

**Proposed amendments by ETUC, ETUCE, EPSU, EUROCADRES, CEPLIS
on the amendments on the Professional Qualification Directive (2005/36/EC)**

		Original version	Proposed amendment	Reason
1	1. CONTEXT AND AIM OF THE PROPOSAL/ 1.1. General context/paragraph 2	“Modernising the Directive would also respond to the needs of Member States facing increasing shortages of skilled workforce. Mobility of EU citizens within the single market is an important issue in this regard. Shortages of workforce will not only persist in the future but are projected to increase in particular in the health sector, in the education sector, and also in growth sectors, such as construction or business services.”	“Modernising the Directive would also respond to the needs of Member States facing increasing shortages of skilled workforce. Mobility of EU citizens within the single market is an important issue in this regard. Shortages of workforce will not only persist in the future but are projected to increase in particular in the health sector, in the education sector, and also in growth sectors, such as construction or business services. The Directive would also contribute non-national employees having obtained their recognition to receive equal and fair treatment at the workplace as the national employees. ”	The modernization of the Directive and facilitation of provision of recognition of qualifications should contribute to reduce the illegal work of those who at the moment have to wait long for receiving their recognition in the host country. Furthermore, these people should get equal and fair treatment at the workplaces working under same conditions as national employees.
2	1. CONTEXT AND AIM OF THE PROPOSAL/ 1.1. General context/Paragraph (8)	“In order to apply the mechanism of recognition under the general system, it is necessary to group the various national education and training schemes into different levels. Those levels, which are established only for the purpose of the operation of the general system, should have neither effect upon the national education and training structures nor upon the competence of Member States in this field, including a national policy for	In order to apply the mechanism of recognition under the general system, it is necessary to group the various national education and training schemes into different levels. Those levels, which are established only for the purpose of the operation of the general system, should have neither effect upon the national education and training structures nor upon the competence of Member States in this field, including a national policy for	Teaching and provision of any educational services in the formal education are under national competence and the Directive should not jeopardize this.

		implementing the European Qualifications Framework.”	implementing the European Qualifications Framework. Accordingly, the qualification of teachers and educational employees has to be recognised in conjunction with the national requirements on teaching and on the provision of educational services of the host country.	
3	1. CONTEXT AND AIM OF THE PROPOSAL/ 1.1. General context/Paragraph (10) and accordingly: Paragraph (17), Art.3/1/k,Art.4/1, Art. 4.a/1, Art.4.a/4 and 8, Art. 4c/3, Art. 4.e/5 (3 times),Art.5 paragraph 1/b, Art.7 paragraph 4 (twice), Art.8 paragraph 1, Art.11.d and e, Art.14 paragraph 1,5, 6d and 6e, Art.50/3a	“This measure should be proportionate and, in particular, take account of the knowledge, skills and competences gained by the applicant in the course of his professional experience or through lifelong learning. The decision imposing a compensatory measure should be justified in detail in order to enable the applicant to better understand his situation and to seek legal scrutiny [...]”	“This measure should be proportionate and, in particular, take account of the knowledge, skills and competences gained by the applicant in the course of his/ her professional experience or through lifelong learning. The decision imposing a compensatory measure should be justified in detail in order to enable the applicant to better understand his/ her situation and to seek legal scrutiny [...]”	It is essential that the Directive mentions both sexes through the text, which lacks in 23 cases in the Amendment.
4	Art. 4a/1 and thorough Article 4.	“Member States shall provide a holder of a professional qualification with a European Professional Card upon his	“In case the profession is regulated, Member States shall provide a holder of a professional qualification with a	We are concerned that the professional card for the non-regulated professions will not

		request and on condition that the Commission has adopted the relevant implementing acts provided for in paragraph 6.”	European Professional Card upon his request and on condition that the Commission has adopted the relevant implementing acts provided for in paragraph 6.”	facilitate the recognition procedure. Issuing professional card by the home country based on non-regulated education or non-regulated profession would not simplify the recognition of the profession in the host country as not reliable information will be delivered from the home country to the host country.
5	Article 4a/6 ¹	“The Commission shall adopt implementing acts specifying European Professional Cards for specific professions, at the request of the social partners and establishing the format of the European Professional Card, the translations necessary to support any application for issuing a European Professional Card and details for the assessment of applications, taking into account the particularities of each profession concerned. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.”	The Commission shall adopt implementing acts specifying European Professional Cards for specific professions, following the request of the European sectoral social partners and professional associations representing the sectoral professions to establish a card for a specific profession , establishing the format of the European Professional Card, the translations necessary to support any application for issuing a European Professional Card and details for the assessment of applications, taking into account the particularities of each profession concerned. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58. The Commission shall consult Competent Authorities and European and national level social partners and professional associations representing the sectoral professions of	<i>(Insertion 1)</i> : Set-up of European Professional Card for specific professions should be dependent on the European Commission, but at the request of European sectoral social partners and professional associations representing the sectoral professions, which represent highly mobile professionals. <i>(Insertion 2)</i> Requirements towards professions greatly differ, therefore the European Commission should consult with the Competent authorities and European and national level social partners and professional associations

