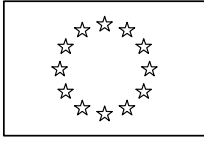


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**COMMISSION STAFF WORKING DOCUMENT**

**on the transposition and implementation of the Professional Qualifications  
Directive**

**(Directive 2005/36/EC)**

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## 1. INTRODUCTION

In 2005, a comprehensive Directive streamlined the historically evolved EU law on professional qualifications: Directive 2005/36/EC<sup>1</sup>. The Commission services have started a major evaluation of the Directive in March 2010.

This staff working paper contains a first assessment, from the Commission services' point of view, of how the Directive has been transposed into the laws and regulations of the Member States (see section 3). It also gives an overview of the mechanisms introduced to support the smooth daily implementation of the Directive (see section 4). The paper, further, focuses on new developments since the entry into force of the Directive (see section 5). In section 6, several conclusions are put forward.

However, this paper does not represent the Commission services' final evaluation of the Directive. The evaluation will rely on a much broader analysis by the Commission services. This analysis will rely on feedback from external stakeholders on how well the Directive has achieved its objectives and of its relevance to changing demands. As a first step, the Commission services reached out to competent authorities with a request to draw up reports reflecting their own experience with the *acquis* on professional qualifications – these reports are made public at the same time as this staff working paper.

The next step will be to learn from professionals, consumers, employers and citizens at large about what are their experiences with the Directive. A final evaluation report will be published in autumn 2011.

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<sup>1</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications; Official Journal L 255, 30/09/2005, p. 22–142. See also Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania; Official Journal L 363, 20/12/2006, p. 141-237.

## 2. A KEY FOR CITIZENS TO BENEFIT FROM THE SINGLE MARKET

The right to work in another Member State stems directly from the Treaties. It is of critical importance for citizens, enabling the free movement of workers, the free movement of services and the freedom of establishment (Articles 45, 49 and 53 TFEU). The right to work includes the right to exercise one's profession in another Member State. About 800 professions are regulated throughout the EU in as far as they require specific qualifications. As qualification requirements differ (sometimes considerably) from country to country, a person who is fully qualified for his/her profession in one country might not be considered fully qualified in another. The 2005 Directive is a key for professionals to overcome problems resulting from these differences. Thus, it enables professionals to take full advantage of the potential of the Single Market in finding a job, developing their career or extending their business.

### 2.1. Simplification and consolidation

The first objective of the 2005 Directive is to simplify and consolidate<sup>2</sup> a wide array of earlier instruments adopted to facilitate recognition of professional qualifications. This enabled the repeal of 15 previous directives.

#### 2.1.1. *Craft, commerce and industry (automatic recognition)*

As a starting point, in the 1960s, a range of directives created a provisional recognition regime for various activities in the areas of craft, commerce and industry which was based on automatic recognition of consecutive periods of professional experience (rather than the possession of formal qualifications or diplomas). The 2005 Directive did not change this framework, but it facilitates its implementation by listing all activities covered by this automatic recognition regime in one place (Annex IV).

#### 2.1.2. *Health professionals and architects (automatic recognition)*

Between 1975 and 1985, the minimum training requirements for doctors, dentists, general care nurses, midwives, pharmacists and veterinary surgeons were defined in a series of directives, allowing for automatic recognition of these professional qualifications throughout the EU. A similar regime of automatic recognition was achieved for architects in 1985. This system is maintained under the 2005 Directive. Annex V lists all professional titles (by Member State) which entitle their holders to benefit from automatic recognition anywhere in the EU.

#### 2.1.3. *General system (mutual recognition)*

Over time, it became increasingly difficult to achieve harmonisation for further professions. Against this background, the first 'mutual recognition' Directive was adopted in 1989 providing a framework for the recognition of higher education diplomas. Two further mutual recognition directives followed in 1992 and in 1999 establishing the General System for recognition of professional qualifications. The 2005 Directive simplified the General System by merging three different regimes that were created over time into a single one.

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<sup>2</sup> See White Paper on European Governance, 25.7.2001, COM (2001) 428 final.

Under the General System, access to a profession must be granted to a professional who is fully qualified for the same profession in another Member State. Member States can only impose compensatory measures - a choice of either an adaptation period or an aptitude test, if the duration or the content of the migrant's training differs substantially from that which they require. In any event, a qualified migrant can no longer be forced to undergo a full course of training; the added value of the training obtained in his/her Member State of origin must be taken into account.

## **2.2. New opportunities to facilitate free movement**

The 2005 Directive also contains two new features: (i) it invites Member States to renounce prior checks of the qualifications of professionals who wish to carry out professional activities on a temporary or occasional basis; and (ii) it introduces the concept of common platforms.

### *2.2.1. Temporary mobility*

The Directive relies on the case law of the European Court of Justice to considerably facilitate temporary mobility.

The underlying legal assumption is that a professional who is "legally established", that is to say, who lawfully exercises his profession in a Member State, is deemed sufficiently qualified to pursue this profession on a temporary or occasional basis in any other Member State. Moreover, in accordance with the principle of proportionality, he or she should not be treated in the same way as a professional seeking employment or establishment for an indefinite period.

