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COMMISSION STAFF WORKING PAPER
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**amending Directive 2005/36/EC on the recognition of professional qualifications and
Regulation on administrative cooperation through the Internal Market Information
System**

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1. INTRODUCTION

The Professional Qualifications Directive¹ defines the conditions for the recognition of professional qualifications in cases of establishment in another Member State as well as the conditions for moving to another Member State on a temporary basis.

The modernisation of the system of recognition of professional qualifications is one of the 12 levers of the Single Market Act aiming to create growth and boost confidence. It is based on a thorough evaluation of the Directive conducted between March 2010 and May 2011.

2. SUBSIDIARITY

The rules governing the recognition of professional qualifications are laid down in Directive 2005/36/EC on the recognition of professional qualifications. Changes to this acquis imply the modification of this Directive but not a new Directive.

3. OBJECTIVES

Based on the analysis of the problems presented in the next section, the main objectives of the initiative are to facilitate the mobility of professionals and the intra-EU trade in services, address the challenge of filling high-skill jobs and offer more possibilities for job seekers.

4. PROBLEM DEFINITION, POLICY OPTIONS AND THEIR IMPACTS

The identification of the problem areas derives mainly from the outcome of the evaluation and from the reactions to the Green Paper the Commission issued on 22 June 2011.

4.1. Information and e-government for citizens

Professionals seeking the recognition of their qualifications still experience difficulties in identifying the right competent authority and the documents they need to submit.

Another issue concerns the limited use of electronic means for completing recognition procedures. In particular, health professions and job seekers do not benefit from the facilities offered by the Points of Single Contact (PSC) set up in the context of the Services Directive. The impact assessment identified 4 potential options: 1). No action at EU level; 2). Strengthen the national contact points; 3). Member States should provide a central online point to access information and complete recognition procedures; 4). Extend the scope of the PSC.

Option 4 is the preferred option as it foresees that all information and procedures must be made available by Member States through the PSC, to which professionals are the most likely to revert to.

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p.22)

4.2. Efficiency of recognition procedures

4.2.1. Length of recognition procedures

The Directive foresees specific deadlines for processing of recognition requests (3 or 4 months). These deadlines do not seem to be adapted to the needs of the labour market. Moreover, it appears that they are often not respected. The increasing use of the Internal Market Information System (IMI) has facilitated the exchange of information between competent authorities but does not seem to have accelerated the procedures for citizens.

Four different options are examined: 1). No policy change; 2). Stronger enforcement by the Commission in individual cases; 3). Shorten the deadlines in the Directive for all professions; 4). Involve the home Member State and create a European professional mobility card.

Option 4 should be preferred since it addresses the problem upstream and creates favourable conditions to accelerate the recognition procedure. It foresees stricter deadlines but provides the necessary instruments (professional card) to meet them. The option requires limited investments from the Commission and would have positive impact on the recognition costs in Member States. However, it could require additional efforts from some Member States.

4.2.2. Justification and organisation of compensation measures

Problems in this area concern mainly the lack of justification of the decisions taken by the competent authorities and the organisation of the compensation measures.

The impact assessment sets out the following options: 1). No policy change; 2). Develop comprehensive guidelines on the use and organisation of compensation measures; 3). Optimise the use of compensation measures; 4). Option 3 and ensure regular organisation of compensation measures.

The conclusion is that Option 4 is the most effective since it addresses all identified problems.

4.2.3. Absence of common platforms

Common platforms were introduced in order to facilitate the implementation of the general recognition system. Despite attempts at achieving it, no common platform has so far been introduced.

The impact assessment analyses the following options: 1). No action; 2). Deleting the concept of common platforms; 3). Revising the concept of common platform; 4). Harmonising minimum training requirements for new professions.

Option 3 offers the most effective solution to professionals who will obtain the recognition without compensation measures.

4.3. Functioning of the system of automatic recognition

4.3.1. Notification of new diplomas

Evidence from the evaluation demonstrates that the procedure for notifying and examining new diplomas in architecture is considered burdensome. Moreover, the minimum training

requirements for the 6 professions in the health sector, mandatory for all Member States, may not always be respected on the ground.

The impact assessment identified the following policy options: 1). No action; 2). National compliance function; 3). EU-level compliance body.

It concludes that Option 2 should be preferred as it would create better conditions for more timely notifications of diplomas, ease the burden associated with the examination of diplomas and ensure the respect of the minimum training requirements.

