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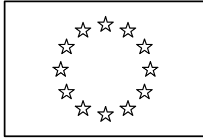

EUROPEAN COMMISSION
Directorate General Internal Market and Services

SERVICES
Free movement of professionals

Brussels, 5 July 2011

EVALUATION OF THE PROFESSIONAL QUALIFICATIONS DIRECTIVE

(Directive 2005/36/EC)

This document is a working document of the Internal Market and Services Directorate General of the European Commission for discussion. It does not purport to represent or pre-judge the formal proposal of the Commission.

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EXECUTIVE SUMMARY

This evaluation assesses the functioning of the European rules applying to the recognition of professional qualifications and identifies the remaining obstacles to the mobility of professionals. The Professional Qualifications Directive[1] is aimed at facilitating mobility within the EU: it defines a set of rules allowing professionals qualified in one Member Sate to exercise their profession in another Member State.

The Single Market Act[2], published in April 2011, identifies the modernisation of the system of recognition of professional qualifications as a key action for improving mobility of EU citizens in the single market.

The evidence presented in this evaluation report has also been used to prepare the Green Paper on the modernisation of the Professional Qualifications Directive[3], adopted by the Commission on 22 June 2011.

Scope of the evaluation

The Professional Qualifications Directive (the Directive) was adopted in September 2005 and transposed in Member States between 2007 and 2010. However, since the Directive consolidates the rules set out in 15 previous Directives adopted from the 1960's onwards, the evaluation covers a much older acquis.

Since 2007, more than 100 000 recognition decisions have been taken under the Directive, enabling the mobility of 85.000 professionals. The most mobile professions are health professions, teachers, social/cultural professions and craftsmen.

Methodology

This evaluation is based on twelve questions, covering the various situations in which the Directive is applied (establishment and temporary mobility), the different regimes set out in the Directive (general system and automatic recognition) and the most relevant horizontal provisions (assessment of language skills, recognition of third country diplomas, administrative cooperation and assistance to citizens).

The evaluation was carried out in order to assess the rules on the recognition of professional qualifications from the point of view of the following criteria: effectiveness, efficiency, relevance, consistency and acceptability. It is based on a broad input from a wide range of all stakeholders (Member States, competent authorities, professional organisations, citizens, educational bodies, trade unions, SOLVIT centres and National Contact Points). The consultation process allowed to collect concrete evidence on the functioning of the Directive and to involve all interested parties in the assessment of possible improvements.

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[1] 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. 0022 - 0142

[2] "Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth" - COM(2011) 206 final: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0206:FIN:EN:PDF

[3] Green Paper on modernising the Professional Qualifications Directive, COM(2011) 367 final; http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications_directive/COM267_en.pdf

Main findings

Recognition under the general system

The functioning of the general system, applied for all professions for which training requirements have not been harmonised, has been carefully examined. It proved to be a pragmatic and effective solution, though the case-by-case assessment of each request for recognition is a burdensome exercise both for competent authorities and professionals. Some unnecessary obstacles to mobility and possible improvements have been identified, notably in relation to the conditions imposed on professionals coming from Member States that do not regulate a profession and to the classification of qualifications.

The compensation measures, used under the general system in cases of substantial differences between the qualifications of the applicant and the qualification required in the host Member State, can be useful in supporting the integration of migrant professionals in the host Member States but need to be better justified by competent authorities.

Demographic developments in the labour markets call for more flexibility in the rules for the recognition of qualifications: in this context, the scope of the general system could be extended in order to cover partial access to a profession and the mobility of young professionals who are not yet fully qualified.

Finally, the concept of common platforms, introduced in the Directive to facilitate the recognition of qualifications under the general system, did not deliver concrete results, notably because the purpose was not sufficiently clear and the conditions for setting up a platform were too demanding for professional organisations.

Automatic recognition

Doctors, dentists, pharmacists, nurses, midwives, veterinary surgeons and architects benefit from the automatic recognition of their qualifications, on the basis of harmonised minimum training requirements. This system is appreciated by competent authorities and professionals because it allows for efficient treatment of requests for recognition. The efficiency of the system is, however, undermined by a complex procedure for the notification of new diplomas (in particular for architects), which is an essential process for keeping automatic recognition up to date. Another issue raised in the evaluation exercise concerns the lack of transparency on the contents of training programmes for diplomas issued in the health sector. Other possible improvements have been identified to strengthen the confidence in automatic recognition (e.g. need to take into account not only the diploma but the fitness to practice) and to facilitate the access to the professions.

The outcome of the evaluation shows that the minimum training requirements, agreed between the 1960's and the 1980's, need to be updated in order to better reflect the current practice of professions. Depending on the profession, these training requirements cover the entry level, the duration and contents of study programmes and the supervised practical experience.

Professions in the areas of craft, trade and industry also benefit from automatic recognition, on the basis of periods of professional experience. This system works smoothly but the classification of economic activities in Annex IV of the Directive, which was established many decades ago, makes the identification of the professions benefiting from this system quite difficult.

Temporary mobility

The Directive introduced a lighter regime for professionals interested in providing services on a temporary and occasional basis. This regime does not foresee a prior check of qualifications (except for professions with health and safety implications) and is based on a prior declaration sent by the professional to the competent authority. The feedback received from competent authorities shows that the use of this system is rather limited compared to cases of establishment. However, some professions expressed a strong interest in this regime and asked for a further simplification of the administrative requirements. The notion of "temporary and occasional" provision of services needs to be clarified in order to ensure a consistent application of this regime.

Language knowledge

The Directive foresees that the professionals benefiting from the recognition of their qualifications should have the language skills "necessary for practising the profession in the host Member State". On this basis, most of the competent authorities consider that it is up to employers to check language skills after the recognition of qualifications. Authorities in the health sector consider that the control of language skills should be strengthened under the Directive for the professionals treating patients.

Third country qualifications

EU citizens holding third country qualifications can benefit from the Directive if the qualifications have been recognised in one Member State and if they have acquired three years of professional experience in this Member State. The processing of these requests for recognition is considered complex, notably because competent authorities experience difficulties in verifying that the conditions for recognition are met (first recognition in a Member State and three years of experience). Third country nationals benefiting from equal treatment under legal immigration directives can also benefit from these provisions.

Administrative cooperation

The Directive widened the scope of administrative cooperation and requires competent authorities in the home and host country to exchange all the necessary information. Evidence collected during the evaluation shows that administrative cooperation allowed to simplify and accelerate recognition procedures, notably through the use of the Internal Market Information system (IMI). However, the exchange of information between competent authorities is still limited to disciplinary sanctions and fitness to practice.

The basis for the introduction of professional cards included in the Directive (recital 32) has not been sufficient for developing new solutions likely to offer concrete benefits for professionals.

Assistance to professionals / Access to information

Despite efforts to set up information and assistance structures (e.g. National Contact Points, Points of Single Contact, SOLVIT), professionals still encounter major difficulties in finding hands-on information on what to do to obtain a recognition of their qualifications (identification of the competent authority, list of documents that need to be submitted). In addition, the limited use of electronic means for submitting recognition requests makes the recognition procedures more cumbersome for the applicants.

1. INTRODUCTION

1.1. Single Market Act

In October 2010 the Commission issued the Communication "Towards a Single Market Act for a highly competitive social market economy"[4] in which it presented 50 proposals to boost growth and jobs and to reinforce citizens' confidence in the single market. This Communication has been the basis for a Europe-wide debate with all interested stakeholders. In the Communication, the Commission announced a major evaluation of the Professional Qualifications Directive, with a view to modernising the rules for the recognition of qualifications and facilitating the mobility of workers. During the debate about the Single Market Act[5], the modernisation has been identified by individual citizens, trade unions and public authorities as one of the most important actions.

Consequently, enhancing the mobility of qualified workers, notably through the modernisation of the rules for the recognition of professional qualifications is one of the twelve levers to boost growth and strengthen confidence announced by the Commission in the final text[6] of the Single Market Act issued in April 2011. On 22 June 2011, the Commission published a Green Paper on "Modernising the Professional Qualifications Directive". This Green Paper should prepare the ground for a legislative proposal before the end of 2011. It is mainly based on the findings of the present evaluation.

1.2. The present evaluation

In March 2010, DG Internal Market and Services launched an evaluation of the Professional Qualifications Directive. The evaluation of the Directive was undertaken in order to assess how the rules for the recognition of professional qualifications currently work in practice and whether there is scope for improvement.

To make this evaluation a success, DG Internal Market and Services involved a broad range of stakeholders, including Member States, competent authorities, national contact points, SOLVIT centres, professional organisations, business community, trade unions and citizens.

The evaluation covers in principle the period of October 2007-May 2011. This reference period starts from the deadline for the transposition of the Directive by the Member States. However, in most cases, the evidence collected on the functioning of the recognition systems is related to an older acquis. Therefore, there are also frequent references to the period from 2000 to May 2011. The results of the first part of the evaluation were already published in October 2010: a working document on how Member States transposed the Directive[7], as well

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[4] "Towards a single Market Act - For a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another" - COM(2010) 608 final/2 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:REV1:EN:PDF#page=2

[5] Results of the consultation on the Single Market Act available on: http://ec.europa.eu/internal_market/smact/consultations/2011/debate/index_en.htm

6 "Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth" - COM(2011) 206 final: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0206:FIN:EN:PDF

[7] Transposition report available on: http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf

as more than 180 experience reports from competent authorities in the Member States8. This evaluation report presents the outcomes of a broader analysis of the acquis on the recognition of professional qualifications; it focuses principally on the input of external stakeholders.

2. DIRECTIVE 2005/36/EC – AN OVERVIEW

EU citizens have the possibility to work in another Member State. This right stems directly from the Treaties. It represents a concrete opportunity for citizens to benefit from the single market. However, Member States can restrict the access to certain professions by requiring that the professional holds specific qualifications. Since qualifications requirements vary from one country to another, a professional who is fully qualified in one Member State may encounter difficulties in exercising the profession in another Member State. The Professional Qualifications Directive[9] is an instrument aimed at overcoming these difficulties by organizing the recognition of professional qualifications.

The Professional Qualifications Directive, hereafter the "Directive", was adopted in September 2005 and fully transposed in all Member States in September 2010, nearly three years after the deadline[10]. However, the acquis on professional qualifications is much older. The Directive simplifies and consolidates the rules for the recognition of qualification set out in 15 previous Directives adopted between the 1960s and 1990s (sectoral directives for craft, commerce and industry and for health professions and architects as well as three general mutual recognition directives).

2.1. Objectives of the legislation

The legislation on recognition of professional qualifications has been developed in order to respond to four objectives:

a) The main objective is to facilitate labour mobility within the EU, allowing European citizens to benefit from employment opportunities in other Member States but also allowing business to recruit qualified professionals throughout the EU. The free movement of qualified professionals is particularly important in cases of shortages of qualified personnel in some sectors, as it helps to ensure the correct balance between the demand and supply of skilled workers.

b) Another more specific objective of the acquis on the recognition of qualifications is to support professionals coming from a non-regulating Member State and interested in establishment in a Member State where the profession is regulated. The various Directives on the recognition of professional qualifications aimed at establishing transparent and uniform recognition procedures to allow access to a profession under these circumstances in a reasonable period of time.