The Directive only allows Member States to require that, once a year, the professional informs the competent authorities of his intention to provide services. Professionals can be subjected to, at most, a pro-forma registration. Such registration cannot be a prerequisite to provide a service and should be without cost or delay. Only in the case of regulated professions with public health and safety implications are competent authorities allowed to exceptionally check qualifications in advance.

### *2.2.2. Common platforms*

Member States have a great deal of discretion in granting access to the professions under the General System. Remaining national differences are not always easy to overcome and can constitute barriers for professionals who frequently move across borders. For this reason, the Directive introduced the concept of common platforms. Article 15 of the Directive defines them as a set of criteria which make it possible to compensate for differences which have been identified between the training requirements of the Member States (at least two-thirds of all those which regulate the profession in question). Such criteria could be additional training, adaptation periods, aptitude tests, professional practice or any combination of the above. A common platform can be initiated either by a European professional organisation or a Member State. The Commission may adopt such platforms through implementing rules (comitology).

## **2.3. Other new elements in the 2005 Directive**

Article 53 of the 2005 Directive clarifies that professionals should have the level of knowledge of the national language that is necessary for exercising the professional activity in question. Any language requirement should be justified and proportionate, in

view of the activity a professional actually wishes to carry out. Recognized professionals are entitled to attest their language knowledge through any means of proof. However, the Directive should not be construed as imposing a blanket ban on language testing; it does allow for language testing in exceptional cases.

Finally, the Directive widens the scope of administrative cooperation and exchange of information between Member States.

### 3. TRANSPOSITION INTO NATIONAL LAWS AND REGULATIONS

#### 3.1. Major transposition delays in Member States

##### 3.1.1. Delays of up to three years

Member States were required to transpose the Directive by 20 October 2007, at the latest. However, the process was slow in all Member States. By the deadline, no Member State had completed the transposition.

As an immediate consequence, the Commission initiated infringement proceedings against all 27 Member States (against 25 Member States in November 2007 and against the 2 new Member States in March 2008).<sup>3</sup> Even then Member States protracted transposition and finalised it only after further action by the Commission and, in some cases, by the Court.

In December 2009 and April 2010 the Commission services published scoreboards bringing the transposition deficits to public attention.<sup>4</sup> By September 2010 - with nearly a three-year delay - all Member States had notified to the Commission all the laws, regulations and administrative provisions necessary to comply with the Directive. The following table (see Annex I for more information) gives a first overview:

Stage in the infringement procedure of the Commission	Member States which completed transposition at that stage
End of transposition period (October 2007)	None
Letters of formal notice (November 2007 and March 2008)	BG, IT, FI, MT, RO, SK
Reasoned opinions (Spring 2008)	CZ, DK, EE, LT, LV, NL, PL, SI
Legal action before the Court (September/October 2008)	CY, HU, IE, PT, ES, SV
Court decisions (second half of 2009)	BE, DE, FR, UK, AT, LU, EL

<sup>3</sup> These proceedings only concerned the non-communication of national transposition measures by Member States.

<sup>4</sup> [http://ec.europa.eu/internal\\_market/qualifications/news\\_en.htm](http://ec.europa.eu/internal_market/qualifications/news_en.htm)

### 3.1.2. *Reasons for the delay*

It could easily be argued that transposition was such a complex task that delays<sup>5</sup> were justified: due to the large number of professions covered by the Directive<sup>6</sup>, the number of transposition measures amounts to more than 1200. In addition, many national departments and competent authorities were involved in the transposition process (authorities competent in the areas of health, industry, trade, small and medium sized enterprises, education, agriculture, etc.). In some Member States, such as Austria, Belgium, Germany or the UK, division of powers between central and local authorities may have complicated the overall transposition even further.

However, it is the view of the Commission services that a transposition period of two years was not too short. The Directive did not represent a completely new policy instrument but mainly consolidated the existing *acquis*. A high number of national transposition measures, including those on training, did not need to be modified under national law but only re-notified to the Commission. To facilitate this work for Member States, the Commission services presented a comprehensive transposition guide in November 2005. This guide identified all the components of the Directive which required fresh action at national level beyond those already taken under the previous Directives.

It should also be noted that the numbers of measures adopted by each Member State range from less than ten (BG, EL, IT, MT, PT) to more than a hundred (AT, DE, DK, FR). , yet there is no correlation between the number of measures adopted and the degree of delay. This suggests that the number of national measures which had to be adopted or amended is not a valid explanation for this delay.

Overall, it seems that it was very hard for Member States to develop a reliable timetable for transposition. Timetables indicated to the Commission services in the course of successive Committee meetings shifted constantly. Transposition measures started trickling in as from May 2007 but no Member State was able to complete transposition by the deadline.

## **3.2. Main problems in the area of recognition of professional qualifications**

### 3.2.1. *Turning rules into rights*

The Directive does not just establish rules requiring Member States to examine citizens' requests. It actually turns such rules into concrete rights for citizens: for instance, it defines an exhaustive list of documents that can be required in the context of a recognition procedure (Article 50 in conjunction with Annex VII). It also provides that each competent authority must acknowledge receipt of an application and inform the applicant of any missing document within 1 month and complete examination of the file within 3 months (with possible extension of one month).