			the related professions on the precise technicalities of the cards of specific professions.	representing the sectoral professions on the technicalities of cards related to different professions. <i>Please also see endnote 1.</i>
6	Article 4a/7	“Any fees which applicants may incur in relation to administrative procedures to issue a European Professional Card shall be reasonable, proportionate and commensurate with the costs incurred by the home and host Member States and shall not act as a disincentive to apply for a European Professional Card. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the setting of criteria for the calculation and distribution of fees.”	<i>delete</i>	European Union is still struggling with the economic and financial crises. We believe that mainly those will benefit from the card who cannot find employment opportunities anymore in their home country. Thus, in order to increase mobility to countries, the cost of the card for the applicants should be zero. Issuing the European Professional Card should not be a commercial activity to generate income to the issuing body not least to prevent from the conflict of interest.
7	Article 4b/4	“The Commission may adopt implementing acts specifying the technical specifications, the measures necessary to ensure integrity, confidentiality and accuracy of information contained in the European Professional Card and in the IMI file, the conditions and the procedures for making available a European Professional Card to its holder, including the possibility of downloading it or submitting updates for the file. Those implementing acts shall be adopted in	“The Commission may adopt implementing acts specifying the technical specifications, the measures necessary to ensure integrity, confidentiality and accuracy of information contained in the European Professional Card and in the IMI file, the conditions and the procedures for making available a European Professional Card to its holder, including the possibility of downloading it or submitting updates for the file. Those implementing acts shall	The "advisory procedure" would imply that the Commission only need to consult with the Member States in the framework of the Committee on the Recognition of Professional Qualification indicated in Art. 58, while "examination procedure" would mean that national representatives would have an active role in examining the application and take a decision on the technical

		accordance with the advisory procedure referred to in Article 58.”	be adopted in accordance with the advisory examination procedure referred to in Article 58.”	specifications of the card, the measures necessary to ensure integrity, confidentiality and accuracy of information the card contains.
8	Article 4c and everywhere where there is a reference to <i>temporary regime</i> and <i>temporary card</i> . ²	Article 4c “European Professional Card for the temporary provision of services other than those covered by Article 7(4)”	Article 4c European Professional Card for the temporary and occasional provision of services other than those covered by Article 7(4)	The social partners have been dissatisfied with the existing rule of the prior declaration and the new initiative on temporary card, as the European Commission created both procedures based on a false assumption, according to which a 1-year (prior declaration) or 2-year provision (temporary card) of “temporary” service would be only occasional. However, as far as we are concerned, neither the European Commission, nor the Competent Authorities can assure whether the professional would misuse the two regimes and would work for whole 1 or 2 years in the host country enjoying a loophole on the national legislations, which was created by the Directive. Therefore, we ask to change the expressions “temporary regime” and “temporary card” in all parts of the Amendment of the Directive to “temporary and occasional mobility regime” and “temporary and occasional card”, taking into account that the term

				<p>“temporary and occasional” was mentioned at numerous cases in the 2005 Directive, namely in paragraph 5, 6, Art.5/2 and Art. 7/1. Furthermore, we request the Commission to explain in the Directive what the Commission means under temporary and occasional period of provision of service. <i>Please also see endnote 2.</i></p>
9	Article 4c/1 ³	<p>“The competent authority of the home Member State shall verify the application, create and validate a European Professional Card within two weeks from the date it receives a complete application.”</p>	<p><i>(Insertion 1)</i> In sectors others than health and social care, the competent authority of the home Member State shall verify the application, create and validate a European Professional Card within two weeks from the date it receives a complete application.</p> <p><i>(Insertion 2)</i> The competent authority must ensure the prior check of the complete application of the professional for temporary provision of service whether his qualifications are in conjunction with the national requirements of the host country on qualifications to provide the same service.</p> <p><i>(Insertion 3)</i> Member States shall provide a list to the Commission on certain professions where working with the temporary mobility card and under the prior declaration regime must require a prior check of application.”</p>	<p><i>(Insertion 1):</i> A relaxation of rules, short deadlines for competent authorities and a lighter regime for health professionals providing services temporarily in another country, also if this is being done by means of an EPC, would not be in line with the objective of guaranteeing a maximum of patient health and safety.</p> <p><i>(Insertion 2)</i> In order to avoid the Directive to create loophole on the national legislations, the social partners urge the relevant European Union institutions to make sure that the applications for temporary and occasional provision of service are checked up by the host competent authorities before providing permit to work under the temporary regime. This was proposed in the 2005 Directive but explained differently in</p>

