Joint response HOSPEEM-EPSU
on the proposal for a directive (of 19 December 2011)
on the modernisation of the directive 2005/36/EC
on the recognition of professional qualifications

Brussels, 5 May 2012/15 June 2012

Joint HOSPEEM-EPSU response

HOSPEEM, the European Hospital and Healthcare Employers' Association, and EPSU, the European Public Service Union, have decided to submit a **joint response to the Commission's proposal issued on 19 December 2011**.

It has to be read as complementary to any replies of individual EPSU or HOSPEEM members. This joint reply reflects the issues, concerns and proposals on which full or broad consensus between the European social partners for the hospital and health care sector could be reached.

Introduction: Guiding principles for EPSU and HOSPEEM

These were set out in EPSU and HOSPEEM's joint response dated 20 September 2011 to the Commission's Green Paper (cf. http://www.epsu.org/a/7993 and http://hospeem.org/activities/consultations/epsu-hospeem-response-to-the-european-commission%e2%80%99s-green-paper-on-reviewing-the-directive-on-the-recognition-of-professional-qualifications-200536ec/), but are worth repeating:

Three key objectives are paramount and need to be guaranteed when updating and revising Directive 2005/36/EC:

- Health and safety of patients
- Quality of service provision in health and social care
- High levels of qualification and professional standards for the health care workforce, in particular for professions benefitting from automatic recognition, but also for those falling under the general system.

It is critical for MS to be able to attract and retain healthcare professionals, and we therefore agree that there should not be unnecessary barriers to free movement that would hamper MS in providing adequate healthcare for their populations. However we are also mindful that healthcare, by its very nature, carries a high degree of serious risk to the health and safety of patients from professionals who may lack training, clinical expertise, relevant experience or personal integrity. It is necessary therefore in this sector to balance the desire to streamline and simplify free movement with the need to maintain minimum quality and safety standards by checking the competence and suitability of professionals who will be providing services.

EPSU and HOSPEEM are in support of instruments and initiatives that help to realise the fundamental right of free movement of workers in the internal market including the EU system for the recognition of professional qualifications. Updated, clear and targeted rules and an effective and clear legal Community framework for the recognition of professional qualifications are in the common interest of both health and social care professionals and employers in the sector.

The European Professional Card

We welcome the voluntary nature of the European Professional Card in the Commission's proposal, and the fact that it will be an electronic certificate administered via the secure IMI system. We would like to stress that the cost of the card to individual professionals should be reasonable and proportionate.
We also have concerns that whilst it is good to speed up administrative procedures, the timescales associated with the use of the card may be over-ambitious. It might be wise to phase the new deadlines them in gradually and/or to "pilot" the new arrangements for a period, to see whether they are realistic.

The principle of partial access

We reiterate the view expressed in our response to the Green Paper that for professions which benefit from automatic recognition such as the sectoral professions in the health sector, partial access undermines existing minimum requirements. EPSU and HOSPEEM oppose partial access to any of the sectoral professions.

We accept that the principle of partial access already exists in case law. However we consider there should be a derogation from the principle of partial access for healthcare professions, given the level of risk to the public's health and safety from inadequately qualified professionals. The Court of Justice recognised in their judgment that the protection of the recipients of services may justify proportionate restrictions on the freedom of establishment and the freedom to provide services, if such measures are necessary and proportionate in order to obtain the objective.

This derogation should apply to all professions notified to the Commission as carrying a health and safety risk, in particular to the sectoral professions and specialist professions (e.g. oncologist or geriatric nurse), not to individuals on a "case by case" basis, as is impossible for regulators to know exactly what activities an individual will perform in order to assess the level of risk to the public.

Minimum qualifications

We are broadly happy with the Commission's proposals, and are pleased to see the recognition that a more transparent and outcome-based system is desirable but that it will be a lengthy and

complex process requiring a sensible timescale. In particular, we are pleased to see new article 21a regarding the quality assurance of minimum qualifications and the related notification procedure.