Initial problems in administrative practice are to be expected. More worryingly, the national laws and regulations are not always in line with the above provisions. The

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<sup>5</sup> See the Study on Transposition of the Directive on the recognition of professional qualifications, (Ramboll ) for the European Parliament's Committee on Internal Market, September 2009 (IP/A/IMCO/ST/2009-05; PE 416.238); <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=fr&file=27071>

<sup>6</sup> It affects around 800 types of professions across the Member States.

Commission services have found requirements for citizens to provide, among others, curriculum vitae, certificates of civil status, certified translations of passports and originals of diplomas<sup>7</sup>, none of which figure on the list of documents which can be requested under the Directive. In other cases national regulations fail to provide for the right of citizens to be informed within one month of any documents missing from the application.

### 3.2.2. *Enlargement in 2004 and in 2007*

Applying the *acquis* to citizens from the new 12 EU Member States has been sometimes a challenge, notably in respect of migrating health professionals. This challenge, however, will diminish over time, as more and more professionals satisfy the EU training requirements.

#### – Organising automatic recognition

Since the accession of the 12 new Member States, the differences between the training offered in those countries before accession and the harmonized EU requirements, in most cases, have been compensated for by recent professional experience. Consequently, these professionals have largely benefited from automatic recognition, provided they had sufficiently recent professional experience over a given number of years (the so-called "acquired rights" regime). In order to qualify for automatic recognition, certain nurses and midwives who qualified in Poland before accession had to undergo an upgrading of their qualifications through a "bridging programme". Late in 2008, Poland requested a review of its initial bridging programme to broaden the base of participation by nurses. This review was discussed in detail by all the Member States and found broad support in November 2009. Poland immediately started implementing the necessary changes.

#### – Applying the general system

The Directive also sought to improve the situation of those professionals from the new Member States who did not qualify for automatic recognition. This concerned primarily professionals (mainly nurses and midwives) who had migrated to the EU 15 from the new Member States before their accession and could not demonstrate the required professional experience. Article 10 of the Directive extended the application of the General System to these professionals. However, some Member States did not transpose Article 10 at all or did not set up the necessary system of compensation measures. This is about to be addressed by the Commission services.

### 3.2.3. *Minimum training requirements for doctors and nurses*

In contrast to the other "sectoral" professions where the Directive defines only the minimum number of years of training the Directive prescribes both the minimum number of years and the minimum number of hours for the training of doctors and general care nurses. In some Member States, considerable deviations occurred from the number of minimum training hours required in the Directive. This issue is under discussion with the Member States concerned. It also needs to be examined in depth in the forthcoming evaluation of the Directive.

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<sup>7</sup> See Case C-298/99, *Commission v. Italy* ECR (2002) I-03129.

### 3.3. Main problems in the area of temporary mobility

Where a professional wishes to exercise activities only on a temporary or occasional basis, no prior checks of his/her qualification should be necessary. The overall trend in Member States has been to adopt a cautious, even reluctant, approach to this new regime. It appears that a significant number of Member States make extensive use of the optional provision of the Directive allowing them to check qualifications in advance. There is also a tendency to impose requirements on temporary migrants which go beyond those allowed under title II of the Directive.

#### 3.3.1. *The scope of the new regime*

Nearly all transposition measures literally stick to the Directive's principle that "*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*". This is a promising signal that Member States do not wish to impose arbitrary constraints on temporary mobility through their national regulation and intend to respect the jurisprudence of the Court of Justice.

Some Member States, however, wish to exclude certain professions (auditors and pharmacists) from the scope of the new regime on temporary provision of services on the grounds that that these activities cannot be provided on a temporary basis. In the Commission services' view, any exclusion of a profession is incompatible with both the Directive and the fundamental freedom to provide services.

#### 3.3.2. *Declaration regime*

Under the Directive, Member States may require a written declaration (accompanied by a number of documents expressly listed in Article 7(2) of the Directive, to be made by the migrant once a year, in advance of a temporary provision of a service, but are not obliged to do so. In practice, all Member States have made use of the possibility to require a declaration. Most Member States require it for nearly all professions they regulate. Only a few Member States (Finland, Lithuania, the Netherlands and Sweden) limit the requirement to certain professions, in particular in the health sector.

A number of requirements related to the contents of a declaration seem to be contrary to the provisions of the Directive. In particular, in some Member States, service providers are required to give details of the time, duration and/or type of the intended activities, as well as their location (especially for dentists, doctors, nurses, veterinary surgeons and ski instructors).

Finally, some Member States stipulate that a declaration has to be made well in advance (ranging from 15 days to one month before the provision of services, or "annually, by 31 January of the given calendar year"). In the light of the objectives of the declaration regime, it should be possible to send a declaration immediately before the temporary provision of a service.

#### 3.3.3. *Pro-forma registration*

To facilitate disciplinary control, Member States may require pro-forma registration of the migrant with a professional register. The majority of the Member States (Austria, Belgium, Bulgaria, Cyprus, Greece, Hungary, Ireland, Lithuania, Netherlands, Poland, Portugal, Romania, Spain, United Kingdom) have made use of this option. Most of them

impose this obligation on all professionals: some limit it to certain sectors (e.g. Slovenia and Sweden). Some Member States leave it to the discretion of the competent authorities to decide whether or not to register a service provider (e.g. Luxembourg) - a practice which may result in a lack of clarity for the professionals. Only a few Member States refrain from imposing any registration requirement (Czech Republic, Estonia, Finland and Latvia).