				<p>the 2011 amendments. <i>Please see also endnote 2 and 3.</i></p> <p><i>(Insertion 3):</i> Member States should provide a list to the European Commission on certain professions for whom working with the temporary mobility card and under the prior declaration regime must go through a strict prior check, only by which the provision of service would be possible.</p> <p><i>Please also see endnote 3.</i></p>
10	Art. 4d/ 1.	“Upon receipt of a complete application for a European Professional Card, the competent authority of the home Member State shall, within two weeks, verify and confirm the authenticity and validity of the submitted supporting documents, create the European Professional Card, transmit it for validation to the competent authority of the host Member State and inform that authority on the corresponding IMI file.”	In sectors others than health and social care , upon receipt of a complete application for a European Professional Card, the competent authority of the home Member State shall, within two weeks, verify and confirm the authenticity and validity of the submitted supporting documents, create the European Professional Card, transmit it for validation to the competent authority of the host Member State and inform that authority on the corresponding IMI file.	As above related to Art. 4c, 1.
11	Article 4e/7	“The Commission shall adopt implementing acts specifying the conditions of access to the IMI file, the technical means and the procedures for the verification referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the advisory procedure	“The Commission shall adopt implementing acts specifying the conditions of access to the IMI file, the technical means and the procedures for the verification referred to in the first subparagraph. Those implementing acts shall be adopted	Similarly to Article 4b/4, we believe that the "advisory procedure" would imply that the Commission only need to consult with the Member States in the framework of the Committee on the Recognition of Professional Qualification indicated in Art. 58,

		referred to in Article 58.”	in accordance with the advisory examination procedure referred to in Article 58.”	while "examination procedure" would mean that national representatives would have an active role in examining the application and take a decision on the technical specifications of the card, the measures necessary to ensure integrity, confidentiality and accuracy of information the card contains.
12	Article 4f/1	“The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:”	The competent authority of the host Member State shall grant partial access to a professional activity in its territory, after consulting with the relevant national social partners and professional associations representing the sectoral professions of the sector the profession of the applicant belongs to , provided that the following conditions are fulfilled:	Competent Authorities should involve the national social partners and professional associations representing the sectoral professions whenever they make a decision on providing partial access to professionals of sectors, which national social partners and professional associations representing the sectoral professions represent.
13	Art. 4f 2.	Partial access may be rejected if such rejection is justified by an overriding reason of general interest, such as public health, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary	The concept of partial access does not apply to the sectoral professions falling under the regime of automatically recognised professions and for health professions in general. In all other cases, partial access may be rejected if such rejection is justified by an overriding reason of general interest, such as public health, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary	We oppose the introduction of partial access for the sectoral professions falling under the regime of automatically recognised professions and for health professions in general; therefore, we reject the case-by-case approach suggested by the proposal. We favour and ask for a blanket exemption of health professions for which any reference “to overriding

				reasons of general interest, such as public health” – as currently phrased in art. 4f, 2. –, would also not be needed any more. The derogation we request should therefore apply to all professions notified to the Commission as carrying a health and safety risk, in particular to the sectoral professions and specialist professions, not to individuals on a “case by case” basis, as it is impossible for regulators to know exactly what activities an individual will perform in order to assess the level of risk to the public.
14	Article 4f/3	“Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III in case of establishment in the host Member State.”	Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III by the competent authorities together with the relevant national social partners and professional associations representing the sectoral professions in case of establishment in the host Member State.	Competent Authorities should involve the social partners and national social partners and professional associations representing the sectoral professions whenever they make a decision on providing partial access to professionals of sectors, which national social partners and professional associations representing the sectoral professions represent.
15	Art. 7, 4. 1 st paragraph, 2 nd sentence	“Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service	Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service	To ensure a maximum of patient safety and health all damage to the health and safety of the service recipient has to be avoided, not only serious damages.

