

Position Paper

UEAPME¹ position on the proposal amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the IMI System COM (2011) 883/2

UEAPME would like to recall the reasons why the directive is of paramount importance for its members. Professional qualifications constitute the basis of activities provided by crafts, trades and SMEs. They serve as the best proof for the competences of the professional concerned and at the same time guarantee the quality and security for goods and services provided to consumers.

The recognition of qualifications supports the fundamental freedom of service provisions and establishment in the European Union. It should ensure the good functioning of the Internal Market and facilitate the mobility of professionals in view of a better matching of supply and demand on the labour markets in Europe.

Against this background UEAPME is fundamentally in favour of simplification and modernisation of the Directive as long as it respects a number of key principles:

- the requirement of high quality education and training,
- the guarantee of fair competition between all professionals,
- the freedom for Member States to regulate professions,
- the assurance of quality and security for consumers.

UEAPME opinion on the amendments to the Directive as proposed by the European Commission in December 2011:

UEAPME can generally support:

1. The proposal on the introduction of a European professional card
2. The proposal for improving the directive in terms of advanced administrative cooperation through the compulsory use of the IMI system
3. The modernisation of Annex IV covering most of the crafts professions while respecting certain conditions.

UEAPME has a number of concerns with the following elements of the new Commission's proposal:

- a. In the case of free provision of services
 - a. regarding professions with health and safety implications, the removal of the possibility for Member States to prior check the qualifications and to set up possible compensation measures as well as introducing a new obligation to justify the list of professions concerned by article 7&4
 - b. the deletion of the two years of professional practice when a service provider is accompanying the service recipient
- b. The changes introduced in the mechanism for recognition of professional qualifications defined in Article 13 of Directive 2005/36/EC
- c. The introduction of the recognition of the new concept of partial access to the professions
- d. The inclusion of remunerated traineeships

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/procurements/notice/55820581197-35).

UEAPME positively assesses the following issues

1 – The European professional card – Article 4a to 4f

The professional card is a step in the right direction to facilitate the recognition of qualifications, for simplification and enhancing mutual trust. Furthermore the application of the European professional card should take into account the already existing ones for professions, sectors and/or activities in some Member States.

UEAPME would have supported the principle of a compulsory card if a given profession would agree to adopt it but takes note that it is not the case in the current EC proposal.

UEAPME welcomes:

- To have the card under the format of an electronic certificate. However since the professional card is not a smart card, authenticity should only be checked online.
- The specific role given to competent authorities from the home Member State registered with IMI for the check of legality of the information on qualifications and the creation and validation of the card.
- To submit online-application for the professional card as foreseen in Article 4b. But the way how documents (e.g. diplomas, certificates) are to be provided should be clarified. Documents provided as simple attachments in a pdf version might not be sufficient in order to guarantee authenticity.

On issuing the professional card, UEAPME insists on the fact that its delivery should remain the prerogative of the sole competent authorities and not of the Assistance centres as proposed in article 4a, paragraph 5, because the future Assistance centres, previously contact points, do not have the information and the competence to precisely assess the qualifications of professionals.

UEAPME disagrees with the new rules proposed in Article 4c under which the transmission of the validation information to the host Member State shall constitute the previous declaration as foreseen in Article 7 for the following two years. **The card might be used in order to speed up the declaration process (Article 7) but not replacing it.**

Furthermore UEAPME would like to insist that 2 weeks as a delay is too short for competent authorities. A longer delay such as one month is clearly necessary. Moreover Art. 4c § 1 states that no further declaration under Article 7 might be required by the host Member State for the following years. A possible derogation from this general rule should be foreseen in case of major changes of prerequisites necessary for fulfilling the requirements under Articles 5 and 7 of the directive.

The European professional card could also provide useful and relevant information on the prerequisites for recognition such as length of professional experience, regulated profession or not in the home Member State, level of qualification, etc... However, on the delay for the recognition procedure, the professional card could help to speed up the procedure but once again 1 month is not sufficient.

On the process of the European Professional Card:

UEAPME is opposed to the excessive use by the European Commission of delegated acts and implementing acts for specifying the concept of the professional card and setting common standards.

UEAPME favours the option of outlining relevant details of the European professional card and the application procedure from the outset in the directive.

On the IMI system:

While the use of IMI is a good starting point to serve as a system for cross-border cooperation of competent national authorities, the precondition is to have a well performing system in all Member States.

Member States should thus first register all their relevant administrations and competent authorities as well as train the staff before becoming fully operational. This performance constraint is absolutely essential to fully apply Art.4d §5.

2 – Points of single contact and assistance centres

UEAPME supports the strengthening of the points of single contact (SPC), as defined in the directive 2006/123. On the one hand in their function as an online central access point of information to citizens and professionals on the recognition of qualifications procedure and, on the other hand, by using them to implement electronic procedures, which should enable data security and integrity.