Regarding the powers to update the content of minimum training requirements by the use of delegated acts, HOSPEEM and EPSU wish to emphasise the importance of fully involving professions, regulators and Member States in this process.

Assuring continuing competence (being "fit for practice")

To guarantee a maximum of patient safety and equal treatment between workers as to requirements to work in a profession, EPSU and HOSPEEM consider important that health care workers are fit for practice at any moment. Those health care workers having obtained a qualification many years ago but not having worked in the profession or in the health care sector for a longer period should be requested to provide evidence of recent practice according to the requirements applicable to those working in the country of destination in the same profession. As this should apply to employed and self-employed persons, HOSPEEM and EPSU would like to see and explicit mentioning of this requirement and accordingly amendments to articles 22 (employed persons in view of their entitlement to practice) and 50 (self-employed in view of establishment). Not to set up undue barriers for mobility, the requirements have to be clear and transparent for the applicant – and how they can be complied with – and they can't differ in a given Member State.

Partially qualified professionals

On principle, EPSU and HOSPEEM do not support the notion of extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad, Article 55a, as we consider this does not fall under the scope of Directive 2005/36/EC. This piece of European legislation has been designed for and is geared towards professionals – including those in the health care sector – who are fully qualified and fit for practice in one Member State and then seeking recognition of their professional qualifications of a completed education and training process in another Member State.

In practice we consider this proposal could be difficult to administer, as in the absence of harmonisation it is hard to be sure of the content of supervised practice undertaken in another Member State. Greater transparency is required to ensure that certain skills and competences are neither missed nor unnecessarily duplicated.

Alert mechanism

HOSPEEM and EPSU are pleased to see the suggested introduction of an alert mechanism and consider this to be a positive step for patient safety. We consider however that in the case of individuals who do not benefit from automatic recognition, competent authorities should be

obliged to alert all other Member States in the same way as for automatically recognised professionals.

We recognise that more work needs to be done on the detail of how this system will work given the differences between Member States' regulatory regimes and sanctions. Currently there is no common view on what proactive information exchange and early warning means across the EU27. The resulting system must be fair and proportionate and allow for appeal.

Language requirements

EPSU and HOSPEEM welcomes the acknowledgment by the Commission that language controls should be in place for health professionals who have a recognised qualification but who require access to practise their profession. Health professionals should have written and oral skills enabling them to do the required documentation and reporting about the caring process and to inform clinical decisions - this is essential for quality and safety.

It is however unclear from the Commission's proposal how this will work in practice. We do not think the wording in the proposal suggesting (for example) the involvement of patients' organisations is feasible.

Employers must retain the ability to assess candidates' suitability for a particular job, and language competence may form part of that assessment. We would not want to see anything in the Directive which emasculates employers' crucial responsibility to recruit people who are "fit for purpose". We think there is an important distinction to be made between the role of the competent authority which is to recognise the migrant's qualification and establish that they are fit to practise the profession, and that of the employer which is to ensure that the person they are recruiting is suitable for the job for which they have applied.

Clarifying minimum training periods for doctors, nurses and midwives

We reiterate the view expressed in our Green Paper response that EPSU and HOSPEEM support retaining minimum training requirements for each profession with reference to a minimum number of years and/or hours, or the equivalent in ECTS credits. Whether or not the years and hours requirements should apply cumulatively should be decided in collaboration with each profession. It is also important that training for health professions should not be merely academic/theoretical but should included a minimum amount of time spent performing appropriate activities in a clinical setting. The social partners support a reference in the directive to the split between theory and clinical practice, e.g. for general nurses at least one third for theory and at least one half of the minimum duration of the training) for clinical practice, as stipulated in Art. 31.3. Ultimately, it is the outcomes rather than the inputs that matter.

For all professions, we would like to see greater recognition of prior relevant education and experience in the minimum requirements, to encourage mature applicants who may not need to start training again from the beginning.