		provider and where this does not go beyond what is necessary for that purpose.”	provider and where this does not go beyond what is necessary for that purpose.	
16	Art. 7, 4. 3 rd paragraph, 3 rd sentence	“The difficulty shall be solved within one month following that notification and the decision finalised within the second month following resolution of the difficulty.”	The difficulty shall be solved as quickly as possible, if possible within one month following that notification and the decision finalised within the second month following resolution of the difficulty.	Delays a non-compliance with by the competent authorities implies the recognition of professional competences at question is not the appropriate instrument. What counts and should be aimed at in the first place is a reliable, trust-creating and transparent process, system and cooperation of competent authorities in the home and host Member State. Once this is achieved, procedures can and should be speeded up in the interest of the applicant, but only then.
17	Art. 22 (b)	“in accordance with the procedures specific to each Member State, continuing education and training shall ensure that persons who have completed their studies are able to keep abreast of professional developments to the extent necessary to maintain safe and effective practice”	in accordance with the procedures specific to each Member State, continuing education and training shall ensure that persons who have completed their studies are able to keep abreast of professional developments to the extent necessary to maintain safe and effective practice. Professionals having obtained a qualification many years ago but not having worked in the same profession or in the same economic sector for a longer period can be requested by the competent authority to provide evidence of recent practice according to the requirements applicable to those working	It is obvious that health professionals need to be “fit for practice” and “able to keep abreast of professional developments to the extent necessary to maintain safe and effective practice” (art. 22, 1b)). In a range of countries “being fit for practice” is the condition for being admitted to a register and where this is the case the home Member State may be allowed to demand the same requirements from applicants as needed to being admitted into the register. We propose here further amendment on the 2005 Directive.

			in the host country in the same profession.	
18	Art. 22 (proposed amendment)	"For the purposes of point (b) of the first paragraph, as from [insert date - the day after the date set out in first subparagraph of paragraph 1 of Article 3] and every five years thereafter, the competent authorities in Member States shall submit publicly available reports to the Commission and to the other Member States on their continuing education and training procedures related to doctors of medicine, medical specialists, nurses responsible for general care, dental practitioners, specialized dental practitioners, veterinary surgeons, midwives and pharmacists.".	"For the purposes of point (b) of the first paragraph, as from [insert date - the day after the date set out in first subparagraph of paragraph 1 of Article 3] and every five years thereafter, the competent authorities in Member States shall submit publicly available reports to the Commission and to the other Member States on their continuing education and training procedures related to doctors of medicine, medical specialists, nurses responsible for general care, dental practitioners, specialized dental practitioners, veterinary surgeons, midwives and pharmacists. Member States must have systems in place to ensure that health professionals can regularly update their skills through some type of continued professional development.	We propose to insert here a new paragraph. See above the reason.
19	Article 49a/ <i>Common training framework/2f</i>	"the common training framework has been prepared following a transparent due process, including with stakeholders from Member States where the profession is not regulated;"	the common training framework has been prepared following a transparent due process, including with national social partners, professional associations representing the sectoral professions, and stakeholders from Member States where the profession is regulated or not regulated;	Common training frameworks should be prepared also by national social partners and professional associations representing the sectoral professions concerning both regulated and non-regulated professions.

20	Article 49a/ <i>Common training tests/2c</i>	“the common training test has been prepared following a transparent due process, including with stakeholders from Member States where the profession is not regulated;”	the common training test has been prepared following a transparent due process, including with national social partners, professional associations representing the sectoral professions, and stakeholders from Member States where the profession is regulated or not regulated;	Common training tests should be prepared also by national social partners and professional associations representing the sectoral professions concerning both regulated and non-regulated professions.
21	Article 53, paragraph 1	“A Member State shall ensure that any controls of the knowledge of a language are carried out by a competent authority after the decisions referred to in Articles 4d,7(4) and 51(3) have been taken and if there is a serious and concrete doubt about the professional's sufficient language knowledge in respect of the professional activities this person intends to pursue.	“A Member State shall ensure that any controls of the knowledge of a language are carried out by a competent authority free of charge for the applicant after while the decisions referred to in Articles 4d, 7(4) and 51(3) have are taken and if there is a serious and concrete doubt about the professional's sufficient language knowledge in respect of the professional activities this person intends to pursue. “	Systematic language testing of the applicants should be applicable to all professions and not only the ones in the medical sector in order to ensure safety of the service provision, quality of service. It is essential to hold language testing during the process of recognition of qualifications, and not after it.
22	Art. 53 paragraph 2	“In case of professions with patient safety implications, Member States may confer to the competent authorities the right to carry out language checking covering all professionals concerned if it is expressly requested by the national health care system, or in case of self-employed professionals not affiliated to the national health care system, by representative national patient organisations.”	In case of professions with patient safety implications, Member States may confer to the competent authorities the right to carry out language checking covering all professionals concerned (<i>Deletion 1</i>) if it is expressly requested by the national health care system, (<i>Deletion 2</i>) or in case of self-employed professionals not affiliated to the national health care system, by representative national patient organisations.	<i>(Deletion 1)</i> : In the case of health workers and to ensure a maximum of patient health and safety, a functioning communication amongst colleagues and a correct documentation, competent authorities should be automatically entitled to systematically test language competences of applicants. “The requirements to be fulfilled by the applicant should be fully transparent and known for a health care worker seeking (automatic)