While the use of points of single contacts and assistance centres is important to support a well functioning system for cross-border cooperation of competent national authorities, the precondition is to have well performing systems of those points of single contacts in all Member States.

UEAPME also considers it essential to maintain the existence of the previous national contact points as assistance centres to discuss the specific cases but underlines that these should not act as competent authorities for issuing a European Professional Card.

3 – Adaptation of lists of activities in Annex IV – Article 20

Annex IV is providing a list of various activities comprising mostly Crafts activities covered by the recognition of professional experience. UEAPME supports the principle of modernisation of this annex as long as it is only to integrate or clarify new activities. Consequently the Commission should avoid shifting professional activities already included in one list of Annex IV to another list of the same Annex.

One of the main reasons is that Annex IV contains three different lists with different formal requirements for recognition (between three and six years of relevant practical professional experience).

If one activity were to be moved from list 1 to list 3, then the recognition requirements set out in Art. 19 would become applicable, thus only demanding for proof of three years practical professional experience in order to have a right of recognition. Such reassignment of already listed professional activities would not be proportionate and not justified.

Furthermore the modernisation of the list should be based on the up-dated version of the ISIC classification of 2008, which is the most realistic and better adapted option in view of integrating some new professions. In this context, UEAPME particularly warns about the use of ISCO.

UEAPME agrees with a modernisation which should be set up in partnership with the competent representative organisations and accompanied by an in-depth impact assessment.

UEAPME concerns on a series of changes proposed by the directive

UEAPME has a series of concerns created by the disproportioned reduction of the qualification requirements for the temporary provision of services and the establishment in another Member State.

1 – UEAPME requests no weakening of Article 13 on the recognition of evidence of training regarding the freedom of establishment

UEAPME disagrees with the deletion of the previously existing objective criteria for the assessment of differences of qualifications and the definition of the compensatory measures.

UEAPME is strongly against the following changes proposed by the Commission:

- 1 – the changes in the 5 level classification system and the suppression of the principle of professional qualification at least equivalent to the level immediately prior to that required in the host Member States (previous Art 13-2 (b))
- 2 – the suppression of two years professional experience – (previous Article 13-2 (c))
- 3 – the suppression of important differences in terms of duration of training (Article 14 (d))

The changes will undermine the quality and value of education and training in countries where professions are regulated and will create strong discriminations against holders of domestic qualifications in the countries concerned. It would also be hardly possible to assess the substantial differences of a qualification in an objective way without such criteria.

Furthermore Article 13 § 4 blocs the direct access of holders with a level-3 qualification (Article 11c) to professions on the next level of Article 11d (qualification level 4). Such a new clause introduces arbitrary borders between university education and vocational education and training qualifications.

It goes against the current political commitments at all levels (Copenhagen process, European Qualifications Framework, ECVET), which aim at facilitating the permeability between vocational training and general education pathways. If adopted this new proposal would seriously undermine efforts in the last ten years to make vocational education and training more attractive for young people, to promote VET excellence, to improve the parity of esteem between VET and Higher Education and finally to further invest in lifelong learning. One concrete example of the problems created can be easily illustrated for the German master craftsman qualifications in the health sector. They are at level 3, whereas in other European countries, a number of such professions are regulated at level 4. The amendment proposed would therefore largely restrict the mobility of German master craftsmen in the health sector, which is not acceptable.

Therefore UEAPME calls for maintaining Article 13 in its original version.

Another reason for UEAPME to come back to the original version of Article 13 is the problem described below.

The new amended Article 13 foresees the possibility for a non-qualified person with a level (a) – an attestation of competence as described in Article 11 - to have a direct access to a level (c) – training at the post-secondary level - when moving cross-border. This is simply not acceptable due to the substantial difference in terms of competences and qualifications. It will create serious discriminations and can be at the detriment of consumers.

If the new Article 13 remains UEAPME requests to amend Article 13 § 4 as follow to avoid this problem: *“By derogation to paragraphs 1 and 2 of this Article, the competent authority of the host Member State may refuse access to and pursuit of the profession to holders of an attestation of competence where the national qualification required to exercise the profession on its territory is classified under Article 11 points (c), (d) or (e)”*.

2 – The deletion of prior requirement of professional experience in the case of provision of services when accompanying clients abroad might create serious problems for many Member States

UEAPME considers that the current existing requirement to show once every two years before the first service provision abroad a professional experience of 2 years during the last 10 years is a sensible request. There is no evidence that such a request constitutes a true obstacle for the internal market functioning.

On the contrary the deletion of such a requirement would create extremely serious problems of legitimacy for certain countries, going against their constitution and the essence of their education and training systems’.

Against this background UEAPME considers that the new problems created by the deletion of such a requirement would largely outweigh the so-called obstacles to the good functioning of the internal market.

For these various reasons, UEAPME cannot support deletion of the 2 years professional experience for professionals - companies - providing services abroad while accompanying clients.