#### *3.3.4. Prior check of the qualifications*

Article 7 (4) of the Directive allows Member States to carry out prior checks of qualifications for professions with health and safety implications for which there is no automatic recognition. The option has been extensively used in certain Member States. The laws transposing the Directive contain long lists of professions which, by virtue of national law, are considered to have public health and safety implications within the meaning of the Directive. Poland (with about 170 out of 385 regulated professions) and Greece (with about 70 out of 167 regulated professions) are in the lead, followed by France, Ireland and Spain which list around 20% of their regulated professions. There is a risk that Member States go beyond what is actually allowed under the Directive.

A significant number of Member States (Belgium, Latvia, Malta, Portugal, Slovenia and the United Kingdom) leave it to the competent authorities to decide on a case by case basis whether or not a service could have public health and safety implications justifying a prior check of the qualifications of the service provider. This results in lack of clarity and creates an obstacle for the professionals.

## **4. IMPLEMENTATION: HOW TO MAKE THE DIRECTIVE WORK**

The success of the Directive does not only rely on its transposition into the laws and regulations of the Member States. It is also heavily contingent upon a continued commitment to make the Directive work after its transposition into national law. To that end, there are a number of key players, including competent authorities, the Commission itself and professional organisations. Furthermore, in order to deliver more effective solutions for professionals, the Directive's implementation is underpinned by various flanking mechanisms which are discussed in detail in Annex II of this paper entitled "Practical assistance to citizens".

### **4.1. How to engage every competent authority**

Each competent authority plays a central role: they are in charge of the actual recognition of professional qualifications. It is up to them to take ownership of the 2005 Directive in order that the interested professionals may benefit from it. However, there exist several hundred competent authorities at national, regional or even local level. The Regulated Professions Database<sup>8</sup>, which is maintained by the Commission services and is constantly updated by the Member States, lists more than 900 authorities. Different mechanisms are in place to ensure that each of these authorities is aware of how best to apply the Directive.

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<sup>8</sup> See the link to the Database on DG Internal Market Website:  
[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?fuseaction=home.home](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home)

#### 4.1.1. *The Group of Co-ordinators*

Under the Directive, each Member State has to designate one representative to coordinate the activities of the various national authorities<sup>9</sup>. Their role is to promote uniform application of the Directive in the Member States. In March 2007, the *Group of Coordinators* was set up<sup>10</sup> and has held regular meetings since October 2007.

#### 4.1.2. *The Code of Conduct*

In June 2009, the Group of Coordinators approved a Code of Conduct. The Code provides comprehensive guidance on all administrative procedures, in particular on the documents that a migrant may be asked to supply, translation requirements, time limits and compensation measures<sup>11</sup>. The Code of Conduct is not, however, a legally binding instrument. It can only provide a consistent overview of best, acceptable and unacceptable practices. For instance, Section VII of the Code of Conduct addresses the issue of language knowledge which has been raised by competent authorities and attracted the attention of several Members of the European Parliament<sup>12</sup>.

However, there is evidence that the Code of Conduct is not yet well known by competent authorities. The Commission services discussed worrying examples related to doctors and physiotherapists with the Coordinators in early 2010 and concluded that efforts should be made to better inform the competent authorities. The correct use of the Code of Conduct by national authorities should clarify citizen's rights resulting from the Directive. This, in turn, should lead to fewer situations where citizens need to contact assistance services like SOLVIT and *Your Europe Advice*.

#### 4.1.3. *Internal Market Information System (IMI)*

The Internal Market Information (IMI) system<sup>13</sup> was developed to speed up communication between Member States and allow competent authorities to directly liaise with each other. IMI was developed after the adoption of the 2005 Directive and at the beginning did not apply to all professions. It was initially only used with regard to certain health professions and was latterly extended to craft professions. Many competent authorities see the advantage of a direct communication with each other and now

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<sup>9</sup> Article 56(4) of Directive 2005/36/EC.

<sup>10</sup> Commission Decision of 19 March 2007 setting up the group of coordinators for the recognition of professional qualifications, Official Journal L 79 of 20/03/2007, p. 38-39.

<sup>11</sup> [http://ec.europa.eu/internal\\_market/qualifications/docs/future/cocon\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf)

<sup>12</sup> Section VII of the Code of Conduct clarifies that the language knowledge requirements must be proportionate and not exceed what is necessary for the performance of the profession at stake and that recognition of professional qualifications should be a different procedure from language tests. Thus, recognition should not be refused or postponed on the grounds that a professional does not have the appropriate language skills (with the exception of the professions where language skills are part of the qualification, for example, a speech therapist). The Code also clarifies that the host Member State may not systematically impose a language examination and that the professional should be allowed to demonstrate language knowledge by other means.