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[8] Experience reports published on: http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm

[9] 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. 0022 - 0142

[10] Member States were required to transpose the Directive by 20 October 2007 (Article 63 of the Directive)

c) The 2005 Directive introduced a new objective: encouraging cross-border provision of services on a temporary and occasional basis in order to improve the competitiveness of the services market. Professionals who do not wish to establish themselves on a permanent basis in another Member State should not be compelled to undergo a prior check of qualifications (except where public health or safety of consumers are at stake).

d) The legislation also sought to balance the need for mobility with legitimate public interest in the high quality of services and protection of consumers and patients. Various conditions and safeguards were introduced in the legislation to guarantee that the migrating professionals have the relevant competencies to exercise their profession.

2.2. Functioning of the Directive

2.2.1. Recognition in case of establishment

For the establishment of a professional in another Member State, the Directive defines three different regimes, which, to a large extent, represent a legacy of the previous directives:

- The general system is based on the mutual recognition directives adopted in 1989, 1992 and 1999. The Directive simplified this legal framework by merging the different regimes existing under these earlier instruments. Under the general system, professionals wishing to become established in another Member State need to send an application for the recognition of their professional qualifications to the competent authorities of the host Member State. The applications are examined on a case-by-case basis: competent authorities look at the duration and content of the training accomplished by the professional in order to determine if there are substantial differences between this training and the qualifications required in the host Member State for the exercise of the profession. In case of substantial differences, competent authorities can impose "compensation measures" on the applicant. These can take the form of an aptitude test or an adaptation period. In 2005, the Directive introduced the concept of "common platforms" as a means of simplifying the implementation of compensation measures for professions falling under the general system.

- The automatic recognition based on harmonised minimum training requirements consolidates the system put in place for doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects in a series of directives adopted between 1975 and 1985. Under this system, a professional still needs to send an application to the host Member States. However, competent authorities should not verify the contents and duration of the training. Qualifications should be automatically recognized throughout the EU if they are listed in Annex V of the Directive. This annex contains all the diplomas and titles that satisfy the minimum training requirements defined in the Directive. A professional who holds a qualification listed in this Annex can benefit from automatic recognition.

- Automatic recognition based on professional experience relies on the system developed in the 1960s for activities in the area of craft, commerce and industry. The sectoral directives from the 1960s were first merged into Directive 1999/42/EC and then taken up by the 2005 Directive. Under this system, a professional can benefit from automatic recognition on the basis of professional experience (for instance: 6 years as an independent craftsman). The Directive defines conditions in terms of duration and nature of the professional experience for activities in the areas of craft, trade and industry.

2.2.2. *New regime for temporary mobility*

The 2005 Directive introduced a new regime for professionals willing to provide services in another Member State on a temporary basis. The objective of this new regime was to facilitate the temporary mobility of professionals by reducing the administrative requirements: professionals no longer need to submit a request for the recognition of their qualifications and to wait for the decision of a competent authority. Member States can only require, once a year, a prior declaration, in which the professional should inform of his intention to provide services. Member States are allowed to carry out a prior check of qualifications only in the case of professions with serious implications for public health or safety of clients. This regime is also open for professionals from non-regulating countries provided they have two years of professional experience or have completed a regulated education.

2.2.3. *Administrative cooperation*

The 2005 Directive widened the scope of administrative cooperation between Member States. Whereas in the past only few information obligations existed, the new Directive requires Member States to fully cooperate and to exchange all necessary information (Articles 8, 50, and 56). In particular, the Directive introduced a requirement for the competent authorities in the host and home Member States to exchange information on disciplinary or criminal sanctions.

However, the Directive did not foresee that Member States exchange information with each other through electronic means. Meanwhile, the Internal Market Information System (IMI) has been developed to support administrative cooperation. IMI is an electronic application allowing national, regional and local authorities to exchange information in a quick and secure way. It was launched in November 2007 in support of the administrative cooperation provisions of the Professional Qualifications Directive. In February 2008 a pilot project asking Member States to use IMI on a voluntary basis started for four professions (doctors, pharmacists, physiotherapists and accountants) and was progressively extended to other professions. In 2009, the use of IMI was further extended and became mandatory for most professions to support the information exchange obligations foreseen under the Services Directive. From the beginning of the pilot phase, in February 2008, until 23 May 2011, 4366 information exchanges on professional qualifications took place in IMI[11].

The use of this system has allowed to speed up the cooperation between public authorities and to overcome the difficulties linked to the exchange of information between administrations from different Member States (e.g. difficulties in identifying the relevant authority or language problems).

2.2.4. *Assistance to citizens*

The Directive also set up new information structures (national contact points) to inform and assist citizens seeking the recognition of their qualifications as well as provide information to other contact points on national legislations governing the professions.

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[11] Information from IMI from May 2011

2.3. Mobility figures

Since 2007, about 104000 decisions of recognition have been taken under the Directive within the EU, enabling the mobility of 85000 professionals[12] (for the purpose of establishment in another Member State). The number of decisions on the recognition of professional qualifications quadrupled between 1997 and 2008.

The most mobile professions are health professions (e.g. doctors, nurses and dentists benefiting from automatic recognition, but also other professionals in the sector, such as physiotherapists) as well as teachers and social/cultural professions. The figure below illustrates the distribution of decisions of recognition by professions.

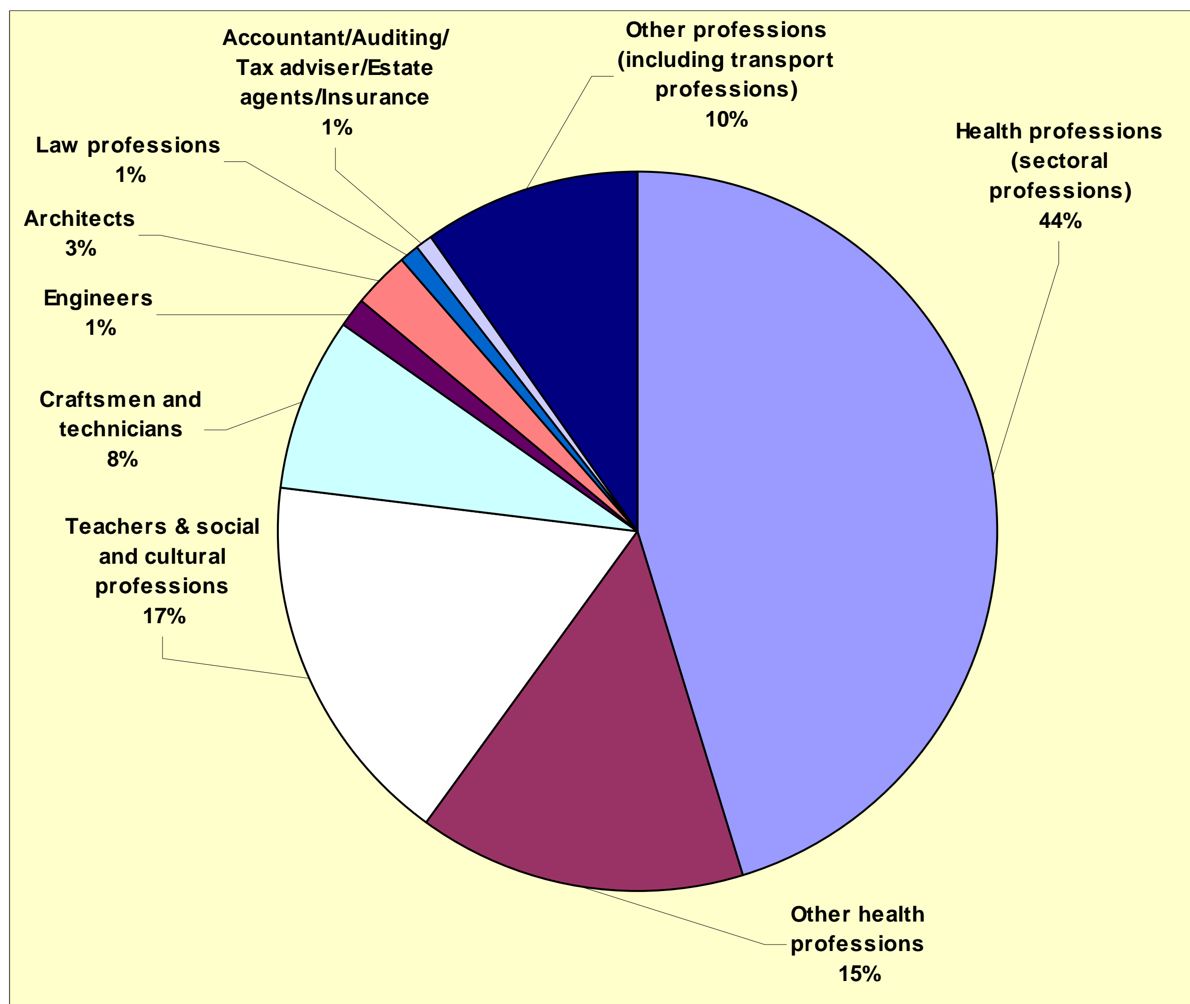

Figure 1: Distribution of the recognition decisions (positive and negative) by sector (2007-2010)

Source: Regulated Professions Database

[12] Source: Regulated Professions Database:
http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=stats.total

2.4. Interaction with the Services Directive

The Services Directive[13] was adopted at the end of 2006 with the objective of eliminating the remaining obstacles to the internal market of services. It requires Member States to simplify the procedures that service providers need to comply with when setting up a business or providing services in another Member State. The Services Directive applies to a wide range of economic activities, including professional services[14]. It does not deal with qualification requirements but regulates other aspects of free movement of professionals (e.g. tariffs, legal form requirements, ownership requirements, etc). The two directives complement each other in order to provide a comprehensive legal framework for professional services and thus facilitate the free circulation of professional services across the EU.

Many stakeholders reported difficulties in the combined application of both Directives. The Transposition Report on the Professional Qualifications Directive, published in October 2010 clarified the interaction between these two instruments: "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[15]".

3. METHODOLOGY APPLIED TO THE EVALUATION

The evaluation of the Professional Qualifications Directive was carried out on the basis of the methodology developed by DG Internal Market and Services for evaluating legislation[16].

Ex-post evaluations are evidence-based assessments of how legislation has been achieving its objectives (i.e. how "effective" it has been), and whether it has done so at a reasonable cost (i.e. whether it has been "efficient"). They also often assess the continued "relevance" of the public intervention (i.e. are its objectives still pertinent in the light of potentially changing needs), to what extent it has shown to be coherent with other policies (at international, EU, national, regional level), etc. In short, they focus on assessing the real-life effects of the intervention on its key stakeholders (i.e. those directly targeted by it) and on society at large, thus also highlighting any adverse effects and trade-offs between various groups of the population.

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[13] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market, OJ L376 of 27.12.2006, p.36

[14] Several services activities are explicitly excluded from its scope of application, notably financial services, electronic communications networks, transport services, health services, audiovisual services, gambling activities, certain social services, notaries and bailiffs.