3 – Introduction of non formal and informal training and lifelong learning only if fully recognised by the home Member States – Amendments of Article 7, paragraph 4, Article 12 and Article 14

UEAPME is well aware that the integration of non formal and informal learning (Article 12) as well as lifelong learning (**Article 7, paragraph 4 and Article 14**) for the recognition of professional qualifications, the adaptation period and /or aptitude test are fully part of the latest evolution of learning processes and therefore should be taken on board concerning the recognition of evidence of qualification.

However in order to be recognised by competent authorities of a host Member State, they should be first and foremost formally recognised in the home Member States.

We share the view that all qualifications can be obtained through formal programmes but also be acquired through the validation of prior learning, including non-formal and informal learning, but this should be accepted under the strict condition that the validation process respects the same standards as for qualifications obtained through formal programmes.

Therefore as outlined by Article 12 we consider that learning outcomes or qualifications acquired through non formal and informal training can only be considered as an evidence of qualification if this non formal and informal training has been previously validated and recognised in the home Member States.

Unfortunately very few Member States so far have a comprehensive system for assessing, validating and recognising the non formal and informal training/learning and therefore the new proposal might create additional complexity for the recognition of qualifications for national competent authorities.

As mentioned in Article 14 § 5 “taking into account the knowledge, skills and competences acquired by the applicant through lifelong learning, notably non formal education and informal learning”. It is hardly possible to comply with this new requirement in view of applying a proportionate aptitude test or an adaptation period to implement if the learning outcomes are not officially assessed, validated and recognised by the home Member State as mentioned above.

4 – No suppression of prior check qualifications for craft trades having public health and safety obligations as foreseen in Article 7 Paragraph 4

UEAPME is concerned and opposed to the new addition to chapter II in the Article 7 § 4 suppressing the prior check of the professional qualification, as well as possible compensation measures for the first provision of services for craft trades listed under Annex 4, which benefit from automatic recognition and have health and safety implications. **This possibility for competent authorities of the host Member State to check the professional qualifications of the service provider prior to the first provision of services should be maintained to avoid serious damage to the health or safety of the service recipient.**

5 - Extension of the scope of the directive to the principle of partial access – Article 4& f

As UEAPME we do not see any need to modify the directive in order to include partial access to a profession. This would be very difficult to effectively assess and implement. The jurisprudence of the European Court of Justice does not require the Member States to grant partial access to a profession. It simply clarifies that the partial access to a profession is not prohibited.

In any case, if the result of the comparative analysis proves that there are substantial differences between shown qualifications and required qualifications, an adaptation period or an aptitude test may be necessary to fill the gap. Finally, a partly completed training should never lead to access to a profession under the present directive. This case would be better dealt with in the process of validating “non-formal and informal learning”.

6 – Extension of the scope of the directive to remunerated traineeships is not desirable – Article 55a

UEAPME disagrees with the recognition of the remunerated traineeships. Their integration in the directive is going too far and would go against the consistency of the scope of the directive. Furthermore it would be extremely complex due to the lack of existing tools for such a recognition process.

7 - UEAPME favours transparency but not as a pretext for reducing the number of regulated professions Article 59

UEAPME supports the transparency principle and the need to have a clear and up-dated list of regulated professions for each of the Member States.

However UEAPME disagrees with Paragraph 2 which obliges Member States to examine whether restricting the access to or pursuit of a profession to the holders of a specific professional qualification is justified along the lines of specific criteria defined by the European Commission. They should also have to inform the European Commission about the reasons for considering maintaining the requirements.

UEAPME is calling for a deletion of Article 59 based on the principle that Member States should keep their full prerogatives whether or not to regulate certain professions.

Furthermore the full exercise of several reporting would be a perfect counter-example of what should be done for cutting red tape and reaching further simplification at EU level.

Additional comments

Common training frameworks Article 49 a

UEAPME considers that further clarifications are required to have a better understanding of the future functioning of common training frameworks. Besides the lowering of the threshold previously in place for common platforms which obviously would facilitate their adoption, UEAPME considers it necessary to clarify the impact and interaction of Articles 49 a (b) and 49 a (c) in their practical implementation.

It is largely recognised that the common platform system has failed because the harmonisation of compensation measures has proven to be extremely difficult. Therefore UEAPME insists on the fact that the new proposal for a common training framework should not lead to an indirect minimum harmonisation based on the lowest common denominator and further to automatic recognition and the abandon of compensation measures.

On the contrary, we would like to ensure that the creation of European curricula on a basis of 9 Member States for a “minimum harmonisation” would not result in reducing the richness of Europe's educational systems. Requirements for given professions are different from country to country and vary along national cultures and specificities. The differences and variety of solutions have been a driving force of innovation and development along the years and this potential should be kept alive also in the case of the setting up of a European curriculum.

Therefore UEAPME would not oppose a “Common training framework” decided on a voluntary basis between several Member States as a type of advanced cooperation process, as long as it is not imposed all over Europe by a minority of Member States as in the current concept developed in the new EC proposal.

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