<sup>13</sup> The IMI is an electronic tool that allows competent authorities from different Member States to communicate directly, quickly and easily with each other without passing through diplomatic channels. It helps authorities to identify their counterparts in other Member States and overcomes language barriers by putting at their disposal pre-translated sets of standard questions and answers as well as an automatic translation system.

frequently use IMI<sup>14</sup>. Different stakeholders have even called for making its use mandatory for all regulated professions. The situation improved even further with the entry into force of the Services Directive<sup>15</sup> and of one of its implementing measures<sup>16</sup> which make compulsory the use of IMI for purposes of administrative cooperation in the area of services (see section 5.1).

The IMI was very positively received by competent authorities. To date, more than 1200 requests have been sent through the system. The requests under the Professional Qualifications Directive were, for the most part, handled within a very short time (58,3 % within two weeks, 92,5 % within eight weeks). There is, however, a wide variation between Member States in the speed of response.<sup>17</sup>

## 4.2. The powers of the Commission

### 4.2.1. Adapting the Directive to new developments

Under the Directive, the Commission obtained the power to adopt implementing rules. However, the possible scope of such implementing rules is limited. They can be used to adapt the Directive to new developments in Member States or scientific and technical advances. However, they cannot be used, for instance, to render the Code of Conduct mandatory.

To this end, the Commission is assisted by the *regulatory committee* under Article 58 of the Directive. With the adoption of Regulation No 1137/2008 of 22 October 2008, implementing rules should mainly be adopted in accordance with the regulatory procedure with scrutiny rights for the European Parliament. So far, the Commission has adopted three regulations, the last of which was adopted under the (then newly introduced) procedure<sup>18</sup>.

### 4.2.2. Extending automatic recognition to new diplomas

The Commission also plays an important role in extending automatic recognition to new diplomas. Article 21(7) of the Directive invites the Commission to publish newly notified diplomas and to regularly update the lists of new or modified diplomas. Since 2008, this has been done twice a year. In carrying out this task, the Commission relies on the Member States to notify any new or amended diplomas which are then assessed for compatibility with the requirements of the Directive. Approximately 200 new or amended diplomas have been published since 2005<sup>19</sup>.

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<sup>14</sup> See the Internal Market Scoreboard, 2010 no. 21, published on 23.9.2010, [http://ec.europa.eu/internal\\_market/score/index\\_en.htm](http://ec.europa.eu/internal_market/score/index_en.htm). See the statistics on the use of IMI on the Commission's website: [http://ec.europa.eu/internal\\_market/imi-net/important\\_documents\\_en.html](http://ec.europa.eu/internal_market/imi-net/important_documents_en.html)

<sup>15</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the Internal Market, Official Journal, L 376, 27.12.2006, p. 36-68.

<sup>16</sup> Commission Decision of 2 October 2009 setting out the practical arrangements for the exchange of information by electronic means between Member States under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

<sup>17</sup> See for further details: Internal Market Scoreboard (footnote 15).

<sup>18</sup> Commission Regulation (EC) No 279/2009 of 6 April 2009 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications, Official Journal, L 93, 07/04/2009, p. 11-12

<sup>19</sup> All communications published are available at: [http://ec.europa.eu/internal\\_market/qualifications/index\\_en.htm](http://ec.europa.eu/internal_market/qualifications/index_en.htm)

Because of the common objectives in the European intergovernmental Bologna Process, all higher education institutions in the European Union are reforming their degree structures and the number of new diploma notifications in the area of architecture is expected to rise. A proactive attitude from Member States is a key in order to ensure that new graduates can swiftly benefit from automatic recognition and their right to free movement. There is a concern that some Member States have been slow in notifying new diplomas, notably Germany where it is understood that more than 50 notifications are expected in the coming months.

#### 4.2.3. *Control of national derogations from citizens' rights*

Under Article 14 (2) of the Directive, Member States can derogate from the principle that migrating professionals are free to choose between an aptitude test and an adaptation period. The Commission can, however, oppose derogation if it is not sufficiently justified. So far, two Member States (the Czech Republic and Belgium) considered applying the derogation by requiring aptitude tests in certain fields<sup>20</sup>. However, there was not sufficient evidence that any gaps in qualifications could not be effectively compensated by means of an adaptation period. Therefore, the Commission concluded that the proposed derogations were not justified.<sup>21</sup> The Member States concerned did not oppose this decision.

In contrast, derogations for a number of sports professions, such as ski instructors, have been granted to Austria, France and Italy, on 25 July 2000 and to Germany on 1 June 2001, allowing those Member States to impose aptitude tests. These derogations are still valid today.

### 4.3. **The contributions of professional organisations and associations**

#### 4.3.1. *Involvement in committees*

After long discussions, the 2005 Directive, unlike the preceding directives does not give professional organisations an institutional role. Under Article 59, where appropriate, the Commission may consult experts from professional organisations. Professional organisations at European level should also continue to offer their expertise as well as feedback on what their constituency (mainly national organisations) considers as priorities and challenges.

#### 4.3.2. *Common platforms*

Despite attempts at achieving it<sup>22</sup>, no common platform has reached an advanced stage of preparation. It is intended that the evaluation of the Directive will further explore the reasons for the apparent failure of common platforms and their future potential. One question which merits further consideration is whether it is necessary to maintain the

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<sup>20</sup> Fire protection and prevention, archaeology, architecture, civil engineering, technicians and private security services.