[15] 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.

[16] DG MARKT Guide to evaluating legislation (March 2008): http://ec.europa.eu/dgs/internal_market/docs/evaluation/evaluation_guide.pdf

3.1. Evaluation questions

Twelve evaluation questions have been formulated in order to structure the analysis and the collection of information. Various services of the Commission had been invited to contribute to the development of these evaluation questions since February 2010[17]. The evaluation questions have also been discussed with Member States during a meeting of the Group of Coordinators in March 2010. In addition, a meeting[18] was organised in March 2010 to obtain feedback from European professional organisations on the priorities for the evaluation of the Directive. Professional organisations requested that particular attention be paid to the impact of educational reforms, the use of common platforms, the idea of a professional card, the regime for temporary mobility, the general system and the adaptation to labour market needs. In addition, competent authorities consider effective cooperation as a high priority.

The list of questions presented below reflects the views of these different stakeholders on the evaluation and covers the various aspects of the functioning of the Directive:

Question 1: To what extent has the recognition of qualifications been simplified under the general system? What are the remaining barriers for professionals?

Question 2: What use has actually been made of compensation measures?

Question 3: Is the general system still relevant in the light of educational reforms and economic / demographic needs?

Question 4: What use has actually been made of common platforms?

Question 5: How is the system of automatic recognition working for health professions?

Question 6: How is the system of automatic recognition working for architects?

Question 7: Does the mechanism in place for the automatic recognition of professions referred to in Annex IV of the Directive work smoothly in practice? Is Annex IV adapted to the current needs of professionals and small and medium enterprises (SMEs) in the areas of craft, commerce and industry?

Question 8: To what extent does the new regime for temporary mobility as currently applied in the Member States meet the needs of professionals?

Question 9: How has the provision of the Directive concerning language knowledge (art. 53) been applied in practice?

Question 10: Is the treatment of third country qualifications under the Directive effective and

[17] The following services of the Commission participated: Secretariat General, Legal Service, DG COMP, DG EAC, DG EMPL, DG ENTR, DG SANCO, DG HOME, DG JUST, DG INFSO, DG TRADE.

[18] Meeting report available on: http://ec.europa.eu/internal_market/qualifications/docs/03082010_evaluation_directive_en.pdf

relevant?

Question 11: In what way does current administrative cooperation contribute to a smooth functioning of the Directive? How did the use of IMI contribute to this cooperation? How has the idea of a professional card been used to support cooperation?

Question 12: To what extent have the provisions on assistance to citizens been applied?

The evidence collected during the evaluation exercise allowed the Commission services to respond to these twelve questions. Sections 4 to 15 of this report present the main findings and conclusions. Some recommendations are also included; the most important ones have been included in the Green Paper on the modernisation of the Directive[19] and are subject to wide consultation.

3.2. Evaluation criteria

The evaluation of the Professional Qualifications Directive has been carried out with particular attention to the following evaluation criteria:

- Effectiveness: whether the Professional Qualifications Directive has been effective in meeting, or moving towards, the objective of facilitating labour mobility
  - ✓ For instance, it has been assessed whether the Directive led to an increase in the mobility of professionals within the EU.

- Efficiency: whether the Professional Qualifications Directive has delivered its results efficiently in terms of the resources used to obtain the actual effects.
  - ✓ For instance, the analysis of the recognition processes (duration, administrative costs, organisation, stakeholders involved) allowed to assess the efficiency of the Directive

- Relevance: whether the objectives of the Directive are still relevant to the problem as it is today; whether the problem is still valid or has evolved.
  - ✓ In particular, the relevance of the Directive has been assessed in the context of shortages of highly qualified workers and recent educational reforms

- Consistency: whether the actual effects (negative as well as positive) of the Directive are consistent with recent developments in the internal market and in other policy fields.
  - ✓ In particular, the Directive has been assessed against recent developments in internal market policies (Services Directive, Single Market Act), in the health sector (Patients' rights Directive) and in the field of education (Bologna process).

[19] Green Paper on modernising the Professional Qualifications Directive, COM(2011) 367 final; http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications_directive/COM267_en.pdf

- Acceptability: whether the legislation itself (the Directive as well as any corresponding national measures) and its effects were acceptable to the stakeholders (professionals and consumers/patients).
    - ✓ The attitude of EU citizens to professionals holding a qualification acquired in another EU Member States has been analyzed in order to assess the acceptability of the Directive.

3.3. Evidence gathering

This evaluation report is based on an extensive consultation conducted between March 2010 and May 2011 and involving Member States, competent authorities, professional organisations and other stakeholders. The objective of this consultation process was to collect concrete evidence on the functioning of the Directive and to involve the interested stakeholders in the examination of possible improvements.

3.3.1. Reactions from Member States and their authorities

Under Article 60 (1) of the Directive, Member States are invited to provide reports on the application of the Directive by the end of 2009 – two years after the end of the transposition period set in the Directive. These reports should contain a statistical summary of recognition decisions and a description of the main problems arising from the application of the Directive. 37 reports have been received covering the period 2007-2009 (some Member States sent an annual report while others provided a report covering two or three years). In the same vein, Member States were asked to provide statistical data on the number and type of decisions taken for the recognition of qualifications on an annual basis since 2007. This information enables the Commission to run a database - the Regulated Professions Database[20]**.** This tool has been used in the evaluation exercise to identify the trends in mobility by profession and by Member State.

In June 2010, the Commission services requested that competent authorities for the recognition of professional qualifications share their experience with the functioning of the Professional Qualifications Directive. By September 2010, more than 170 national authorities submitted "experience reports", drawn up on the basis of a questionnaire provided by the Commission. More than 120 reports focus on professions for which the Directive foresees automatic recognition on the basis of minimum training requirements (health professionals, architects). National Coordinators have also been involved in this exercise by collecting the information on the professions under the general system and under Annex IV of the Directive. These experience reports[21] offer practical insight into how the Directive is working on the ground.

Finally, DG Internal Market and Services held workshops with national ministries to assess the minimum training requirements for the professions which benefit from automatic recognition under the Directive. Three workshops were held in April and May 2011.

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[20] Regulated Professions Database: http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home

[21] Experience reports published on: http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm

3.3.2. *Feedback from citizens*

In May 2010, the Commission services submitted questionnaires to the national Contact Points set up under the Directive and the Citizens Signpost Service (CSS)[22]. They sought information on the functioning of the Directive from the perspective of citizens. 21 Contact Points (including Norway) and 20 CSS replied to the questionnaire, providing valuable evidence on the main difficulties encountered by citizens in the recognition of their qualifications.

The SOLVIT annual reports[23] have been another source of interesting evidence on the implementation of the Professional Qualifications Directive on the ground. SOLVIT[24] is a network managed by the European Commission that deals with problems between individuals or companies and the authorities of a Member State, in cases where there is a possible misapplication of EU law. In 2010, 16% of the cases handled by SOLVIT concerned the recognition of professional qualifications (third problem area after social security – 34% of cases - and residence rights – 23% of cases). In this period, SOLVIT centres handled and closed 220 cases in the area of professional recognition. They were successful in 91% of cases. However, the number of SOLVIT cases in this area does not appear to be going down.

In the same vein, the experience of the experts from Your Europe Advice (YEA) provides concrete examples of the Directive's shortcomings. According to the YEA feedback report on professional qualifications[25], 6.4% of the total eligible enquiries in 2009 concerned the recognition of professional qualifications. This seems like a small share of the enquiries, but the report also notes that the recognition of professional qualifications is more time-consuming than other obstacles encountered in the internal market.

Eurobarometer surveys on the awareness and perceptions of the internal market[26] and on geographical and labour market mobility[27] were another important source of information on citizens' attitudes towards mobility and on their perceptions of the acquis on professional qualifications.

Finally, DG Internal Market and Services itself has been dealing with queries and complaints submitted by individual citizens who encounter difficulties in the recognition of their professional qualifications in host Member States. Between September 2009 and May 2011, 258 complaints related to the recognition of professional qualifications were registered, representing around 28% of all complaints received by DG Internal Market and Services. In some cases these complaints can lead to infringement procedures against Member States who

[22] The former Citizen Signpost Services (CSS) became Your Europe Advice. It is an EU advice service managed by the European Commission for the public, currently provided by the legal experts from the European Citizen Action Service (ECAS): http://ec.europa.eu/citizensrights/front_end/index_en.htm

[23] SOLVIT annual reports available on: http://ec.europa.eu/solvit/site/background/index_en.htm

[24] SOLVIT website: http://ec.europa.eu/solvit/

[25] "The mobility of professionals in practice: A report by the Citizens Signpost Service on the recognition of professional qualifications" (February 2010): http://ec.europa.eu/citizensrights/front_end/docs/css_report_on_prq_220310.pdf

[26] Flash Eurobarometer 263: http://ec.europa.eu/public_opinion/flash/fl_263_en.pdf and Special Eurobarometer 363 (forthcoming publication)

[27] Special Eurobarometer 337: http://ec.europa.eu/public_opinion/archives/ebs/ebs_337_en.pdf

are not applying the rules set out in the Directive correctly. These complaints were a valuable source of information in the context of the evaluation.

3.3.3. Reactions from the professions

European professional organisations have also been closely involved in the evaluation exercise. A meeting with 48 European professional organisations was organised by DG MARKT in March 2010 to discuss the priority questions to be examined during the evaluation. A second meeting followed in October 2010, with the participation of representatives of 58 European professional organisations, to present and discuss the evidence collected in the experience reports.

In addition, on 14 October 2010, the Commission participated in a meeting organised by the European University Association on the interactions between the Bologna process and the Professional Qualifications Directive. This issue was highlighted by a wide range of stakeholders (professional organisations, academic bodies, students associations and regulatory bodies).

3.3.4. Evidence acquired by the European Parliament

The European Parliament devoted particular attention to the transposition and implementation of the Professional Qualifications Directive. In 2009, the Internal Market and Consumer Protection Committee (IMCO) commissioned an initial study[28] which presented the state of play regarding the transposition and enforcement of the Directive. A follow-up study was published in October 2010[29], focusing on the challenges to the recognition of qualifications faced by four mobile professions (architects, nurses, civil engineers and tourist guides). An inter-parliamentary hearing was organised on 26 October 2010. It was testimony to a great interest in the evaluation of Professional Qualifications Directive among Members of both the European Parliament and national parliaments.

3.3.5. Large public consultation in early 2011

In January 2011, the Commission services launched a public consultation[30] on the Professional Qualifications Directive. The number of replies - around 380, from all 27 Member States - shows that there is a strong interest in the recognition of professional qualifications. Contributions from professional organisations represented more than 50% of the answers received. In particular, many national professional bodies who were not involved in the previous steps of the evaluation provided their responses. In addition, a number of contributions from competent authorities, trade unions and employers' organisations,

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[28] Study on recognition of professional qualifications (2009):
http://www.europarl.europa.eu/document/activities/cont/200910/20091009ATT62184/20091009ATT62184EN.pdf

[29] Recognition of professional qualifications: study (2010):
http://www.europarl.europa.eu/document/activities/cont/201010/20101025ATT89911/20101025ATT89911EN.pdf

[30] Public consultation document available on:
http://ec.europa.eu/internal_market/consultations/2011/professional_qualifications_en.htm

educational bodies and individual citizens were received. A summary of the contributions is published at the same time as this evaluation report.