				<p>recognition of her/his professional qualifications. They also have to comply with the principles of appropriateness (for the purpose) and proportionality (extent and level of knowledge asked for to start working in a job).</p> <p><i>(Deletion 2):</i> We fail to see both the competence and capacity of national patient organisations to do language tests in the case of self-employed professionals not affiliated to national health care or health insurance systems.</p>
23	Alert mechanism Article 56a/2	<p>“In the cases not covered by Directive 2006/123/EC, where a professional established in a Member State carries out a professional activity under a professional title other than those referred to in paragraph 1 and within the framework of this Directive, a Member State shall inform without delay other Member States concerned and the Commission upon gaining actual knowledge of any conduct, specific acts or circumstances which is related to such activity and which could cause serious damage to the health or safety of persons or to the environment in another Member State. That information shall not go beyond what is strictly necessary to identify the professional</p>	<p>2. In the cases not covered by Directive 2006/123/EC, where a professional established in a Member State carries out a professional activity under a professional title other than those referred to in paragraph 1 and within the framework of this Directive, a Member State shall inform without delay other Member States concerned and the Commission upon gaining actual knowledge of any conduct, specific acts or circumstances which is related to such activity and which could cause serious damage to the health or safety of persons, or to the environment in another Member State, or the public interest of citizens and consumers. That information shall not go beyond what is</p>	<p>It is essential to extend the alert mechanism to all professionals in case there is a conduct against the professional, whose work would have negative effect not only on the health and safety of the people and the environment, but also the generally on any citizens and consumers.</p>

		concerned and shall include the reference to the decision of a competent authority prohibiting him or her from pursuing the professional activities. Other Member State may request further information under the conditions set out in Articles 8 and 56.”	strictly necessary to identify the professional concerned and shall include the reference to the decision of a competent authority prohibiting him or her from pursuing the professional activities. Other Member State may request further information under the conditions set out in Articles 8 and 56.	
24	6.5. Grounds for the proposal/ initiative/ 6.5.1. Requirement(s) to be met in the short or long term	“The EPC/IMI system will apply to professions that have requested to be covered by this novel process and will be expanded progressively to additional professions. In that respect initial costs will be more limited and future expansions will benefit from economies of scale.”	“The EPC/IMI system will apply to professions that have requested to be covered by this novel process and will be expanded progressively to additional professions. In that respect initial costs will be more limited and future expansions will benefit from economies of scale the price of the EPC for the applicants will be costless. ”	European Union is still struggling with the economic and financial crises. Thus, in order to increase mobility to countries which lacks people with the best required skills, the cost of the card for the applicants should be free.

QUESTIONABLE ISSUES:

¹ We are concerned that the Directive does not indicate it clearly whether the European Commission or national, regional, local authorities, European sectoral social partners and professional associations representing the sectoral professions would initiate the setting up of European Professional Cards for specific professions. Therefore, we request to insert a new paragraph in the Directive to clarify this.

² While we recognise that the Directive cannot specify the period of the temporary regime taking into account each profession’s needs, we ask to change the title of *temporary regime* and *temporary card* to *temporary and occasional mobility regime* and *temporary and occasional card*, and to explain in the Directive:

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- a. what the Commission mean under temporary and occasional period of provision of service;
 - b. in what cases the temporary and occasional regime and card can be considered by the competent authorities as misused; and
 - c. what European and national level instruments can assure that the temporary and occasional regime and card would not be misused making a loophole on the national legislation on requirements towards qualifications.

³ We require further clarification on the following contrary texts of the 2005 Directive and the 2011 Amendments on the Directive, from which later one would not allow the competent authorities to check up the qualification of the professionals after applying for temporary or occasional provision of service in another country:

2011 Amendments on the Directive: Explanatory memorandum, page 8, paragraph 4.2. Free provision of services:

“A special regime for the free provision of services on a temporary basis was introduced through Directive 2005/36/EC. It foresees lighter rules for temporary service providers: they can provide services without the prior check of professional qualifications (except for professions with health and safety implications) which is the rule under the recognition mechanisms for establishment.”

2005 Directive: Title II. Article 5 of the Directive: “The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.”