

## UEAPME reply to the consultation paper by DG Internal Market and Services on the professional Qualifications Directive

UEAPME would like to restate the importance of the directive on the recognition of professional qualifications for the good functioning of the internal market and for facilitating mobility of individuals in view of a better matching of supply and demand on the labour markets in Europe.

UEAPME is fundamentally in favour of simplification and also of simplifying this directive, as long as it respects a number of key principles and notably the freedom for Member States to regulate certain professions. UEAPME is of the view that:

- There is room for improving the directive in terms of advanced administrative cooperation,
- A general overhaul of the directive is not necessary,
- The concept of a European Professional Card could be a step in the right direction.

### 2.1 - Why simplification?

**Q 1: Do you have any suggestions for further improving citizen's access to information on the recognition processes for their professional qualification in another Member State?**

**Q 2: Do you have any suggestion for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence?**

Many efforts for informing citizens about possibilities on recognition of foreign qualifications have been undertaken in the majority of Member States from various stakeholders.

Information has been made accessible to a large public through different media: public authorities' websites, public employment services, professional organisations, brochures and leaflets. Furthermore with the creation of "Points of Single Contacts" as foreseen in the directive 2006/123/EC on services in the internal market the necessary structures to inform citizens about the recognition procedures exist. These PSC allow service providers to get information on and to complete all existing procedures and formalities necessary to exercise a given profession, be it permanently (freedom of establishment) or occasionally (freedom to provide services). The existing system also covers recognition of professional qualifications for granting access to regulated professions in the host Member State. However the awareness of these information sources has to be improved.

One has to recognised that the existing Directive is very elaborated, based on the experience of five decades. Therefore efforts for its simplification should essentially consist of a fine-tuning exercise which has to be balanced against other policy goals such as maintaining high quality standards for performance of specific services. The requirement of professional qualifications is a modern approach for aiming at a high standard of consumer protection.

Another area for further "simplification" should be to speed up administrative procedures. One such element could be a European professional card (see answer to question 11).

Moreover improving transparency of professional qualifications should be a common objective of the Member States and the European Commission by using already developed tools notably through the Copenhagen and the Bologna processes as well as the European Qualifications Framework. To this end an important improvement would be the creation of a data-base regrouping national information on existing professional qualifications throughout the EU.

## 2.2 - Making best practice enforceable

**Q 3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions**

The Code of conduct is a useful tool that should be much better communicated and disseminated at national and regional levels. However we don't think that the code of conduct should become enforceable since it has not been conceived to become a binding text and in several aspects goes far beyond the directive provisions.

## 2.3 – Mitigating unintended consequences of compensation measures

**Q4: Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?**

**Q 5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?**

**Q 6: Do you see a need to include the case-law on “partial access” into the Directive? Under what conditions could a professional who received “partial access” acquire full access?**

Based on the feedback from our members and users, experiences of compensation measures are quite satisfactory. As UEAPME we disagree with the idea of a possible deterrent effect of compensation measures. On the contrary they have an integration-supportive effect.

Compensation measures are only applicable when the qualifications of the applicant are not equivalent or superior to the qualification level required in the host Member State for a given regulated profession. Without this instrument applicants could not be granted access to the regulated profession they are not sufficiently qualified for on basis of the legal requirements of the Directive. Therefore compensation measures are in the very interest of professionals for ensuring a high degree of mobility within the internal market.

Compensation measures must be proportionate and have to focus on those areas where deficits in the applicants' qualifications have been established. It is essential to recall that the length of adaptation-periods is determined on an individual basis and that Member States have the choice between adaptation period and aptitude test. Thus, the instrument of compensation measures is a very flexible one.

In the same way we do not support the idea of developing European-wide codes of conduct on aptitude tests or adaptation periods. Given the multiple professions where compensation measures might be required and the large number of possible deficits in applicants' qualifications, it seems unrealistic to create such European codes of conduct. As explained above compensation measures require flexibility and proportionality because they focus on those areas where deficits in the applicants' qualifications have been established. These requirements lead to specific compensation measures tailored for individual recognition procedures. Therefore a European-wide code of conduct on aptitude tests or adaptation periods would be either too generic or not flexible enough to really cover all the possible situations and therefore not helpful.