A public hearing organised on February 2011 to discuss the main questions of the consultation document was an opportunity to discuss the consultation document with a wide range of professional organisations at EU and national level.

4. Recognition under the general system

This section assesses the current functioning of the general system, addressing evaluation question 1 with a particular focus on the effectiveness and efficiency of the rules defined in the 2005 Directive.

The so-called "General system" was introduced by the first mutual recognition Directive of 1989 on the recognition of higher education diplomas of at least three years duration (not covered by sectoral directives – see section 7 below). This system was extended to lower-level qualifications through further Directives in 1992 and 1999. The general system was conceived with a view to accommodating the great diversity of qualifications across the EU when harmonisation of education and training allowing for automatic recognition no longer appeared to be a viable option.

The 2005 Directive consolidates this *acquis* and defines rules which apply to all types of qualifications for which no regime of automatic recognition has been developed. The main objective of the Directive was to reinforce the legal certainty for migrants by merging the rules defined in different regulations into a single framework. In addition, the 2005 Directive introduced the concept of common platforms.

Under the general system, each application is examined by the competent authority of the host Member State on a case-by-case basis. This individual assessment of the training and professional experience of a migrant should allow for the identification of any substantial differences between the qualification held by the migrant and that required in the host Member State.

From 2007 to 2010, Member States reported more than 40.000 recognition decisions (positive and negative) taken under the general system. It is estimated that there are many more because 11 Member States either did not provide any reports or their figures were incomplete[31]. Only 61% of these decisions were related to the primary application of the general system (application of the general system for the professions not covered by any regime of automatic recognition); the remaining 39% of the decisions were taken in the context of the subsidiary application of this system of recognition (application of the general system for the professions covered by a system of automatic recognition in cases where individual applicants did not meet the conditions for automatic recognition – see sections 8 and 9).

The professions which made use of the general system most frequently are primary and secondary school teachers (18000 decisions taken from 2007 to 2010), second level nurses (4400 decisions), physiotherapists (3700 decisions)and social workers (1600 decisions).

In 73% of the applications processed between 2007 and 2010, recognition was granted without compensation measures. In 15% of the cases, recognition was granted after an aptitude test or an adaptation period. In 12% of the cases, recognition was not granted.

[31] For instance, the figures are incomplete for the following Member States: IT, CY, RO, SK, ES, IE, BG

4.1. Recognition procedures under the general system

4.1.1. Need for documentation

The evaluation has raised questions as to the efficiency of the case-by-case assessment of applications by competent authorities.

Some competent authorities consider this practice to be complex and time consuming. The assessment of possible substantial differences implies a careful examination of the training programme followed by an applicant (with respect to its duration and its contents) and a comprehensive understanding of the scope of the profession in both the home and the host Member State. Competent authorities also need to check if the professional experience of the migrant can compensate for any substantial differences in the training.

In order to enable competent authorities to carry out this kind of individual assessment, migrants are required to provide a series of documents attesting their qualifications and professional experience. Annex VII of the Directive contains an exhaustive list of the types of documents and certificates that can be requested. It provides that competent authorities can ask the applicant to provide information concerning his training "to the extent necessary in order to determine the existence of potential substantial differences with the required national training". The Code of Conduct[32] provides further details on which documents can be required from the migrant in case of establishment.

Competent authorities reported difficulties in obtaining transcripts of training and lack of clarity on which documents can be considered as proof of professional experience.

Evidence collected through the evaluation shows that the extensive documentation requested from the applicants (on the training and professional experience) often creates huge difficulties for citizens who not only need to gather all the relevant documents but, in many cases, also translate them into the language of the host Member State. The documentation requirements, and in particular lack of information on the specific documents to be submitted, also have an impact on the efficiency of the recognition procedures which are often delayed when a competent authority considers a file to be incomplete.

National Contact Points and SOLVIT centres reported particular difficulties experienced by applicants coming from Member States that do not regulate the profession in providing the documents and certificates requested by competent authorities in the host countries. This has also been noted in the European Parliament study. In response to the public consultation, some stakeholders expressed the need to be better supported by the Member States of origin in the recognition procedures, in particular with regard to the documentation requirements.

Since the general system is based on a careful examination of qualifications, providing documents attesting education and professional experience is an essential step of the process. However, both competent authorities and professionals signal the need to streamline this process: more clarity is needed on the type of documents to be provided in order to make the recognition procedures more transparent for applicants and more efficient for competent authorities. The standard documents developed in the context of the recent educational reforms and relevant information on the objectives of training programmes (Europass

[32] The Commission and Member States coordinators for recognition of professional qualifications issues agreed on a set of guidelines for interpreting the Directive, the so-called Code of Conduct, agreed in June 2009, see http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf .

Diploma Supplement[33], Europass Certificate Supplement[34], and ECTS transcripts) could be appropriate as tools to standardize the document requirements under the general system.

4.1.2. Length of procedures

The Directive foresees specific deadlines for the processing of requests of recognition (Article 51):

- within one month of the receipt of the application, competent authorities should acknowledge it and inform the applicant if his file is not complete, specifying the missing documents.
- once a complete file has been submitted, competent authorities should take a decision within three months. This deadline can be extended to four months for applications examined under the general system.

Evidence collected through individual complaints and SOLVIT cases show that these deadlines are often not respected. In many cases, competent authorities failed to acknowledge receipt of applications and to inform the applicant that documents were missing. Some citizens were asked to provide additional documents, which were not necessarily in their possession several months after their application. The need to contact their national administration or training institutions to obtain these additional documents can cause vast delays in the processing of applications.

Many complaints handled by SOLVIT or by the experts of Your Europe Advice are related to such excessive delays in the recognition procedures: in some cases citizens have to wait for more than a year for a decision. These delays prevent professionals from exercising their profession.

In this regard, better enforcement of the deadlines foreseen in the Directive seems necessary in order to avoid negative consequences on employment. However, the complaints often reflect failings of the competent authorities in individual cases which the Commission cannot take up with the Court of Justice (the Commission focuses on national regulation and/or practices incompatible with Union law).

4.2. The situation of citizens coming from non-regulating Member States

The best way to measure simplification under the general system is to examine the case of citizens from a Member State where the profession is not regulated seeking establishment in a Member State where it is. The Directive foresees two possibilities: they can either prove two

[33] The Europass Diploma Supplement is issued to graduates of higher education institutions along with their degree or diploma. It helps to ensure that higher education qualifications are more easily understood, especially outside the country where they were awarded. See http://europass.cedefop.europa.eu/europass/home/vernav/InformationOn/EuropassDiplomaSupplement.csp;jsessionid=43770C133C7D2B78EA4522BF5ABFF581.wpc1

[34] The Europass Certificate Supplement is delivered to people who hold a vocational education and training certificate; it adds information to that which is already included in the official certificate, making it more easily understood, especially by employers or institutions outside the issuing country. For more information see http://europass.cedefop.europa.eu/europass/home/vernav/InformationOn/EuropassCertificateSupplement.csp;jsessionid=43770C133C7D2B78EA4522BF5ABFF581.wpc1

years of professional experience (in the last ten years) or demonstrate that they followed regulated education.

4.2.1. Requirement of two years of professional experience

If a professional holds a qualification obtained in a Member State that regulates neither the profession nor the education, the Directive foresees that the migrant should have exercised his profession for two years on a full time basis during the previous ten years. If the migrant cannot prove two years of professional experience, the Directive does not apply. Instead, the migrant has recourse to the Internal Market Freedoms guaranteed by the Treaties (free movement of workers, right of establishment, freedom to provide services), but cannot benefit from the procedural safeguards foreseen in the Directive for the treatment of the request for recognition.

This requirement was examined in the evaluation exercise in order to assess if it does not constitute an obstacle for professionals coming from Member States that do not regulate their profession.

The majority of competent authorities reported limited experience in this regard. The practices adopted in cases where the migrant does not have two years of professional experience are quite heterogeneous: in some cases applications are rejected or are examined according to the Treaty provisions on the free movement of workers, right of establishment or free movement of services; in other cases competent authorities apply the Directive and may impose compensation measures.

The majority of the respondents to the public consultation consider the requirement is useful in avoiding "forum shopping" by professionals and to protect domestic consumers who rely on the regulation of the profession.

Some professional organisations stated that this requirement was arbitrary and could constitute an obstacle to certain cross-border labour markets (e.g. for tourist guides and ski instructors). In particular, there is no clear understanding of what types of documents can be accepted as proof of professional experience when the profession is not regulated in the home Member State.

Some Member States (DK, NL) which have a limited number of regulated professions reported problems encountered by their own nationals who have not pursued the profession on a full-time basis for two years. They consider that this requirement creates discrimination against citizens coming from regulating countries as compared to migrants from non-regulating countries. These Member States indicated this was not acceptable for young professionals.

Two other Member States (DE, LU) questioned the necessity of this requirement under the establishment regime[35]. They explained that the requirement is not necessary under the recognition procedures in place: in case of substantial differences in the training, the host Member State can impose compensation measures. At the same time, they note that the requirement can constitute a real obstacle for graduates or professionals with limited

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[35] **The situation is different under the free provisions of services (see section 11.1.2), where this requirement can be justified when there is no prior check of qualifications.**

professional experience whose Member State does not regulate the profession. A graduate wishing to establish in another Member State directly after the completion of training would not be able to from the Directive for the recognition of qualifications.

4.2.2. Regulated education

If the migrant from a Member State which does not regulate the profession has followed "regulated education", the requirement of two years of professional experience does not apply. The Directive defines "regulated education and training" as "any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice". In addition, Article 13 (2) refers to Annex III stating that the training courses listed in this Annex constitute "regulated education".

The evidence from the experience reports and public consultation shows that this concept is not sufficiently clear. Some competent authorities signal difficulties in appreciating its scope and often limit their interpretation to the courses listed in Annex III. National contact points in Member States are also frequently asked to issue certificates stating that the education followed by an applicant is a regulated education; however they reported problems in doing so because of the unclear meaning of the term.

The idea of a training "specifically geared to the pursuit of a given profession" appears to be too restrictive when compared to the current conception and organisation of training programmes. In order to enhance employability in a lifelong learning perspective, education and training policies increasingly aim at developing general "transferable" skills (e.g. communication, management), in addition to specific job-related skills (technical skills). As a consequence, training programmes may be less orientated towards "the pursuit of a given profession" and tend to include training subjects linked to transferable skills instead. Consequently, the consistency of the concept of regulated education, as defined in the Directive, with education policies is questionable. A wider interpretation of this concept may contribute to a reduction of the obstacles to mobility for professionals coming from non-regulating Member States.