4.3.2. Adjustments of the minimum training requirements

The minimum training requirements defined in the Directive do not necessarily reflect scientific and technical progress and the recent educational reforms.

a). Clarification of minimum training periods for doctors, nurses and midwives: the minimum duration of the training is expressed in terms of years or training hours. This gave rise to diverging interpretations whether the two criteria constitute two options or are cumulative. The following options are considered: 1). No action; 2). Exclude one of the two criteria; 3). Combination of the two criteria and adaptation of the number of years for doctors; 4). Option 3 and introduce a reference to ECTS (European Credit Transfer and Accumulation System).

The preferred option is Option 4, as it clarifies the legal provisions (number of years and hours apply together) and offers the necessary flexibility for doctors (number of training hours to be distributed over at least five years).

b). Admission requirements for nurses and midwives: the admission requirement for nurse and midwifery training is currently minimum 10 years of general education. Considering the evolution of these professions, stakeholders argued that the training should be raised to 12 years of general education as it is already the case in 24 Member States. The following options are examined: 1). No action; 2). Require 12 years for both professions; 3). Update the requirement only for midwives; 4). Require 12 years or equivalent for both professions and foresee a transition period.

The preferred option is Option 4. It enables Member States to educate more skilled and independent nurses and midwives and maintains trust in nurse and midwife qualifications obtained in an EU Member State.

c). Opening up new pharmacies: a derogation adopted in 1985 allows Member States not to give effect to the recognition of a pharmacist's qualification for the setting up or management of new pharmacies. This is a discrimination against EU citizen. The impact assessment analysed the following options: 1). No action; 2). Repeal this provision. Option 2 is the preferred option as it ends the existing discrimination based on a foreign qualification.

d). Minimum training requirements for architects: they no longer reflect the prevailing standard in architectural education. Moreover, requirements for fully qualifying as an architect, notably practical experience, are not covered by the Directive. The following options are considered: 1). Do nothing; 2). Increase minimum duration of training from 4 to 5 years; 3). Increase duration to 5 years and include supervised practical experience of 2 years; 4). Set the training of architects to 6 years, consisting of minimum 4 years of university training and minimum 1 year of practical experience.

Option 4 is preferred since it brings the Directive's requirements more closely in line with the commonly accepted standards.

4.3.3. Automatic recognition based on professional experience

Feedback received from competent authorities shows that the International Standard Industrial Classification of All Economic Activities (ISIC) from 1958, the basis of Annex IV, does not always allow for an identification of the professions which should benefit from automatic recognition. This creates legal uncertainty for professionals.

The following options are considered in the impact assessment: 1). No action; 2). Immediate replacement of the ISIC classification of 1958 by another classification; 3). Update of the ISIC classification of 1958 with the most recent ISIC classification dated 2008; 4). Introduce more flexibility in order to allow a modernisation of the classification in the future.

Option 4 should be the preferred one: it allows reviewing the classification of activities at a later stage, drawing on the results of a study which would assess the impacts on different stakeholders.

4.4. Establishing in another Member State

4.4.1. Qualifications levels

If there is a difference of two or more qualification levels between the qualification of the applicant and the qualification required in the host Member State, the applicant is excluded from the benefits of the Directive, such as procedural safeguards. The relevance of the qualifications levels in the Directive has been questioned, mainly for its lack of consistency with the European Qualifications Framework².

The following options are considered in the impact assessment: 1). No action at EU level; 2). Simplify the classification of education levels; 3). Remove the classification from the Directive.

Option 2 is the preferred one as it would reduce the current legal uncertainty related to the applications examined under the Treaty. The existing classification would continue to constitute a reference point for comparing qualifications.

4.4.2. Partial access

Economic activities associated with a particular profession can differ significantly from one Member State to another. An aptitude test or an adaptation period may not always compensate for these differences. As an alternative to completing new training in the host Member State, the European Court of Justice laid down the principle of partial access to a profession³.

The impact assessment considers the following options: 1). No action; 2). Introduce the possibility of partial access in the Directive for all professions; 3). Introduce the possibility of partial access in the Directive but exclude professions with public health implications.

² Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning, OJ 2008/C 111/01

³ Case C-330/03 of 19 January 2006, *European Court reports 2006 Page I-801*

Option 3 is the preferred option. It can reduce obstacles to mobility while taking into account consumer protection and patient safety.

4.4.3. Mobility from non-regulating to regulating Member States (establishment)

Professionals coming from non-regulating countries are currently obliged to demonstrate 2 years of professional experience in the last 10 years or prove that they have completed "regulated education and training" geared to the specific profession.

The impact assessment discusses the following options: 1). No action; 2). Broaden the concept of regulated education and training; 3). Remove all specific requirements.

Option 3 is the preferred option since it would simplify the administrative requirements for professionals coming from non-regulating countries.