The case 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. Therefore the present case-law allows Member States to refuse partial access under several conditions.

In our opinion, partial access to a profession only seems possible if following cumulative conditions are fulfilled:

- the concerned part of the profession can be exercised in the Member State of origin as a 'complete' profession on the basis of a fully completed training,

- the concerned part of a profession can be exercised in the host Member State as a 'complete' profession and is not to be considered as an inseparable part of a profession with a wider range of inherent activities.

In any case, if the result of the comparative analysis shows 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 kind of case would be better dealt with in the process of validation of “non-formal and informal learning”.

#### **2.4 - Facilitating movement of new graduates**

**Q 7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons**

**Q 8: How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons?**

As UEAPME we strongly support the learning mobility and in particular the learning mobility of young people as full part of their training pathway including graduates mobility. However the mobility of graduates who are not yet fully qualified should not be dealt with under this directive but under the Copenhagen process and ECVET or the Bologna process.

#### **2.5 – Facilitating movement between non-regulating and regulating Member States**

**Q 9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across Member States in Europe is vital? Please be specific in your reasons.**

**Q 10: How could the concept of “regulated education” be better used in the interest of consumers? If such education is not specifically geared to a given profession could a minimum list of relevant competences attested by a home Member State be a way forward?**

For the first time the Directive 2005/36/EC has introduced a special regime for service providers in the European legal framework. According to it if a profession is not regulated in the home Member State and the service provider might not prove the successful completion of a regulated education and training, then the Directive requires the service provider to have a minimum of two years professional experience during the 10 years preceding the provision of services.

These existing rules are already very liberal and assume an equivalence of the service providers' competencies with those of a Member State regulating the access to and pursuit of a given profession. Waiving the requirement of two years of professional experience would mean full application of the country of origin principle (automatic recognition) without previous minimum harmonisation measures and we consider it as not acceptable.

With regard to the applicable rules on freedom of establishment, Article 13 § 2 requires a minimum of two years of practical professional experience as one condition for recognition of qualifications, if the profession is not regulated in the home Member State. One or more attestations of competence or documents providing evidence of formal qualifications are required, which must meet certain criteria further specified in Article 13 § 2. The requirement of practical experience does not exist if the relevant profession is regulated in the applicants' home Member State (Article 13 § 1).

The reasons for such a differentiation are obvious. In cases falling under § 1, the applicants' formal qualifications are specifically focussed on the access to and pursuit of a given regulated profession; in those cases falling under § 2, this is not the case. Therefore an additional time period of practical professional experience is required. This approach should be maintained.

The existing concept of "regulated education" as defined in Article 3 § 1 (e) is coherent and certainly in the potential interest of consumers. It is obvious that a regulated education, the content of which is narrowly linked to the exercise of a given profession, has a significantly higher quality than one of any relevant educational programme officially recognised and attested as such by the home Member State of the mobile professional. Therefore the definition in Article 3 § 1 (e) should be maintained unchanged.

### **3.1 - A European Professional Card**

**Q 11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase transparency for consumers and employers? Should it enhance confidence and forge closer cooperation between a home and a host Member State?**

**Q 12: Do you agree with the proposed features of the card?**

**Q 13: What information would be essential on the card? How could a timely update of such information be organised?**

**Q 14: Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?**

Directive 2005/36/EC covers at the same time free provision of services , freedom of establishment under the "general system" and freedom of establishment on basis of coordination of minimum training conditions . The possible benefits of a European professional card should be analysed in each of the three areas independently.

With regard to free provision of services (Title II), a European professional card might be used in order to speed up the declaration process (Article 7). It could contain information on whether the profession is a regulated one in the service providers' home Member State. If it is not the case, it should contain information on a successfully completed regulated education and training by the service provider leading to the profession. If the profession is not regulated in the home Member State and the service provider might not prove the successful completion of a regulated education and training, then information should be given on the card if the service provider has a minimum of two years professional experience during the last 10 years before issuing the card.