4.3. Application of the general system in particular cases

4.3.1. Code of Conduct of June 2009

The Code of Conduct was drawn up by Commission services and approved by the Group of Coordinators in June 2009 in order to promote a coherent implementation of the Directive. It offers some guidelines on how various provisions of the Directive must be interpreted when applied to different aspects of the recognition procedures (e.g. document requirements, translation requirements, time limits and compensation measures). It is not a legally binding instrument but it provides an overview of the best, acceptable and unacceptable practices.

The Transposition Report published in October 2010 provided an initial assessment of the Code of Conduct: "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*."

In March 2011, the Group of Coordinators agreed to improve the visibility and enforcement of the Code of Conduct, notably by ensuring that it is available on the website of national competent authorities.

4.3.2. *Recruitment procedures in public service*

The Directive is often invoked when professionals feel disadvantaged during an actual recruitment process, notably for a post in the public service. However, the Directive cannot help in this regard. The recent Communication from the Commission on "Reaffirming the free movement of workers: rights and major developments"[36] (July 2010) mentions specific cases in which the Professional Qualifications Directive does not apply: "*Directive 2005/36/EC does not apply, however, where the diploma does not attest to specific professional training, i.e. training specifically for a given profession. Posts in the public sector in a Member State often call for a different type of diploma that attests to a certain level of education (university degree, school-leaving certificate plus three years' higher education etc.) or a diploma attesting to a level of education that meets certain content-related criteria without the content in question constituting vocational training within the meaning of Directive 2005/36/EC (a requirement for a diploma in either economics, political science, science or social sciences, etc.).*

Such cases fall under Article 45 TFEU rather than within the scope of Directive 2005/36/EC. The authorities of the host Member State are entitled to assess the level of the diploma but not its training content, where the only significant factor is the level of study for which a diploma is awarded. When the diploma needs to meet certain content-related criteria in addition to being of a specific level, its equivalence should be recognised where it was awarded on completion of education or training in the required subject. No further assessment of training content is authorised."

4.3.3. *Franchised diplomas*

In some cases the diploma the recognition of which is sought is a franchised diploma.

A franchised diploma is the result of an agreement between an institution (e.g. university) located in a Member State A and another institution located in a Member State B. Under this agreement, students are awarded a diploma of an institution in Member State A, following training and final examination in Member State B, in conformity with the standards of the Member State A institution.

Article 50 (3) of the Directive sets out rules with regard to the recognition of franchised diplomas. However, some Member States were reluctant to recognise such diplomas. The European Court of justice has confirmed in two judgments of 23 October 2008 (Case C-274/05, Commission v Greece) and 4 December 2008 (case C-84/07, Commission v Greece) that the refusal to recognise the diplomas awarded through franchised agreements was

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[36] Communication "Reaffirming the free movement of workers: rights and major developments": http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=847

inconsistent with the rules of the directives on the recognition of professional qualifications (Directive 89/48/EEC and 92/51/EC – replaced since by Directive 2005/36/EC).

4.3.4. Application of the general system to particular professions

4.3.4.1. Teachers

Each Member State has its own education system which results in differences in the organisation of the teaching profession across the EU. Although the profession is regulated in nearly all Member States, in some Member States regulations only apply to teachers in state schools, whilst other Member States also regulate teaching in private schools. Furthermore, some Member Sates regulate the profession from "Kindergarten" until university; others only regulate primary and secondary school teaching. These differences in the scope of regulation within the EU make it difficult for teachers to work in a Member State other than that in which they acquired their qualifications.

The main obstacle for mobile teachers is the organisation of the education system. A primary school teacher from the Netherlands for example is trained to educate children between the ages of 4 and 12, in Belgium between 6 and 12, in Germany between 6 and 10 and in France between 6 and 11. The differences in the organisation of the profession are even greater for secondary school teachers. Consequently, a teacher might be qualified in the home Member State but the difference between the education systems of the home and host countries requires compensatory measures (see section 5) or partial recognition (see section 6.5).

4.3.4.2. Physiotherapists

The profession of physiotherapist is regulated in nearly all Member States (25 Member States); however, the scope of activities exercised by the professionals varies from one Member State to another. The differences concern the duration and the content of the training programmes. Thus, the main challenge for the competent authorities for physiotherapists consists in the comparison of the training programmes and the imposition of appropriate measures which can compensate for those differences.

4.3.4.3. Engineers

The profession of engineer covers various disciplines which do not necessarily coincide or are organised in the same way from one Member State to another. As a consequence, there are sometimes significant differences in the duration and content of training courses, which leads to compensation measures.

4.3.4.4. Subsidiary application of the general system for sectoral professions (Article 10 of the Directive)

When a professional does not meet the conditions for automatic recognition (see Section 5), the application has to be examined under the general system. This situation arises quite often, representing 16% of the positive decisions taken for the professions which, in principle, benefit from automatic recognition of qualifications on the basis of harmonised minimum training requirements. The views from the relevant competent authorities on the subsidiary application of the general system differ, but in general they appear to experience more difficulties than other competent authorities, because they are used to dealing with

recognition procedures under the automatic recognition system. The majority of them described this system as time consuming and costly and signalled major difficulties with the assessment of individual applications within the timeframe of three or four months. Some competent authorities, in particular for nurses and midwives, expressed concerns about the high number of requests processed under the general system in some countries. Competent authorities also reported problems linked to the implementation of compensation measures for health professionals, notably difficulties in designing adequate compensation measures, high cost of the aptitude tests, difficulties in finding placements in medical establishments and language problems during the adaptation period.

4.3.4.5. Lawyers and notaries

According to the Court of Justice in its judgments of 24.5.2011 (see. points 139 and 141 of the judgement in the case C-47/08), in view of certain particular circumstances of the legislative procedure for the adoption of Directive 2005/36, it does not appear possible to conclude that there existed a sufficiently clear obligation for the Member States to transpose the Directive with respect to the profession of notary, even though, the Court confirmed that the activities of notaries did not fall under the exception of official authority (ex Article 45 EC). The Commission will examine how to clarify the applicability of the Directive to the notaries.

Lawyers rarely use the recognition possibilities offered by the Directive. It seems that lawyers prefer recognition based on their home country title, available to them under Directives 77/249/EEC and 98/5/EC[37], so that the differences in qualifications between the Member States do not matter.

Directive 77/249/EEC, known as the "Lawyers' Services Directive" allows lawyers established in a Member State to provide their services in any other Member State without the need to reside in or register in the host country. They are entitled to pursue all the activities of a lawyer of the host country, except for those reserved to prescribed categories of lawyers. However, Member States may require that a lawyer from another Member State be introduced to the presiding judge or President of the relevant Bar or to work in conjunction with a local lawyer in the pursuit of activities relating to representation of a client in legal proceedings.

Directive 98/5/EC, or "Lawyers' Establishment Directive" foresees that access to the profession in another Member State should be granted on the basis of the professional title of one of the other Member States (which presupposes legal establishment in that Member State), rather than directly on the basis of qualifications. The Directive thus facilitates lawyers' access to the profession on a permanent basis in other Member States in that it eliminates the examination of qualifications by the competent authority and the need to complete compensation measures. However, in order to account for any lack of precise knowledge of the national law of the host Member State, lawyers benefiting from the provisions of Directive 98/5/EC must exercise the profession under their home Member State title. Article 10 of Directive 98/5/EC provides a means of full integration into the profession of the host Member State for those lawyers who have already benefited from the Directive by becoming established in that Member State under their home Member State titles. It is based

[37] This is in contrast to the Directive 2005/36/EC which foresees that a professional who obtained the recognition of his qualifications in a Member State can use the title of that Member State (see Article 52 (1) of the Directive)

on the premise that any gaps in the precise knowledge of the national law of the host Member State can be bridged by effective and regular pursuit of the profession in the Member State and in the law of that Member State for minimum three years.

4.4. Key findings

- In the majority of cases (73% of all recognition decisions), citizens obtain the recognition of their qualifications without any compensation measures.

- However, the process leading to the recognition decision under the general system is cumbersome and time consuming for competent authorities and for citizens. The recognition of qualifications under the general system is based on extensive documentation requirements, which to a certain extent undermine the efficiency of the system. The lack of clarity on which documents needs to be submitted can lead to delays in the recognition procedures. A simplification of the documentation requirements could improve the efficiency of the general system.

- The requirements imposed on professionals coming from Member States that do not regulate a profession may be too restrictive and create artificial obstacles to mobility. In particular, the requirement of two years of professional experience does not seem to be necessary under the establishment regime, where competent authorities assess the qualifications (training and professional experience) and have the possibility of imposing compensation measures in cases of substantial differences. The concept of regulated education, which can be used to exempt professionals from the two years' professional experience requirement, is not sufficiently clear to generate concrete benefits for professionals.

5. USE OF COMPENSATION MEASURES

The second evaluation question focuses on the use of compensation measures. As long as education and training for the various professions are different in the various Member States, the possibility of imposing a compensation measure on a professional is necessary. The general system allows competent authorities to impose an aptitude test or an adaptation period of up to three years on an applicant in case of substantial differences with the training required in the host Member State.

Through the evaluation process, the Commission services sought to examine if compensation measures have been used effectively by competent authorities and what impact they had on migrant professionals. It has been of particular interest to establish whether compensation measures discouraged professionals from moving from one Member State to another or if, on balance, they were beneficial in that they actually enabled migrating professionals to access the profession in another Member State by allowing them to acquire the necessary "missing" competences.

The tables in figure 2 below indicate how frequently compensation measures have been used between 2007 and 2010 for the professions with the highest mobility rates under the general system. It seems that compensation measures are most frequently imposed on primary school teachers, followed by secondary school teachers and social workers.

	2007				2008			
	Total number of positive and negative decisions	% Positive decisions without CM	% Positive decisions after CM	% Negative decisions	Total number of positive and negative decisions	% Positive decisions without CM	% Positive decisions after CM	% Negative decisions
Primary school teachers	675	14%	79%	7%	1	19%	75%	6%
Secondary school teachers	2892	68%	8%	24%	3454	71%	8%	21%
Physiotherapists	1147	88%	7%	5%	1140	86%	12%	2%
Second level nurses	1130	91%	6%	3%	3825	86%	10%	4%
Social workers	411	73%	20%	7%	425	74%	18%	8%

	2009				2010			
	Total number of positive and negative decisions	% Positive decisions without CM	% Positive decisions after CM	% Negative decisions	Total number of positive and negative decisions	% Positive decisions without CM	% Positive decisions after CM	% Negative decisions
Primary school teachers	385	57%	11%	32%	166	66%	5%	29%
Secondary school teachers	4063	75%	6%	19%	423	63%	5%	32%
Physiotherapists	962	90%	7%	3%	24	96%	0%	4%
Second level nurses	396	65%	19%	16%	253	79%	0%	21%
Social workers	421	66%	22%	12%	11	0%	91%	9%

Figure 2: Use of compensation measures for the professions with high mobility rates under the general system (CM: compensation measures)
Source: Regulated Professions Database

5.1. The purpose of compensation measures

The general system is based on a case-by-case comparison between the qualification a professional acquired in the home Member State and the qualification required in the host Member State. In contrast to academic recognition under the 1997 Lisbon Convention[38], the comparison of professional qualifications is much more focused: only substantial differences related to the essential areas of the professional activities matter. Competent authorities must also consider whether previous professional experience does not already compensate for any substantial differences in the training.