4.5. Moving on temporary basis

The introduction of a specific regime for the free provision of cross-border services has been the major innovation of the Professional Qualifications Directive in 2005. However, competent authorities reported limited experience. This might be linked to the legal requirements imposed on professionals and to the lack of clarity of some provisions.

4.5.1. Requirements imposed on professionals from non-regulating Member States

The following options are presented: 1). No action; 2). Broaden the concept of "regulated education and training"; 3). Exempt professionals accompanying consumers.

Option 3 offers flexibility and a more effective solution even if limited to a smaller proportion of professionals. Activities with public health and safety risk should be excluded from Option 3.

4.5.2. Temporary mobility with prior check of the qualifications

Several options are discussed: 1). No action; 2). Member States would produce a list of professions with health and safety implications; 3). The Commission would define a list of professions with health and safety implications.

Option 2 should be preferred because it gives more clarity to the existing provisions without important additional costs.

4.5.3. Lack of clarity on the scope of the regime

The impact assessment considers the following options: 1). No action; 2). Provide a guidance document to competent authorities; 3). Specify a maximum duration/frequency for the "temporary and occasional provision of services".

It concludes that Option 2 is the preferred one as it presents a non-binding and flexible solution in line with the Court case law while providing the necessary guidance to competent authorities.

4.6. Scope of the Directive

The Directive applies only to a certain extent to the holders of third country qualifications and does not cover not fully qualified professionals and notaries.

4.6.1. Not fully qualified professionals

The following options are discussed: 1). No action; 2). Enlarge the scope of the Directive; 3). Option 2 and clarify the situation in the home Member State.

Option 3 is the most efficient solution as it not only organises the movement of the professional to the host Member State but also his return to the home Member State.

4.6.2. Third country qualifications

Three options are discussed: 1). No action; 2). Reduce the requirement from 3 to 2 years of professional experience; 3). Enlarge the scope of the Directive to cover the recognition of third country qualifications (for the first recognition).

Option 1 should be preferred as the two other options are not supported by Member States and prove to be over ambitious at this moment.

4.6.3. Notaries

The impact assessment considers the following options: 1). No action; 2). Excluding notaries from the Directive; 3). Extending the Directive to cases of establishment ; 4). Establishment with limited scope of provision of services; 5). Full application of the Directive.

It concludes that option 4 responds best to the specificities of the profession.

4.7. Protection of patients

Public health emerged as a particular issue during the evaluation of the Directive.

4.7.1. Guarantees on the status of professionals

Some stakeholders, even a few governments, suggested making the continuous professional development (CPD) of health professionals mandatory under the Directive. There is also a concern of competent authorities on doctors or nurses who have been out of practice for many years or might be barred from practising due to disciplinary or penal sanctions.

The following options are discussed: 1). No action; 2). Adding new requirements on CPD and recent professional experience; 3). Adding new requirements with respect to recent professional experience; 4). Introduction of an alert mechanism combined with increased transparency between Member States on CPD.

Option 4 is the preferred one as it effectively reduces risks of health professionals moving from one Member State to another whilst not longer allowed to practice.

4.7.2. Guarantees on language skills

Language knowledge of professionals is a sensitive issue for patients. The Directive imposes an obligation upon the professionals but does not prescribe any particular means by which

Member States should enforce the obligation. Concerns have been raised in this regard for health professionals.

The impact assessment analyses the following options: 1). No action; 2). Introduce systematic checking of language skills on health professionals and harmonise it at EU level; 3). Clarify the rules on how to enforce checking language skills for professionals on a case by case basis.

Option 3 is the preferred option as it ensures a balance between the need to ensure patient safety and the required effectiveness of recognition procedures.

4.8. Lack of transparency and justification of qualifications requirements in regulated professions

800 categories of professions are regulated within the EU. The reserved tasks associated to regulated professions as well as the type of qualification required can vary significantly from one Member State to another.

Given the current debate on the number of regulated professions (and the request of the European Parliament to reduce the number), it seems first of all necessary to ensure a greater transparency and justification of regulated professions.

The impact assessment examines the following options: 1) No action at EU level; 2) Ensure greater transparency on the regulation of the professions; 3) Option 2 and launch a mutual evaluation exercise; 4) Option 2 and introduce a specific regime for professions regulated in only one Member State.

Option 3 should be preferred, as it would effectively improve transparency and encourages Member States to assess and compare their national regulations.

5. OVERALL IMPACTS OF THE PACKAGE

Policy options are combined in a way to ensure the internal coherence of the initiative. The impact on the stakeholders is always considered as well as the administrative burden and compliance costs created by the preferred policy options.

6. MONITORING AND EVALUATION

Specific indicators have been set to monitor the progress on the implementation of the Directive. Reporting obligations have also been foreseen in order to assess the functioning of the different recognition systems.