



**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**
Brussels, 19.12.2011, COM(2011) 883 final, 2011/0435 (COD)

EPSU response and position paper (22 May 2012)

Brussels, 22 May 2012

Introduction

With this position paper the European Federation of Public Service Unions (EPSU) aims to make a contribution to the ongoing debate across Europe on the revision of Directive 2005/36/EC on the recognition of professional qualifications, a process started in 2010 and to outline its views for the next steps of the policy process towards the adoption of the new directive to the attention of the European institutions and other interested stakeholders.

EPSU (<http://www.epsu.org>) represents a total of about 8 million workers in more than 270 trade unions in 47 countries across Europe. 60% of the members of EPSU's affiliates are women. EPSU covers workers in four key sectors of the European economy, involved in the delivery of quality public services: 1) Local and regional government (municipalities, districts, provinces/regions); 2) Central government and European administration; 3) Public utilities (i.e. the network industries: electricity, gas, water, waste) and 4) Health and social services. In the sector of health and social services, with a share of on average above 80% female workforce across the EU, EPSU represents about 3.5 unionised million women and men. EPSU is the recognised European social partner for the hospital sector and health care sector. EPSU has also developed a joint position with our sectoral European social partner, the European Hospital and Healthcare Employers' Association (HOSPEEM). Both documents can be accessed at <http://www.epsu.org/a/8744>.

The position paper outlines and is structured along a number of key outstanding issues. It is based on position papers, statements, letters and other input from a range of EPSU affiliates, in particular from Belgium (CSC), Denmark (DSR), Finland (JHK; SuPer; Tehy) Germany (Marburger Bund; ver.di), Norway (NSF), Sweden (Vårdförbundet) and the United Kingdom (RCM; RCN) and feedback from affiliates in Austria, France, Latvia and The Netherlands. It reflects the result of continued exchange and discussions since early 2012, both in the context of EPSU's Standing Committee "Health and Social Services" and the Sectoral Social Dialogue Committee for the Hospital Sector. It further builds on EPSU's contributions to consultation on Directive 2005/36/EC launched by the European Commission on 7 January 2011 (cf. EPSU response of 20 March 2011, <http://www.epsu.org/a/7448>) and to the consultation on the Green Paper of 22 June 2011 (cf. EPSU reply of 15 September 2011 <http://www.epsu.org/a/7993>) and on their main positions, key principles and recommendations, particularly in relation to health and social care professionals.

EPSU generally welcomes the open consultation the European Commission has engaged in and a number of key issues proposed in the revised directive, e.g. where it provides stronger acknowledgement of the need to balance free movement with overriding issues of patient health and safety.

Internal Market Information System (IMI)/European Professional Card (EPC) (art. 4a-4e)

EPSU supports the extended role foreseen for the Internal Market Information System (IMI) as best suited instrument to support, include and transfer detailed information about the card holder, to speed up the recognition process and to create more trust amongst the different stakeholders. In principle EPSU supports the objective of speeding up the recognition process, as this is in the interest of the health workers seeking recognition and employment in another EU MS. To properly and effectively fulfill their tasks it is essential to ensure the national authorities in charge have the necessary competencies and resources.

EPSU also supports the voluntary nature of the European Professional Card (EPC) and the format proposed, a virtual card/electronic certificate linked to the IMI System. When it comes to the cost of a possible future EPC, EPSU supports the wording of (art. 4a, 7.) that “any fees charged to health professionals for the card should 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”.

We expect that the relevant professional associations and competent authorities and also trade unions will be represented and will have a decisive say in the concrete design of such an EPC, should it be retained in the European legislation.

Temporary (and occasional) activity (art. 4c+4d)

EPSU opposes the relaxation of rules or a lighter regime for health professionals providing services temporarily in another country, including by means of an EPC.

EPSU would prefer the change of the term “temporary provision” into “temporary and occasional provision” and an explanation of what should be understood by both terms in one of the recitals. In EPSU’s opinion “temporary provision” should be limited to 1 year, not 2 years as suggested in art. 4c, 2..

Deadlines for the verification and the issuing of an EPC should start, for the category of temporary and occasional provision and in general, only upon receipt of a complete application for a European Professional Card by the competent authority which also should be stipulated like this in the directive.

Partial access (art. 4f)

EPSU opposes the introduction of partial access for health professions in general. The derogation should apply to all professions notified to the Commission as carrying a health and safety risk, in particular to the sectoral health professions and specialist professions and professions working in social services. It should not be applied 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. EPSU therefore rejects the case-by-case approach suggested by the proposal. For clarity, we favour a blanket exemption of health professions. This would also make no longer necessary a reference “to overriding reasons of general interest, such as public health” – as currently phrased in art. 4f, 2.. When assessing a demand for partial access it should, however, still be possible to invoke “overriding reasons of general interest” for other professions).