The majority of the respondents to the consultation support the existing provisions and consider that any deterrent effects of compensation measures on mobility are the exception and are linked to an incorrect application rather than the provisions themselves.

[38] Convention on the recognition of qualifications concerning higher education in the European Region: http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=165&CM=8&DF=10/17/2007&CL=ENG

Some authorities, professional organisations and trade unions, in particular in the health sector, indicated that compensation measures were not only necessary to ensure public safety but were also beneficial for the migrants, because they could facilitate the access to the profession in as far as, for example, an adaptation period could provide useful "tutoring" for a professional coming from another Member State.

Competent authorities for nurses noted that compensation measures were particularly helpful in cases where the migrant professional had been absent from the profession for a long period. Professional organisations and trade unions in the health sector indicated that compensation measures were extremely important in cases where the scope of practice of a profession differed between the host and home countries.

Professional organisations representing the craft professions also took the view that compensation measures helped in the integration of migrant professionals.

Compensation measures appear to be beneficial when they are applied in a proportionate manner and when they are adapted to the needs of a professional. In this context, the relevance of an adaptation period of three years could be questioned. Various respondents to the public consultation indicated that this compensation measure could have a deterrent effect on mobility. At the same time, several competent authorities noted that adaptation periods of three years were very rarely imposed.

5.2. Decisions on compensation measures

The conditions under which the host Member State can impose compensation measures are defined in Article 14(1) of the Directive: they are related to the duration of the training, the contents of the training and the activities that can be exercised by the given profession. The duration of training does not appear to be particularly relevant: a difference of one year between the training of the home Member State and the training required in the host Member State may be explained by differences in the organisation of education systems and does not systematically entail substantial differences in training programmes.

Competent authorities of the host Member States have a wide margin of discretion in determining what constitutes "substantial differences" in the training and thus in deciding whether to impose compensation measures. Evidence from the evaluation demonstrates that compensation measures are sometimes disproportionate or imposed in an arbitrary way. SOLVIT centres are often contacted by professionals who consider that the compensation measures imposed on them are not proportionate.

In particular, there is a concern (signalled even by some Member States) about a lack of transparency of the decisions taken by competent authorities: the information provided by competent authorities to justify compensation measures is often considered insufficient and does not always testify to a careful comparison of the training contents.

5.3. Organising compensation measures

Many competent authorities signalled during the evaluation process that the organisation of compensation measures complex and costly. In order to be efficient, compensation measures must be flexible, tailored to the needs of the applicant and to the deficit identified between the applicant's training and the training required in the host country. Some competent authorities

pointed to difficulties in formulating aptitude tests and in providing adaptation period placements. The organisation of aptitude tests requires the setting up of examination boards and the possibility to offer adaptation periods depends on the availability of employers. According to the study carried out for the European Parliament in 2010, "there is a general agreement that both adaptation periods and aptitude test are resource demanding for the applicants, the competent authorities and others involved".

The organisation of compensation measures seems particularly challenging for those competent authorities which receive very few requests for recognition, as they do not have much experience in preparing tests or organizing adaptation periods. The development of compensation measures tailored to each applicant can take a lot of time and cause delays in the recognition procedures. Some competent authorities suggested that it would be useful to put in place exchanges of experience and best practices on the organisation of compensation measures. The study carried out for the European Parliament contains a similar recommendation. It also presents good practices developed by some national competent authorities, such as adaptation periods with intermediate and final reporting or the use of online aptitude tests. It invites competent authorities to coordinate their efforts in this field.

Many stakeholders expressed concerns about the frequency, availability and cost of the compensation measures. Several respondents to the public consultation reported that in some cases competent authorities did not offer a choice between an adaptation period and an aptitude test. Some citizens indicated that aptitude tests for their profession were not organised every year and that they had to wait a long time before being able to sit a test. In this regard, the Code of Conduct foresees that competent authorities should offer aptitude tests at least twice a year ("acceptable practice").Various trade unions stated there was a need to foresee a remuneration of professionals undergoing adaptation periods.

5.4. Key findings

- Overall, compensation measures play a useful role under the general system: they make the mobility of professionals from a Member State to another possible, even when there are substantial differences in the training or in the scope of activities covered by a given profession. They can help professionals in their integration into the host Member State labour market. However, they are not always applied in the correct way. In particular, the decisions taken by competent authorities are not always well explained. In some cases, the compensation measures themselves are not proportionate.

- Some competent authorities experience difficulties in the organisation of aptitude tests and adaptation periods, with direct impact on the applicants who are not always offered the possibility to sit a test or complete an adaptation period in a reasonable period of time. The provisions of the Code of Conduct on the frequency of compensation measures are not always applied in practice.

6. THE GENERAL SYSTEM IN THE LIGHT OF RECENT EDUCATIONAL REFORMS AND ECONOMIC NEEDS

6.1. Introduction

The general system has always been designed to offer citizens a way of obtaining mutual recognition of the qualifications or experience acquired in their Member State of origin. It

offers a concrete framework so that citizens can in practice – and not only in theory – benefit from the free movement of citizens. Recent educational reforms but also economic developments have changed the context: citizens are no longer moving only as fully qualified professionals but already as students, and a declining working population in the EU increasingly forces Member States_to attract highly qualified citizens – such as doctors or engineers – from other Member States to compensate for domestic shortages.

These developments have led to major policy developments in the recent years.

6.1.1. Developments in the field of education

The "Youth on the move" initiative[39], launched in 2010, is a flagship initiative of the Europe 2020 strategy, specifically aimed at increasing the education and employability of young people. This initiative includes some concrete proposals (e.g. "Youth on the move card", "European skills passport") to promote mobility of young people once they wish to study or seek employment in another Member State.

EU-wide Initiatives in the area of education have contributed to promote a better understanding of education systems and qualifications across Europe:

- In 2008, the Recommendation from the Council and the European Parliament on the European Qualifications Framework[40] (EQF) invited Member States to relate their qualifications systems to the EQF by 2010. The EQF is expected to provide a reference point and translation device for comparing qualifications across different education and training systems.

- The Bologna process is an intergovernmental process initiated in 1998 and including now 47 countries. It aims at making higher education systems more comparable by carrying out similar reforms in the participating countries, such as the introduction of a system based on different study cycles (Bachelor – Master – Doctorate) and of a credit transfer system (ECTS). The key goal of the Bologna process was to establish a European higher education area (EHEA) by 2010.

6.1.2. Developments on the labour markets

The situation of European labour markets has considerably evolved since the first Directives on the recognition of professional qualifications. The ageing population and increasing demand for highly-qualified workers, in particular in the services sector, will lead to further changes. CEDEFOP estimates that demand for highly qualified jobs will increase by 16 million jobs by 2020. Member States will experience a shortage of labour, in particular in some professional sectors (health professions, engineering, construction). Some Member States are already taking measures to attract qualified workers from other Member States in order to face the shortage of labour in some key sectors of the economy. In this context, the geographical mobility of professionals will become an essential adjustment tool and the rules

[39] "Youth on the move: An initiative to unleash the potential of young people to achieve smart,sustainable and inclusive growth in the European Union": http://ec.europa.eu/education/yom/com_en.pdf

[40] 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.

applying to the recognition of professional qualifications should be flexible enough to support this need for mobility. Geographical mobility will increase as flexicurity principles are spread among Member States. In constantly changing labour markets workers, as well as professionals, need flexible and reliable contractual arrangements that preserve social security rights. The Commission has communicated in detail the characteristics of flexicurity that are essential within the 2020 strategy.[41]

In December 2008, the Commission issued the "New Skills for New Jobs" Communication [42], including a series of proposals for better anticipating and matching labour market needs. Geographical mobility is identified as a concrete solution to address mismatches in the EU labour market. Under this initiative, projections for future labour market needs and analyses of the skills needs by sector have been developed.

In November 2010, the Commission presented in follow-up "an agenda for new skills and jobs"[43] as a flagship initiative of the Europe 2020 strategy[44]. This agenda sets out 13 key actions aimed at raising employment rates in the EU. The reform of the system for the recognition of professional qualifications has been identified among the key actions which could contribute to strengthen the capacity to match labour market and skills needs. The Annual Growth Survey[45] presented in January 2011 by the Commission also refers to the simplification of the systems for the recognition of qualifications as a contribution to the labour market reforms needed to boost growth and job creation.

6.2. European Qualifications Framework and Article 11 of the Directive

Article 11 of the Directive introduced a classification of educational qualifications under five levels, based on the type and duration of training. Article 13 specifies that this classification should be used by competent authorities to check the eligibility of an application: a professional can benefit from the Directive if his qualification is at least equivalent to the level immediately below that required in the host Member State. If there is a difference of two or more levels between the qualification of the professional and the qualification required in the host Member State, the Directive does not apply and competent authorities should examine the recognition request under the Internal Market Freedoms foreseen in the Treaty[46].

The evidence collected from the experience reports shows that the levels defined in Article 11 are widely used by competent authorities. The majority of competent authorities consider that the education levels are useful to compare qualifications and make the recognition process easier.

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[41] See COM(2007) 359 final and http://ec.europa.eu/social/main.jsp?catId=102&langId=en

[42] "New Skills for New Jobs : Anticipating and matching labour market and skills needs"; http://ec.europa.eu/education/lifelong-learning-policy/doc/com868_en.pdf

[43] "An agenda for new skills and jobs: a European contribution towards full employment":

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0682:FIN:EN:PDF

[44] Europe 2020 is the EU's growth strategy with five ambitious objectives - on employment, innovation, education, social inclusion and climate/energy - to be reached by 2020.

[45] Communication from the Commission " Annual Growth Survey: advancing the EU's comprehensive response to the crisis" (January 2011): http://ec.europa.eu/europe2020/pdf/en_final.pdf

[46] Free movement of workers, right of establishment, freedom to provide services.

However, some authorities reported difficulties in applying Articles 11 and 13 of the Directive, and the accompanying Annex II. Allocating the qualification presented by the migrant in a specific level of Article 11 is not an easy task. It often requires a good understanding of the education systems of the Member State of origin and can be time consuming. Other authorities expressed concerns on the use of Article 11: they consider that this classification based on broad descriptors, together with the provision allowing the recognition of qualifications at an inferior level, can lead to an inaccurate matching of qualifications.

Some authorities noted that the classification defined in Article 11 is not consistent with the qualification frameworks existing at national level or with other tools developed at European level to compare qualifications (such as the European Qualifications Framework; the EURACE index for engineers has also been mentioned). The EQF recommendation explicitly states that it does not affect the recognition of professional qualifications under the Directive[47]. However, as a tool allowing the comparison of qualifications awarded under different national education systems, its consistency with Article 11 of the Directive can be questioned. With the European Qualifications Framework (EQF), qualifications are not compared on the basis of the duration of a training course (input-based) but according to "learning outcomes" (output-based). Learning outcomes refer to the knowledge, skills and competencies a student is expected to have acquired at the end of a training programme. The number of levels also differs from the classification defined in Article 11: the EQF is based on eight levels of qualifications, covering all types of qualifications. The EQF is aimed to be used as a "meta-framework" to compare qualifications that should be classified in National Qualifications Framework (NQF). These NQF should be elaborated in terms of learning outcomes but can include a different number of levels compared to the EQF. It should be noted that Member States are at different stages in the development of their NQF and in the referencing of their NQF to the EQF (linking NQF levels to EQF levels).

