPD).** Although a strong current of opinion wanted the amended Directive to render CPD compulsory, for the sake specifically of patient safety, a new Article 22.2 requires only that Member States submit quinquennial reports on the

arrangements that they have made for CPD – in all the sectoral professions except architecture. The Commission conceives of CPD as a manifestation of **lifelong learning**, which it defines as follows: ‘all general education, vocational education and training, non-formal education and informal learning undertaken throughout life, resulting in an improvement in knowledge, skills and competences.’ (new Article 3(1))

7 **Recognition of prior learning (RPL)**. This term, current in the EHEA and a key element of lifelong learning, is not used in the proposals. RPL featured in Directive 2005/36/EC, but only in respect of the partial exemption allowable to general care nurses who had already covered elements of the required training in previous courses (Article 31.3). This facility is marginally extended in the new proposals. A new Article 25.3(a) allows Member States to grant partial exemption in courses of specialist (but not basic) training for medical doctors.

8 **Accreditation and quality assurance**. Automatic recognition covers the sectoral professions listed above – but only if the courses of training are listed in Annex V of the Directive. The notification of new courses by Member States has become problematic in recent years, as learning and teaching methods and course content have diversified. In an attempt to stem the slippage, the Commission proposes to require Member States to nominate an appropriate body to take responsibility for the accurate **notification of compliant courses**. This requirement is implied in amended Article 8.1 and made explicit in new 21a.2. Para.6.4.4 of the Legislative Financial Statement accompanying the proposal which makes it clear that the rate of notification will be used as a performance indicator at the time of implementation.

9 **The ‘general system’**. For qualifications not subject to automatic recognition (i.e. the formal qualifications attaching to all regulated professions other than the seven sectoral professions featured in para.5 above), Directive 2005/36/EC provided a 5-level grid (old Article 11).

9.1 The **5-level grid** was used by Competent Authorities to determine whether an incoming professional was adequately qualified and whether an adaptation period or an aptitude test was an appropriate compensation measure. If the professional’s attainment was more than one level lower than that required by the host Member State, the application could be refused. In the new proposals, this facility is withdrawn except where higher education qualifications are concerned.

9.2 The new proposals also address the lack of clarity in the current Directive’s definition of the two **higher education levels (d) and (e)**. Old Article 11 defined (d) as ‘at least three and not more than four years’ duration’ and (e) as of ‘at least four years’ duration’, implicitly allowing Member States to assign 4-year courses to either (d) or (e). Amended Article 11, however, makes clear that (e) covers courses of ‘more than four years’ duration’. It also allows the use of ECTS to express duration.

9.3 The compensation measures could be required by a host Member State if it found that **‘substantially different matters’** rendered

recognition difficult. Old Article 14.4 describes these as 'important differences in terms of duration or content'. New Article 14.4, however, deletes 'duration' but retains 'content'. New article 14.5, moreover, places on the host Member State the burden of determining 'whether the knowledge, skills and competences acquired by the applicant in the course of his professional experience and through lifelong learning [...] is of a nature to cover, in full or in part, the substantially different matters [...]'. New 14.6 goes further: the host Member State must show, when deciding to impose a compensation measure, how the professional experience and lifelong learning fail to make up for the discrepancy in course content.

10 **The 'common training framework'**. Directive 2005/36/EC (Article 15) foresaw the development of common platforms, which would facilitate curricular convergence in the professional qualifications located in the General System. This provision was never utilised and has been abandoned. In its place is proposed the 'common training framework' (new Chapter IIIA, Article 49a), designed to allow groups of Member States – at least one third of the total number – to agree curricula based on 'common sets of knowledge, skills and competences'. A significant innovation is that such frameworks will be referenced to the (academic) European Qualifications Framework for lifelong learning (EQF), rather than to the 5-level grid.

11 **Mutual evaluation by Member States**. The Commission proposes that Member States be obliged to account for the extent to which they regulate professional service delivery (Recital 27 and new Article 59 'transparency') – both to the Commission and to each other. A similar mutual evaluation exercise was carried out in 2011 in the framework of the Services Directive.