Article 1 would need to be amended as follows: “This Directive also establishes rules concerning partial access to some regulated professions and access to and recognition of remunerated traineeships pursued in another Member State”.

Declaration to be made in advance, if the service provider moves (art. 7)

EPSU doubts whether a shortening of deadlines as suggested in the proposal (1 month for the first provision of services, art. 7, 4., and 2 weeks in case of the temporary provision of services, art. 4c, 2.) is either realistic or appropriate in all cases. Whilst EPSU supports any aspiration for a swift and transparent processing of applicants’ cases and dossiers, deadlines nevertheless need to be stipulated in a manner to enable the competent authority to duly check all documents. What counts and should be aimed at in the first place is a reliable, trust-creating and transparent system and stronger cooperation between competent authorities in the home and host Member State.

In addition, in EPSU’s opinion expired deadlines should not lead to an automatic recognition of a professional qualification. Art. 4d, 5. therefore should be deleted.

EPSU is critical of the wording of art. 7, 4., second phrase which only allows a prior check of professional qualifications where the purpose is “to avoid serious damage to the health and safety of the service recipient due to a lack of professional qualification”. For health professions any likely risk for the patients’ health and safety should be prevented, not only “serious damage”.

Levels of qualifications (art. 11)

EPSU supports the reference to 5 levels of qualification as kept in art. 11, at least until a new classification has been adopted, as they are needed and have proved to be useful benchmarks.

But we also agree with the possibility for competent authorities to compare qualifications by using other tools as reference points, e.g. the European Qualification Framework (EQF).

Compensation measures (art. 14)

EPSU supports the legislative changes suggested under this article, not least as they still allow the host Member States to require “the applicant to complete an adaptation period of up to three years or to take an aptitude test if the training he/she has received covers substantially different matters with regard to professional activities than those covered by the training in the host Member State” (art. 14, 1.), obliging the competent authority to justify their decisions (cf. art 14, 6.). The length of the compensation measures has to be seen in relation to the length of the professional training in case of both full-time or part-time compensation measures/courses.

EPSU considers that the definition of “substantially different matters” as suggested in art. 14., 5. is both appropriate and practical. EPSU in addition highlights that nowadays in professional training (courses) reference is also often made to “fields of competence/fields of activities”. Therefore differences between countries should be assessed in view of learning outcomes to be achieved (which would also be consistent with the logic of the European Qualification Framework).



Notification procedure under the system of automatic recognition (art. 21a)

EPSU supports the notification requirement for the legislative, regulatory and administrative provisions a Member State adopts with regard to issuing of evidence of formal qualifications and the possibility for the European Commission to adopt delegated acts to adapt qualifications according to the stipulated procedure (cf. art. 58a, “exercise of the delegation”).

Common provisions on training/updating professional qualifications (art. 22)

EPSU supports the requirement for Member States to publish reports on the continuing education and training procedures in place in their country for the sectoral health professions as enumerated in art. 22, 2. - and to elaborate such reports should they not exist.

Health professionals need to be “fit to 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 to practice” is a condition for being admitted to and remaining on a register. Where this is the case the home Member State should be allowed to demand the same requirements from EU applicants. This may include providing evidence of recent practice. In this context EPSU also calls for guarantees by the employers to offer support when it comes to the induction of newly recruited migrant health workers.

EPSU would also like to see clearly strengthened the requirements in the directive concerning participation in continued professional development (CPD). EPSU therefore suggests including an explicit requirement for Member States to have systems in place to ensure that health professionals can regularly update their skills through some type of CPD and for employers to support their employees by different means in this regard.

Doctors of medicine (art. 24)

The Commission proposes that the duration of the basic medical training should be at least 5 years (currently 6 years) AND should consist of at least 5,500 hours of theoretical and practical training. EPSU is of the opinion that the minimum duration of basic medical training should not be shortened by one year because otherwise the quality of training would suffer. Furthermore students of medicine would be exposed to excessive time pressure.

EPSU members representing doctors (and other EPSU members) oppose the use of delegated acts in accordance with article 58a to specify the issues enumerated under article 24, 4. and therefore seek removal of this paragraph. In their view the definitions of the content of doctors’ training and professional training in the field of health professions in general is a subsidiarity issue should remain with the Member States and respective competent authorities.

Nurses in general care (art. 31)

All EPSU affiliates are in full support of specifying the minimum length of training to 4,600 hours AND at least 3 years, as stipulated in art. 31. 3.. The same holds for the split between theory (at least one third) and clinical practice (at least one half of the minimum duration of the training), art. 31. 3., EPSU also supports adoption of delegated acts, within certain parameters – also see below under “Delegated acts (art. 58a) – in order to review content and future competencies for nurses, art. 31. 7. Empowering the EC to intervene directly into the definition of the contents of national professional training regulations will, however,

continue to be problematic given the differences in the national health (care) systems in particular as to the work organisation and as to the design and attribution of tasks.