With regard to freedom of establishment under the "general system" (Title III), a European professional card could also provide useful information. Articles 16 to 19 contain a set of rules for recognition of professional experience. A European Professional card could provide relevant information on the prerequisites for recognition under this chapter (e.g. duration of professional activity as self-employed or as manager of a business). With regards to recognition of evidence of training (Title III, Chapter I), it would be advisable for the Member States to build up a common information platform, which contains standardised information on national formal qualifications. The European Professional card could give an indication as to formal qualification(s), documented on the platform, the card-holder possesses.

European professional cards should only be issued by public authorities registered with IMI. These are well familiar with the European recognition of professional qualifications framework and would guarantee a high level of confidence and trustworthiness in the information contained on the card. Further IMI could be used in order to contact the issuing public authority in cases of doubt on the authenticity of a professional card or the information contained on it, or if additional information on the applicant's qualifications were required in individual cases.

The cards should have a limited validity (e.g. five years) in order to facilitate up-dates and controls and avoid possible frauds. Under no circumstances the introduction of such a card should lead to the detriment of educational quality.

A European professional card should be a smart card allowing for electronic communication of the card-holder with the national authority, competent for recognition of professional qualifications. The use of advanced electronic signatures based on a qualified certificate and which are created by a secure-signature-creation device (see Article 5 of Directive 1999/93/EC on a Community framework for electronic signatures), should be foreseen. In this way the advanced declaration for provision of services (Article 7 of Directive 2005/36/EC) could take place by electronic means.

### **3.2 – Abandon common platforms, move towards European curricula**

**Q. 15: What are your views about introducing the concept of a European curriculum - a kind of 28<sup>th</sup> regime applicable in addition to national requirements? What conditions could be foreseen for its development?**

As assessed in the Commission's report, it is largely recognised that the common platform system has failed. In fact the harmonisation of compensation measures has proven to be extremely difficult.

A 28<sup>th</sup> regime would require „common sets of competencies“ which could be considered as a minimum harmonisation of education and training conditions.

The tentative of setting minimum standards has already failed in the 80s. Moreover reaching a quorum of 9 Member States seems to be highly questionable as a basis for a „minimum harmonisation“ in the Internal Market.

The creation of European curricula would 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, specificities. The differences and variety of solutions have been a driving force of innovation and development along the years and this potential should not be undermined by a European curriculum. Further, the idea highly conflicts with the restricted competencies of the EU in the area of education and training (Articles 165, 166 of the EU Treaty).

### **3.3 – Offering consumers the high quality service they demand**

**Q. 16: to what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented**

**Q.17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?**

As UEAPME we don't share the views of risk of fragmented markets because of high numbers of regulated professions.

The existing rules and regulations on recognition of professional qualifications guarantee a smooth functioning of recognition processes if required for the access to or the pursuit of a given professional activity which is subject to the possession of specific professional qualifications. As the SOLVIT statistics show, only a few Member States seem to have difficulties in the application of the existing legal framework. It is the task of the Commission together with these Member States, to achieve improvements here. So far, the Member States competence to decide on the necessity to regulate certain professions has not been challenged. This must be further maintained.

Relatively low mobility rates are not caused by existing legal requirements such as recognition prior to the exercise of a regulated profession. As a matter of fact, in the majority of cases mobile professionals do not need to comply with any kind of recognition process. Nonetheless, mobility rates within the EU are relatively low. One of the major reasons has to be seen in cultural and language barriers and insufficient information on existing job opportunities in other Member States. Reducing the number of regulated professions will in no way change this situation.

We do not support either the development of lighter regime for professionals who accompany consumers to another Member State. The existing legal framework on recognition of professional qualifications, as set out in Directive 2005/36/EC is sufficiently developed and overall well-functioning. A set of special rules on cross-border provision of services exists (Title II of the Directive). Only a declaration has to be made in advance covering essential information (e.g. proof of nationality, evidence of professional qualifications). A "lighter" regime would mean automatic recognition (country of origin principle) within the general system on recognition of professional qualifications. If a Member State does not comply with the Directive's rules and obligations, then it is up to the Commission to intervene after appreciation of the facts.