<sup>21</sup> Commission Decisions of 3.5.2007, K (2007) 1909; 16. 4. 2007, K (2007) 1631; 30.5.2007, C (2007) 2226 final; 30.9.2009, K (2009) 7448; available at: [http://ec.europa.eu/internal\\_market/qualifications/future\\_en.htm#compensation](http://ec.europa.eu/internal_market/qualifications/future_en.htm#compensation)

<sup>22</sup> Notably for engineers, psychotherapists, real estate agents, specialists in clinical chemistry and laboratory medicine.

requirement that a platform needs to take account of substantial differences in training in at least two thirds of the Member States. (i.e. 18 Member States) Another question is the extent of the cross-border dimension which would merit a common platform.

#### *4.3.3. Professional cards*

The 2005 Directive does not foresee professional cards at European level, although they are used in some Member States. Recital 32 of the Directive mentions the possibility to develop them in order to facilitate mobility. The introduction of European professional cards has also been the subject of a European Parliament resolution<sup>23</sup>. It is also a priority under the Single Market Act. It will be explored further in the context of the ongoing evaluation of the Directive. The evaluation will show whether certain professions are willing to take this much further.

## **5. NEW DEVELOPMENTS SINCE THE ENTRY INTO FORCE OF THE 2005 DIRECTIVE**

### **5.1. Services Directive**

Directive 2006/123/EC (the "Services Directive") is a horizontal instrument which applies to a large number of service sectors including the services of the regulated professions. The Professional Qualifications Directive and the Services Directive regulate different aspects of free movement of professionals. The Professional Qualifications Directive deals with issues linked to the recognition of professional qualifications, use of professional and academic titles as well as knowledge of languages of the professionals concerned. The Services Directive deals with most of the other requirements applicable to the regulated professions (and it is important to note that these are not only requirements imposed by law or regulation but also by the rules of professional bodies in the exercise of their legal autonomy). This includes issues such as tariffs, legal form requirements, ownership requirements, professional liability insurance, as well as restrictions on the use of commercial communications and multidisciplinary activities. The rules in the Services Directive aimed at administrative simplification and administrative cooperation also apply to the regulated professions. All in all, the two Directives complement each other in order to provide a comprehensive legal framework for regulated professions providing services and therefore to facilitate the free circulation of professional services across Europe.

One of the most important obligations in the area of administrative simplification in the Services Directive is the setting up of "Points of Single Contact" through which service providers can obtain all relevant information and complete on-line all administrative procedures needed for access to and exercise of their services. This includes the recognition of professional qualifications where the Points of Single Contact have to be available both for the information and completion of formalities imposed on professionals in the case of permanent establishment (Title III of Directive 2005/36/EC)

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<sup>23</sup> See Resolution of the European Parliament of 19 February 2009 on the creation of a European professional card for service providers, IMCO report A6-0029/2009.

and for the information and completion of formalities imposed on professionals in the case of temporary provision of services<sup>24</sup>.

In contrast, the "contact points" referred to in Article 57 of the Professional Qualifications Directive pursue a different objective (the gathering of information and assistance to citizens' questions<sup>25</sup>) than the "Points of Single Contact" established under the Services Directive (e-government centres)<sup>26</sup>.

Where necessary, specific provisions have been included in the Services Directive to avoid from the outset any conflict arising from its parallel application with the Professional Qualifications Directive. For instance, in the area of authorisations, the procedural rules and time limits set out in the Professional Qualifications Directive apply fully to any issue linked to the recognition of professional qualifications and are not touched upon by the Services Directive. Similarly, the application of Title II of the Professional Qualifications Directive (notably the possibility for Member States to require a prior annual declaration in the context of the cross border provision of services of the regulated professions) is ensured by the specific derogation from the freedom to provide services clause included in the Services Directive<sup>27</sup>.

Professions excluded from the scope of the Services Directive (such as health professions, notaries and bailiffs) but covered by the Professional Qualifications Directive remain fully covered also by the Internal Market freedoms under the TFEU. Therefore, in order to guarantee the free circulation of those professional services, Member States have to both implement the Professional Qualifications Directive for matters linked to the recognition of professional qualifications and ensure the compatibility of their rules with the TFEU provisions, notably its Articles 49 and 56 for any other issue.

## **5.2. European Qualifications Framework (EQF)**

In 2008 the Council and the European Parliament recommended that Member States relate their national qualification frameworks to the eight reference levels identified in the new European Qualifications Framework (EQF)<sup>28</sup>. The objective of the EQF is to make qualifications more readable and more easily understandable across different countries. It is an instrument targeting national education systems and the national qualification frameworks which flow from them. It does not, however, affect the access to regulated economic activities in the Member States, which continues to be regulated by the Professional Qualifications Directive, with rights for citizens which can be directly enforced before national courts in the EU. As the objectives of these two

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<sup>24</sup> Points of Single Contact should allow to complete procedures and formalities related to the recognition of qualifications both for natural persons (self-employed professional) and for legal persons (a company employing a number of professionals and having to have their qualifications recognised, for instance in the context of a cross border provision of services).

<sup>25</sup> Article 57 of Directive 2005/36/EC.

<sup>26</sup> Articles 6 and 8 of Directive 2006/123/EC.