Finally, feedback received from competent authorities shows that the classification contained in Article 11 is used mainly to compare the levels of qualifications but not to check if an applicant can benefit from the Directive or not. Many competent authorities reported that they use the classification mainly as a benchmarking tool to assess the necessity of compensation measures. It is used very rarely in the initial purpose foreseen by the Directive; i.e. to "exclude" applicants from the possibility that their recognition requests are examined under the Directive (this situation can arise when there is a difference of two or more levels between the qualification of an applicant and the one requested in the host Member State).

The use of a system of levels in the recognition procedures and the respective use of Article 11 and EQF are being further explored in an external study carried out on the impacts of educational reforms (see section 6.3).

[47] 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".

6.3. Comparison of qualifications under the general system: impact of the Bologna process

The recent reforms undertaken within the Bologna process have significantly modified the higher education landscape. The Bologna process introduced the use of a credit system (ECTS – European Credit Transfer and Accumulation System) and learning outcomes in the design of training curricula. The concept of learning outcomes illustrates the evolution from an input-based approach (approach used in the Directive, where the qualifications are compared on the basis of training subjects and of the duration of training programmes) to an output-based approach (approach used in the EQF, where qualifications are defined in terms of knowledge, skills and competences expected to be acquired at the end of a training programme). This new approach has contributed to the modernisation of education and training systems, in particular in vocational education. Learning outcomes have been implemented quite slowly in higher education institutions[48].

In 2010, the European University Association (EUA) published a new report in the "Trends" report series: "A decade of change in European Higher Education"[49]. This report examines the achievements of the Bologna process on the structure and organisation of training programmes. The "Survey of Master Degrees in Europe"[50] published by the EUA in 2009 offers a specific understanding on how the Master qualification, which constitutes the Bologna second cycle, has been implemented in the various European countries. A specific section of this report is dedicated to the implementation of the Master degree for the regulated professions and the interaction with the provisions of the Professional Qualifications Directive, in particular the relation between the Bachelor and Master degrees and classification of qualifications under Article 11. One important question examined in this report is the impact of the Bachelor-Master structure on long integrated training programmes (for example in medicine or engineering).

An external study has already been launched in December 2010 by the Commission in order to assess the impact of these recent educational reforms on the recognition procedures, in particular on the general system. The main objective of the study is to assess to what extent these reforms have had an impact on the comparability of qualifications and convergence of training programmes. National competent authorities have been deeply involved in this study in order to understand whether the new elements introduced by these reforms (e.g. Bachelor-Master sequence, ECTS, learning outcomes) have contributed to a simplification of recognition procedures and/or have led to a quasi-automatic recognition of certain qualifications. The study will be concluded by September 2011. At this stage only some preliminary findings can be reported.

- The convergence of training programmes seems to be very limited. Bologna reforms had more impact on the structure of training programmes rather than on the contents.

- It appears that the three-cycle structure had a limited impact on recognition procedures, notably because the duration associated with the Bachelor or Master cycle

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[48] "The shift to learning outcomes: conceptual, political and practical developments in Europe" , CEDEFOP, 2009: http://www.cedefop.europa.eu/EN/publications/12952.aspx

[49] Trends 2010: A decade of change in European Higher Education: http://www.eua.be/publications.aspx

[50] Survey of Master Degrees in Europe, 2009: http://www.eua.be/publications.aspx

varies from one country to another; but also because the information on the level of study is not considered sufficient to decide on recognition.

- Similar differences have been noted for the use of the ECTS credit system, which limit the immediate added value for recognition. However, the use of ECTS transcripts is considered useful to have detailed information on the content of a training programme.
- Learning outcomes seem to be helpful to understand a qualification; but competent authorities consider that they do not constitute an alternative to other criteria used to compare qualifications (duration of the training and training subjects).
- The Europass Diploma Supplement is viewed as a very useful tool to support the recognition procedures.

6.4. Not yet fully qualified professionals

The Professional Qualifications Directive seeks to facilitate only the free movement of fully qualified professionals (see Article 1 of the Directive). Its scope does not cover professionals who hold a diploma but have yet to complete a remunerated traineeship or supervised practice under the law of the Member State where they graduated. For instance, a professional might have passed his or her Master in Architecture but still needs to undergo supervised practice. The construction sector which is facing a crisis might lead to a situation where such a graduate wishes to do such practice in another Member State.

The Court of Justice clarified in the *Morgenbesser* case[51] that the Treaty rules on free movement apply to such cases and that Member States cannot, as a matter of principle, prevent future lawyers from pursuing a remunerated supervised practice if they offer such a possibility to their own nationals.

It is unclear whether competent authorities are aware of this principle and whether they actually apply it. In practice, there seems to be little experience of such situations. However, feedback from the public consultation shows that there is a growing interest in developing the possibility for young graduates to pursue a remunerated traineeship abroad and a large number of stakeholders support measures to facilitate mobility of new graduates, even if certain stakeholders consider that exceptions to such a principle could, in certain cases, be justified (in particular for health professionals). On the other hand, certain stakeholders reject as a whole the idea to extend the Directive to new graduates, considering that their mobility concerns academic recognition which should not come under the Professional Qualifications Directive. This argument is certainly important if a graduate does not receive any remuneration during a supervised practice abroad. If remuneration is paid, such graduate can invoke the reasoning under the "Morgenbesser" judgments.

As concerns the conditions for recognition of a traineeship done abroad by new graduates, many stakeholders consider that the home Member State would need a lot of detailed information on the content of the traineeship and that the home Member State regulator should oversee the process, taking evidence of the achieved learning outcomes. According to a number of stakeholders, supervisory and supporting arrangements should be agreed between

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[51] Court of Justice 13 November 2003, Case C-313/01, Morgenbesser, ECR I–13467. (This judgement was confirmed by the Court's judgement in Case C-345/08, Peśla v. Justizministerium Mecklenburg-Vorpommern.)

the sending, the receiving education institution/or the employer and the young professional, and be backed by framework agreements between Member States.

As to the account that should be taken of the traineeship done abroad, most stakeholders do not favour an automatic acceptance. Many stakeholders note that such traineeship should be subject to an assessment by the home Member State and compensatory measures could be justified.

In conclusion, it could be useful to clarify the rules applicable to remunerated traineeship conducted abroad, as developed by the case-law. Indeed, the Treaty rules on free movement apply to such cases and Member States cannot, as a matter of principle, prevent people from doing a remunerated supervised practice if they offer this possibility to their own nationals. They must compare the qualifications of the applicant to those required nationally with the view to assessing whether they are, if not identical, at least equivalent.

At the same time, it could be also useful to extend the scope of the Directive to such situations, so that new graduates benefit of the procedural guarantees provided by the Directive. This concerns, in particular, the deadlines applicable to competent authorities for taking a decision, but also the obligation to acknowledge receipt of the application within a certain timeframe and inform the applicant of any document missing from their file.

6.5. Use of partial access to a profession

In some cases, the scope of the activities covered by a profession differs significantly from a Member State to another. This can create problems for a professional qualified in one Member State and willing to establish in another Member State where the scope of the profession is much larger.
In these cases, the differences in the training and experience are so important that they cannot be compensated by an aptitude test or adaptation period. The host Member State would require the professional to undergo a full training programme in order to acquire the "missing part" of the qualification.

In the case *Collegios de ingenieros*[52], the European Court of Justice laid down the principle of partial access to a profession. The Court has decided that partial access must be granted if two conditions are met:

- the differences between the fields of activity of the professions concerned are so large that they cannot be compensated by compensatory measures and that in reality a full training and educational programme is required;
- there are no valid public interest reasons to prohibit such partial access.

The possibility to offer partial access has been rarely used by competent authorities, which prefer to refuse *in toto* the access to the profession

For instance, the Dutch authorities refused partial access to the activity of teacher in kindergarten/primary school ("basis school") to the holder of a Belgian diploma for Kindergarten teaching, arguing that Directive 2005/36/EC was not applicable.

[52] Case C- 330/03 of 19 January 2006, *European Court reports 2006 Page I-801*

The Belgian diploma qualifies the teaching of children from the age of 2 up to the age of 6. In the Netherlands, primary school teachers are allowed to teach children from the age of 4 to the age of 12. However education is divided into 8 Groups. Groups 1 and 2 cover children until the age of 5. The holder of a Belgium diploma could have been authorized to teach only to Group 1 and 2 as this corresponds to his competence under the Belgium system.

Another example concerns access to the activity of snowboard instructor in France. The French authorities refused to authorize snowboard instructors qualified in other Member States to exercise this profession in France on the ground that, in France, the profession of snowboard instructor is restricted to ski instructors. Therefore, in order to teach snowboarding in France, snowboard instructors from other Member States had to prove that they were also qualified or able to teach skiing. Following the opening of an infringement procedure by the Commission, the French authorities finally amended their legislation to authorize partial access to the profession of snowboard instructor.

6.6. Key findings

- The general system is still relevant today: economic and demographic developments make the need for mobility within the EU stronger than a few decades ago. In this context, the general system still represents a pragmatic solution for allowing the mobility of professionals and overcoming existing differences in the regulation of professions and in training programmes. In addition, at this stage, the impact of recent educational reforms on the convergence of training programmes seems to be insufficient for allowing an automatic recognition of qualifications. The results of the external study on the impacts of educational reforms will provide more detailed information on this aspect.

- Economic and demographic developments call perhaps for more flexibility in the rules applying to the recognition of qualifications:

  - The provision allowing competent authorities to reject applications if there is a difference of two or more levels between the qualification of the professional and the qualification required in the host Member State (Article 11) may result in excluding some citizens in an unnecessary way from the scope of the Directive. The limited use of this provision by competent authorities shows that a more flexible approach may be relevant to deal with applications presenting important differences in qualification levels.

  - Not yet fully-qualified professionals who however undergo remunerated and supervised practice currently risk facing a gap, since they are not covered by the Directive (but by the Internal Market freedoms[46]).

  - The partial access doctrine developed by the Court of Justice is rarely used by competent authorities and professionals can be penalized by the differences existing in the economic activities carried out by professionals in different Member States.

7. COMMON PLATFORMS

7.1. Introduction

A new concept under the Directive has been common platforms (Article 15). The idea of this new instrument was to facilitate the implementation of the general recognition system (see

4.1.). Where the differences in national qualification requirements are such that this system allows competent authorities to impose compensatory measures on migrants, common platforms could make such measures redundant. The Directive defines common platforms as a set of criteria which make it possible to compensate for the widest range of differences which have been identified between the training requirements of the Member States (at least of all those which regulate the profession in question). Such criteria could be additional training, adaptation periods, aptitude tests, professional practice or combinations thereof.[53] In other words, a common platform is a kind of one-size-fits-all compensation system, which can for instance take the form of a common aptitude test, valid for obtaining the recognition in all Member States regulating a profession. A professional who satisfies all of its criteria, would be waived of any individual compensatory measure in a Member State, wherever he wishes to exercise his profession.