### **3.4 – Making it easier for professionals to move temporarily**

**Q. 18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms “temporary or occasional” or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?**

**Q 19: is there a need for retaining a pro-forma registration system?**

**Q 20: Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?**

In the case of regulated professions, and notably for craft professions where services are generally not provided online, a declaration in advance is indispensable in order to ensure compliance with professional rules for service providers who move to another Member State (Article 5 III 2005/36/EC). Different treatment compared to online services is therefore justified notably because online service is something which is likely to develop further in the future. As already mentioned, the existing legal framework on recognition of professional qualifications is sufficiently developed and overall well-functioning. A set of special rules on cross-border provision of services exists (Title II of the Directive). As a rule, only a declaration has to be made in advance covering essential information (e.g. proof of nationality, evidence of professional qualifications). A "lighter" regime would mean automatic recognition (country of origin principle) within the general system on recognition of professional qualifications. The introduction of a European professional card as well as the electronic communication between service providers and competent national authorities could be elements to speed up the current declaration regime (see answer to question 11). The scope of application of the rules under Title II of the Directive is clear and precise. Therefore a differentiation between situations, where the essential part of the service is provided online and those where this is not the case would lead to further demarcation problems, making the up to now lean regime more complex.

So far, the declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services in that Member State during that year. It might be investigated, if the requirement to indicate a material change in the situation substantiated by the documents would not be sufficient, so that the requirement to renew the declaration could be waived. The prerogative of Member States to proceed to prior check should remain.

### **4.1 – Retaining automatic recognition in the 21th century**

**Q. 21: Does the current minimum training harmonisation offer a real access to the profession, in particular for nurses, midwives and pharmacists?**

**Q.22: Do you see a need to modernise the minimum training requirements, Should these requirements also include a limited set of competences? If so what kind of competences should be considered?**

**Q. 23: Should a member State be obliged to be more transparent and provide more information to the other Member States about future qualifications which benefit from automatic recognition?**

**Q. 24: Should the current scheme for notifying new diploma be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.**

**Q. 25: Do you see a need for modernising this regime on automatic recognition, notably the list of activities listed in Annex IV?**

**Q. 26: Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?**

UEAPME does not see any need for the revision of the current Annex IV notably for professions related to the craft activities. The annex is in use in all Member States and has proven its efficiency. The only change of Annex IV could be the introduction of some new professions non-existent at the time and for which the application of the system on recognition of professional experience is deemed appropriate.

However UEAPME does not refuse to engage into a discussion on modernising Annex IV with some clear warning notably avoiding a merger of the three current lists into one single list and avoiding moving professions from one list to another. Finally UEAPME requires an impact assessment of any change of Annex IV and notably the use of another possible classification.

In the same way, we don't see a need for reducing the number of years of professional experience necessary to qualify for automatic recognition.

#### **4.2 - Continuing professional development**

**Q. 27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the directive?**

Continuing professional development and adult learning are crucial for adapting to rapid changes of skills needs on the labour market and for workers employability. However it is difficult to see how this dimension could be introduced in a meaningful manner into the current directive. Instead it should strongly relate to the work done at national level on lifelong learning, learning outcomes and the implementation of the European Qualifications Framework. With regard to the objectives of Directive 2005/36/EC, the focus should stay on professional qualifications, as defined in Article 3 § 1 (b) of the Directive. Only these qualifications are a sound basis for recognition purposes.

#### **4.3 – More efficient cooperation between competent authorities**

**Q. 28: Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use the IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions?**

**Q. 29: In which cases should an alert obligation be triggered?**

Before starting a discussion around the extension of IMI to the professions outside of the scope of the Services Directive, it would be more relevant to ensure that the current full objectives are reached and that current systems are functioning in the satisfactory manner which is not the case so far.

#### **4.4 – Language skills**

**Q.30: Have you encountered any major problems with the current language regime as foreseen in the directive?**

The current language regime is not particularly relevant for the craft activities.

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