N.B.: There are diverging views in the EPSU membership concerning the proposed move to require a minimum of 12 years of general education or equivalent to enter nurse education, art. 31. 1., with the majority supporting the 12 years proposal in the draft EC Directive and others supporting the current wording and variation on the way to enter nurse education.

Midwives (art. 40)

The move to require a minimum of 12 years of general education or equivalent to enter midwifery education as suggested in art. 40. 2. is supported by most EPSU affiliates. They all agree with the wording and rules as currently proposed concerning the minimum training requirements, art. 41. 1.

Common training frameworks (art. 49a)

Starting from the understanding that this instrument does not and should not apply to sectoral professions, EPSU is open in principle to possible future initiatives to develop common training principles, including for certain professions in the field of health and social care, under the condition that such an initiative is led by these professions and is supported by professionals from at least one third of the EU Member States (some EPSU members would like to see the threshold fixed at a minimum of half of the EU Members States) where they are regulated, art. 49a, 2. (2). The regulation of health professions, however, has to remain under the auspices of the competent national authorities.

EPSU sees a role for the involvement of its members and more generally of social partners in the event that such common training frameworks are developed, art. 49a, 2. (f).

Knowledge of languages and language control (art. 53)

EPSU supports the possibility of tighter language controls and the introduction of the right for regulators to systematically check language knowledge in professions with health and safety implications as foreseen in the proposal. We are, however, critical about the negative and narrow wording in the current proposal that allows language tests only in case of “serious and concrete doubts about the professional’s sufficient language knowledge in respect of the professional activities this person intends to pursue” (art. 53, 2nd paragraph).

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 control for the 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) recognition of her/his professional qualifications, e.g. by making any exams easily accessible via the National Contact Points and by providing sample language exams. 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)”. [Source: EPSU contribution to the public consultation on the Green Paper on the Modernisation of the Professional Qualifications Directive, 15 September 2011, p. 15].

EPSU is in favour of allowing language controls by both the regulator/competent authority – in the context of the recognition procedure to test if a professional is “fit to practice” – and by the employer, if required. In the Member States there are different systems in place, sometimes in the form of a two stage process, with initial recognition, but also the need to obtain a license to practice in a certain region. EPSU recognises the need to assess language before a license for professional practice is issued and would like to have this unambiguously stipulated. We see a clear need to clarify the wording in the directive as the text as it stands is ambiguous and still open for interpretation. Employers should also be able to assess whether an applicant has the relevant skills for a particular role, including language/communication skills. They should therefore not be prevented from carrying out their own appropriate controls as long as these do not replicate the testing already done by the competent authority. EPSU members work towards obtaining organisational and financial support by the employers for the improvement of the language skills of the migrant health worker recruited.

EPSU fails to see how the role of national patient organisations in recommending language controls for self-employed professionals not affiliated to national health care or health insurance systems could be implemented effectively and therefore proposes deletion of the respective half-sentence.

Not fully qualified professionals (art. 1 + art. 55a)

In the case of health professions EPSU is not in support of the proposal made in art 55a to oblige home Member States to “recognise the remunerated traineeship pursued in another Member State and certified by a competent authority of this Member State”, given that two important preconditions have not been met: first full transparency; and second harmonisation of key elements in the contents of such a remunerated internship. The home Member State should, however, facilitate the recognition of experience gained in the completion of a remunerated traineeship, e.g. for doctors and pharmacists, by taking it into consideration.

Alert mechanism (art. 56a)

EPSU agrees with the proposal for automatic alerts to all Member States for those health professions enumerated under art. 56a, 1., (a)-(j) after a decision of the competent authority to prohibit the pursuit of the relevant professional activity. This requirement makes sure that alerts will not be issued on the basis of allegations or suspicions.

EPSU also supports the wording suggested on possible appeals against such a decision and the obligation to inform the health professionals concerned about their decision at the same time as the alert as such.

Delegated acts (art. 58a)

Whilst EPSU is unable to assess currently all possible implications of the extended use of delegated acts to update the contents of professional qualifications as defined in the Annexes to the directive, we support in principle the use of such an instrument within certain parameters. Representatives of relevant professional groups, competent regulatory bodies, other key experts and trade unions need to be represented to shape the agenda and any decisions taken, whilst fully respecting the competencies of Members States and utilising this instrument where strictly necessary for effective and good governance.



EPSU would welcome and support steps towards a more competency-based framework for the awarding of professional qualifications.

EPSU would like to recall that changes to the institutional framework to replace the current comitology system by either implementing acts or delegated acts in line with the Lisbon Treaty, as foreseen for the first phase (as mentioned in on p. 15 of the Green Paper on the Modernisation of the Professional Qualifications Directive of 22 June 2011), need to be processed in the framework of a transparent system that includes a close cooperation with Member States and the competent authorities.

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