<sup>27</sup> Article 17(6) of Directive 2006/123/EC foresees a specific derogation from the application of Article 16 for matters covered by title II of the Professional qualifications Directive.

<sup>28</sup> Recommendation of the European Parliament and of the Council of 23 April 2008 .on the establishment of the European Qualifications Framework for lifelong learning, Official Journal C 111 of 6/5/2008, p. 1-7.

instruments differ, the EQF recommendation explicitly states that it does not affect the recognition of professional qualifications under the Directive<sup>29</sup>.

Although the objectives differ, one might question to what extent the tools for comparing qualifications should differ: Classification of educational levels under the Directive is based on the length of training courses or studies, i.e. it is input-oriented, whilst the EQF classifications are described in terms of learning outcomes, and are thus output-oriented. Moreover, in contrast to the eight levels under the EQF Recommendation, the Directive groups professional qualifications under only five levels<sup>30</sup>. Under the Directive, mobility is facilitated for foreign qualifications if they are on the same level as the qualification required in the host country or on the level immediately below.<sup>31</sup> During the evaluation, the Commission will reach out to stakeholders to explore this issue further.

## 6. CONCLUSIONS

At this stage, the Commission services can only draw fairly limited conclusions about some of the successful improvements ushered in by the 2005 Directive and about some less encouraging outcomes and outline questions which merit further attention:

### a) Areas of concern

Member States were exceedingly late in the transposition and there is no real justification for the delay.

Member States tend to be cautious, even reluctant, when it comes to allowing professionals from other Member States to provide services on a temporary basis.

No agreement on a common platform has been reached or is at an advanced stage of preparation. The concept of common platform, in its current form, appears to be a failure.

The fact that the current Code of Conduct is not binding leads to a great number of cases where EU law is not correctly applied. This explains the frequent recourse by citizens to SOLVIT and *Your Europe Advice* (ex-Citizens Signpost Service).

Extending automatic recognition to new diplomas depends on Member States. They should be more proactive in notifying new diplomas, in particular for architects.

### b) Open issues

Some Member States appear to be seeking more flexibility for the training in the sectoral professions, in particular for doctors and nurses.

There is a continued interest in a professional card.

<sup>29</sup> Recital 11 of the Recommendation reads as: "This Recommendation is without prejudice to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications which confers rights and obligations on both the relevant national authority and the migrant. Reference to the European Qualifications Framework levels on qualifications should not affect access to the labour market where professional qualifications have been recognised in accordance with Directive 2005/36/EC".

<sup>30</sup> See Article 11 of Directive 2005/36/EC. These levels are established in the recognition procedures since many years.

<sup>31</sup> See Article 13 of the Directive 2005/36/EC.

There is a need to enhance the understanding by stakeholders of the relationship between the EQF and the Professional Qualifications Directive.

There is a need for stronger enforcement of the implementation by Member States of the new elements of the acquis introduced by Directive 2005/36/EC.

**c) Positive advances**

Enlargement in 2004 and in 2007 raised some difficult technical questions. They have largely been addressed.

The co-ordinators in Member States have been a good driving force to ensure that competent authorities take ownership of the Directive.

The Internal Market Information System (IMI) shows much potential in allowing competent authorities to communicate more effectively.

The Professional Qualifications Directive and the Services Directive complement each other in order to facilitate the free circulation of professional services.

## Annex I : Transposition of Directive 2005/36/EC

België/ Belgique/ Belgien	Transposition by horizontal and sectoral (profession specific) laws and regulations on national and regional level (36 notifications)  Judgement by the Court of Justice of 9.7.2009 (C-469/08) for failure to transpose within the prescribed period  Transposition completed in May 2010
България	Horizontal transposition (total of 6 notifications)  Transposition completed in February 2008
Česká Republika	Horizontal and sectoral (profession specific) transposition: 24 laws and 3 regulations on national level (total of 27 notifications)  Transposition completed in October 2008
Danmark	Transposition by horizontal and sectoral (profession specific) laws and regulations on national level  Transposition completed in November 2008 with 135 notifications.
Deutschland	Transposition by sectoral (profession specific) laws and regulations on federal and regional level (total of 203 notifications)  Judgement by the Court of Justice of 17.12.2009 (C-505/08) for failure to transpose within the prescribed period  Transposition completed in March 2010
Eesti	Transposition by 1 horizontal law and sectoral (profession specific) regulations on national level (total of 16 notifications)  Transposition completed in December 2008
Ελλάς	Horizontal Transposition (1 measure)  Judgement by the Court of Justice of 2.7.2009 (C-465/08) for failure to transpose within the prescribed period

	Transposition completed in May 2010
España	Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (24 notifications)  Transposition completed in January 2009
France	Transposition only by sectoral (profession specific) laws and regulations on national level (129 notifications)  Transposition completed on 3 May 2010
Ireland	Transposition by horizontal and sectoral (profession specific) laws (11) and regulations on national level (total of 32 notifications)  Transposition completed in April 2009
Italia	Transposition by one horizontal law and one sectoral (profession specific) law (7 notifications)  Transposition completed in November 2007, but additional law communicated later
Κύπρος	Transposition on national level, 1 horizontal law, 8 sectoral (profession specific) laws  Transposition completed in April 2010
Latvija	Transposition by 1 horizontal law and sectoral (profession specific) regulations on national level (total of 24 notifications)  Transposition completed in November 2008
Lietuva	Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 33 notifications)  Transposition completed in April 2008
Luxembourg	Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 7 notifications)  Judgement by the Court of Justice of 2.7.2009 (C-567/08) for failure to transpose within the prescribed period  Transposition completed in September 2010