12 **Remunerated traineeships**. The Commission proposes to enshrine in the Directive the ECJ ruling (case C-313/01 *Morgenbesser*), which allows academically qualified migrants – for example, in pharmacy and architecture – to undertake their post-course traineeships in another Member State and to enjoy full recognition. Amended Article 3(j) and new 55a refer.

13 **'Partial access'**. A new Article 4(f) sets out the conditions under which partial access to professional activity may be granted. This, too, follows rulings of the ECJ, in this case on matters relating to mobility between Member States in which professions are segmented into sub-specialisms in different ways.

14 **'Regulated education'**. The current Directive allows a temporarily mobile professional to move from a Member State in which her/his profession is regulated to one in which it is not. The professional, however, has to show evidence of having undertaken at least two years of 'regulated education or training' (i.e. which is of direct professional relevance, cf. Directive 2005/36/EC Article 3(e)). New Article 57 requires Member States to maintain an on-line list of such training courses. Regulated education also features in the 5-level qualification system used in the General System (see above, para.9, and amended article 11(c)(ii)).

15.1 **The European Professional Card (EPC).** The EPC (new Article 4(a-e)) is the *pièce de résistance* of the Commission's proposals. Put forward at the insistence of Commissioner Barnier, it will underpin the expansion of DG MARKT's successful Internal Market Information system [IMI]. Optional for the migrant professional, but mandatory for the national Competent Authority, it will allow electronic certificates of competence to be exchanged between regulatory bodies in support of legitimate professional mobility.

15.2 As far as higher education is concerned, the EPC is of relevance to careers counselling services and to the **ENIC-NARIC** agencies, some of which will be designated as the single national points of contact supporting the future implementation of the two Directives (Professional Qualifications, and Services). The ENIC-NARIC networks will also be key to easing the interface between recognition of academic and recognition of professional qualifications in the European Area of Recognition (EAR).

16 **The new comitology.** Where next? The Commission's publication of its proposals constitute the first stage of the 'ordinary legislative procedure', previously known as co-decision, in which Council and Parliament have roles of equal importance. The EU institutions hope that the procedure will advance rapidly: Commission and Parliament have liaised closely throughout the period of review and consultation, while the incoming Danish presidency is committed to progressing the Single Market Act (of which professional qualifications is a component) as far as it can.

16.1 Thereafter, once transposition into Member State legislation has been completed, implementation will begin. New comitology developed to support the Treaty of Lisbon effectively replaces, albeit gradually, the 'regulatory procedure by scrutiny' (RPS), which allowed the Commission to modify 'non-essential' aspects of Directive 2005/36/EC (i.e. changes that did not distort its underlying logic) while it was in force. The new procedure is made up of **delegated acts** and **implementing acts**.

16.2 How will it work? The proposals envisage a **committee procedure** (new Article 58), composed of Member State representatives and chaired by a non-voting member of the Commission. The Committee's function will be to oversee, on behalf of Member States, the Commission's management of the implementing acts. The detail of the procedure is set out in Regulation 182/2011 article 4 and can be viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0013:0018:EN:PDF> In the proposals, however, the Commission's use of implementing acts is mainly confined to the procedures supporting the proposed alert mechanism, set up to facilitate the communication of decisions regarding professional disqualification (new Article 56a).

16.3 The **delegated acts** (such as those mentioned in para.5 above) are much greater in number. The full list is set out in Recital 24 and their mode of operation described in new Article 58a. The mode of operation, however, is described only in formal terms. Article 58a is addressed to the

legislative bodies and is to be understood in the context of agreed and established inter-institutional procedures; it has not been drafted for the lay reader.

16.4 The legislators have power of veto, on a case-by-case basis and within a specified timeframe, over the proposed scope, duration and conditionality of the delegated acts. In drafting the delegated acts, the Commission will therefore seek the view of **Expert Groups**. Article 59 'Consultation' of the current Directive, which obliged the Commission to consult relevant professional bodies, has been deleted.

Please feel free to forward this briefing to other interested parties.

<http://www.eua.be/eua-work-and-policy-area/building-the-european-higher-education-area/bologna-and-professional-qualifications.aspx>

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