Magyarország	<p>Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 38 notifications)</p> <p>Transposition completed in September 2009</p>
Malta	<p>Transposition by one horizontal and 5 sectoral (profession specific) regulatory measures on national level (total of 8 notifications)</p> <p>Transposition completed in January 2008</p>
Nederland	<p>Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 72 notifications)</p> <p>Transposition completed in February 2009</p>
Österreich	<p>Transposition by horizontal and sectoral (profession specific) laws and regulations on federal and regional level (total of 124 notifications) Judgement by the Court of Justice of 24.9.2009 (C-477/08) for failure to transpose within the prescribed period</p> <p>Transposition completed in September 2010</p>
Polska	<p>Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 61 notifications)</p> <p>Transposition completed in November 2008</p>
Portugal	<p>Horizontal Transposition (2 notifications), to be complemented by ministerial orders relating to specific professions Transposition completed in March 2009</p>
România	<p>Transposition by 1 horizontal and sectoral (profession specific) laws and regulations on national level (total of 25 notifications)</p> <p>Transposition completed in February 2008</p>
Slovenija	<p>Transposition by 2 horizontal laws and 15 sectoral (profession specific) laws and regulations on national level (total of 17 notifications)</p> <p>Transposition completed in July 2008</p>
Slovensko	<p>Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 36 notifications)</p>

	Transposition completed in June 2008
Suomi/ Finland	Transposition by horizontal and sectoral (profession specific) laws and regulations on national level (total of 17 notifications)  Transposition completed in November 2008
Sverige	Transposition only by sectoral (profession specific) laws and regulations on national level (total of 60 notifications)  Transposition completed in June 2009
United Kingdom	Transposition by horizontal and sectoral (profession specific) laws and regulations on national and regional level (total of 77 notifications)  Transposition completed in January 2010  Judgement by the Court of Justice of 9.7.2009 (C-556/08) for failure to transpose within the prescribed period

## Annex II: Practical assistance to citizens

A large array of instruments has been put at the disposal of citizens to allow them to enjoy the benefits of the single market.

Firstly, citizens can find valuable information on the internet on how to proceed in order to exercise a regulated profession in other Member States. The "**Your Europe**"<sup>32</sup> portal gives practical information (deadlines, types of documents that can or cannot be requested etc.) and provides a link to the **User's Guide**<sup>33</sup>, issued by the Commission services to explain, in a user friendly manner, the system put in place by the Directive. It also refers to the **Regulated Professions Database**<sup>34</sup> which provides information on which professions are regulated, the type and level of regulations in different Member States, and the authorities competent for treating their applications.

Secondly, the Directive foresees **Contact Points** that provide information and assist citizens in realising their rights under the Directive. Such contact points are now in place in all Member States. As the distinction between professional and academic recognition of qualifications is not always clear to citizens, the Commission has encouraged Member States to set up single access points for both professional and academic recognition of qualifications or, at least, to create a link between them (e.g. a common web page or a visible link from one procedure/network to the other).

Furthermore, the **Points of Single Contact** foreseen by the Services Directive should function in each Member State as fully fledged "e-government centres" and allow professionals (whether self-employed or working for a company) to obtain all relevant information and to complete on-line all administrative procedures needed for the recognition of their professional qualifications both for the purposes of permanent establishment and for the purposes of cross border provision of services. Finally, citizens can rely on all the other structures put in place to help them benefit from the single market:

**Your Europe Advice**<sup>35</sup> is an EU advice service for the public: it provides free and personalised advice on citizens' rights in the EU, in their own language and within a week of the request.

**SOLVIT**<sup>36</sup> is a network in which Member States work together to solve, without formal legal proceedings, problems caused by misapplication of single market law by public authorities. SOLVIT is committed to finding solutions to problems within ten weeks and its use is free of charge. There is a SOLVIT centre in every Member State.

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<sup>32</sup> See [http://ec.europa.eu/youreurope/citizens/work/jobseeker/qualifications-for-employment/index\\_en.htm?profile=0](http://ec.europa.eu/youreurope/citizens/work/jobseeker/qualifications-for-employment/index_en.htm?profile=0)

<sup>33</sup> See [http://ec.europa.eu/internal\\_market/qualifications/docs/guide/users\\_guide\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf)

<sup>34</sup> The database is managed by the Commission services but fed-in with information provided by Member States. See [http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?fuseaction=home.home](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home)

<sup>35</sup> Your Europe is an EU advice service for the public, currently provided by the legal experts from the European Citizen Action Service (ECAS) operating under contract with the European Commission. See [http://ec.europa.eu/citizensrights/front\\_end/index\\_en.htm](http://ec.europa.eu/citizensrights/front_end/index_en.htm)

<sup>36</sup> See [http://ec.europa.eu/solvit/site/index\\_en.htm](http://ec.europa.eu/solvit/site/index_en.htm)