Today a common platform can be initiated by a Member State or by professional organisations representative at national and European level and should cover at least two thirds of the Member States, including all regulating the profession. If the Commission considers that a common platform would facilitate the recognition procedures for a given profession, it may present the necessary measures with a view to their adoption under Comitology procedures.[54]

7.2. Reasons of the failure of common platforms

To date, no common platform has been achieved. However, some professional organisations have shown an interest in this new concept. They have approached the Commission services seeking advice in the preparation of a common platform for the respective professions (especially psychotherapists, engineers, real estate agents, specialists in clinical chemistry and laboratory medicine). The reasons for the apparent failure of common platforms are as follows:

(1) A common platform requires, as a starting point, compiling a reliable inventory of the legal situations in at least two thirds of the Member States (scope of activities of the profession in question, regulatory details, level and content of training required). It turned out that this is a very challenging task for professional organisations due to the limited resources they have. Instead, Member States should be in charge of this task for the professions for which mobility is particularly problematic.

(2) Differences in professional regulations vary considerably from country to country (from no regulation at all or professional self-regulation to the requirements of university diplomas). It appears to be very difficult to bridge such huge gaps, i.e. to find a common denominator of compensation measures satisfying at the same time those Member States which do not see any need for regulation and the most demanding ones.

(3) Some professions do not exist as such in all Member States: the activities which in one Member State constitute a "stand alone" profession can be linked to another profession in another Member State (e.g. psychotherapists). In this case a common platform cannot work, as compensation measures are not sufficient to access a different profession.

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[53] See Article 15 of the Directive, read in conjunction with Recital 16.

[54] Art. 15 (2) in conjunction with Art. 58 (2)

(4) Finally, the discussions revealed that the organisational arrangements need further consideration. The Directive is rather vague regarding the way to implement a platform. In particular, it is unclear who would be in charge of implementing it (organizing additional training, adaptation periods or aptitude tests, certifying the successful completion of all necessary steps). The engineers' organisations, for instance, came to the conclusion that the complexity of the task (also given the different professional branches of engineer) is disproportionate in relation to the existing recognition problems.

Some professional organisations considered that the number of Member States necessary to set up a common platform is too high and suggested to reduce it (e.g. from two thirds to half of all Member States). Others considered that the concept of common platforms should be reviewed and expressed a preference for developing common quality standards for a given profession rather than setting up a platform to "accommodate" the existing differences in training and activities.

Generally, the professional organisations involved in the evaluation exercise agreed that common platforms could be a workable tool provided that their use is simplified. They invited the Commission not to give up on the concept of a common platform, but to review its conditions/modalities to make it easier to implement. The purpose of a common platform may also be revised, as one of the limits of the concept is that it does not offer automatic recognition but only a way to compensate for existing differences in training programmes.

Some professions call for extending automatic recognition to new professions, on the basis of common standards of training or of a set of common competencies. The concept of a common platform may be explored to facilitate the recognition of professions which have agreed some common standards on a voluntary basis.

7.3. Key findings

- The concept of common platforms did not reach the objective of facilitating the recognition of qualifications under the general system. The current definition of a common platform may not be adapted to the diversity of professional regulations and training conditions; in addition the conditions for setting up a platform are particularly difficult to meet.

8. AUTOMATIC RECOGNITION FOR HEALTH PROFESSIONS

Automatic recognition of professional qualifications was the original objective of EU Directives. To this end, minimum harmonisation of training requirements was achieved for six professions in the health sector: doctors, dental practitioners, pharmacists, nurses, midwives and veterinary surgeons. Under the so-called "sectoral Directives" for each for these professions, professional qualifications which corresponded to the minimum training conditions were automatically recognized throughout the EU.

The 2005 Directive consolidated the rules applicable to the automatic recognition of the qualifications for these professions in a single legislative instrument taking over the essential rules from the preceding directives without any substantial changes. The rules are now laid down in Title III Chapter 3 of the Directive.

8.1. How does it work in practice

Article 21 of the Directive lays down the principle of automatic recognition of the formal qualifications of doctors with basic training, specialised doctors, general practitioners, and nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons pharmacists and architects. A similar regime applies to midwives with the particularity that the recognition may be subject to further conditions (Article 21 (3)).

The minimum training requirements for each of these professions are set out in separate articles of the Directive[55]. These provisions regulate the conditions for admission to the training and the minimum duration of the training (in principle expressed in years, except for doctors, nurses and midwives for whom they are expressed in years or in training hours). Furthermore, the Directive provides, for each profession, a list of elements of knowledge and skills a professional has to acquire in the course of the training. In addition, for midwives and pharmacists, the Directive also provides a list of activities the professional has to be in the position to exercise.

Except for doctors, the Directive provides for additional training elements in its Annex V. This annex contains, for each of the professions concerned, a non-exhaustive list of training subjects which must be included in the training. Finally, the same annex lists, for each Member State and all professions concerned, the diplomas and titles[56], which are automatically recognized throughout the EU. If a migrant is in the possession of a diploma which figures in one of the various lists of Annex V, it is presumed that this qualification satisfies the training conditions set out in the Directive for the profession in question. It follows that all Member States have to give it the same effect as the nationally awarded diplomas and titles.

[55] Basic medical training, Art. 24; specialist medical training, Art. 25; specific training in general medical practice, Art. 28; nurses, Art. 31;dental practitioners, Art. 34; specialised dental practitioners, Art. 35; veterinary surgeons, Art. 38; midwives, Art. 40; pharmacists, Art. 44 and architects, Art. 68.

[56] Except for medical and dental specialties

8.2. Additional EU policy initiatives in the public health area

The minimum training requirements for health professionals are an important achievement also from the perspective of public health in the Member States.

In recent years, various initiatives deepened EU involvement in national policies on public health. In 2008, the Commission published a proposal for a Directive on patients' rights in cross-border healthcare. The Directive was adopted by the European Parliament and the Council in March 2011[57]. It offers patients seeking treatment in another Member State legal security concerning reimbursements of their healthcare costs.

In December 2008, the Commission adopted a Green Paper on the European Workforce for Health[58]. This Green Paper examines demographic challenges affecting the demand for health care, the organisation of training and the mobility of health professionals. It calls for coordination of policies for the recruitment and training of medical staff.

In addition, the e-Health initiative examines how information technology can be used in the health sector to ensure safer and more efficient care. The first Action plan for a European e-Health Area was adopted in April 2004 and called for the commitment by Member States to work together for the deployment of e-Health. It includes proposals on the interoperability of health systems, the development of electronic health records and the identity management of patients and health professionals. The e-Health Action Plan should be updated by the end of 2011.

8.3. High mobility of health professionals due to automatic recognition

The health professions are the most mobile among the regulated professions in the EU.

Between 2007 and 2010, automatic recognition of diplomas was granted to about 26.600 doctors, 15.200 nurses, 6600 dentists, 3400 pharmacists, 1700 midwives and 3700 veterinary surgeons.[59]

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[57] Directive 2011/24/EU: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF

[58] Green Paper on the European Workforce for Health: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0725:FIN:EN:PDF

[59] Source: Database on regulated professions: http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home; completed by data reported in experience reports from competent authorities: http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm

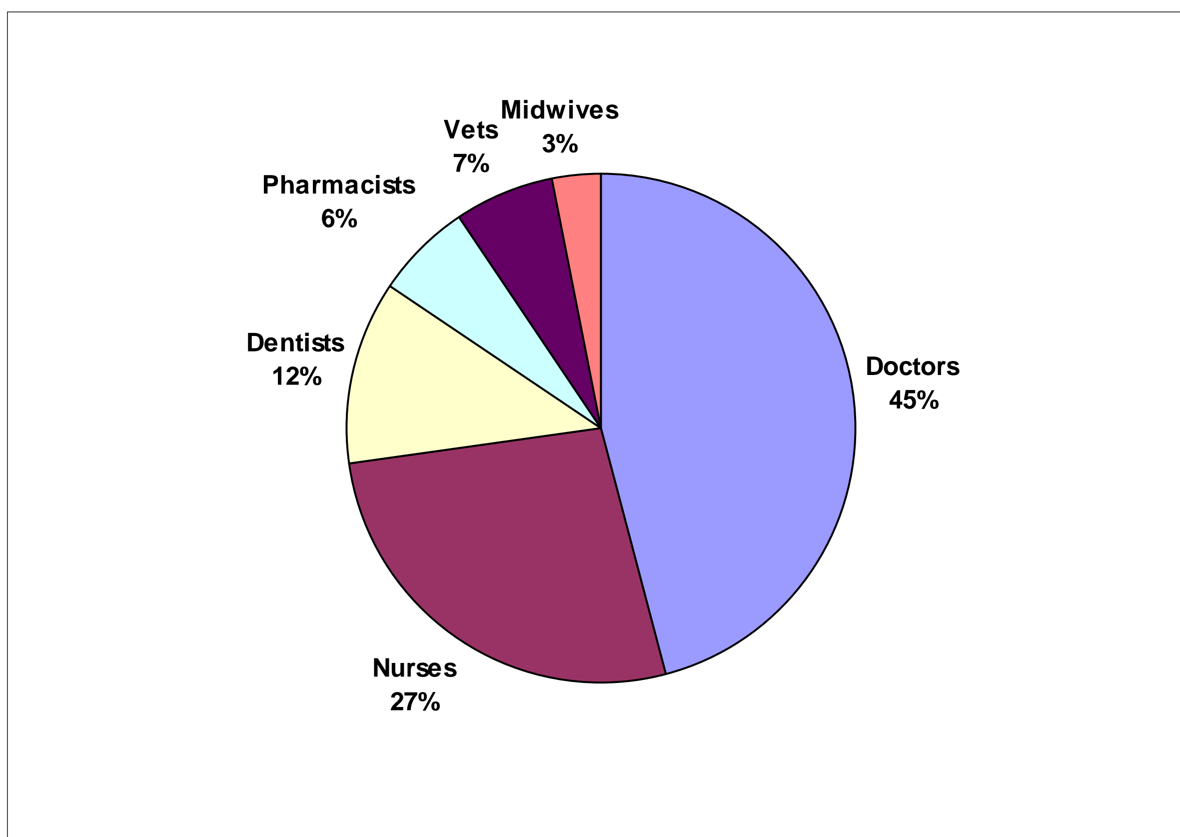

Figure 3: Distribution of recognition decisions for health professionals (automatic recognition) – Period: 2007-2010
Sources: Experience reports and Regulated Professions Database

Figure 3 above suggests that the automatic recognition of diplomas under European directives has had a considerable impact on the mobility of health professional in Europe, even if the proportion of mobile health professionals is very low compared to the absolute number of health professionals working in the EU. Evidence gathered from the European Observatory on Health Systems and Policies[60] confirms that, from a long term perspective, mobility and migration in Europe have increased. Some Member States can be described as predominantly "receiving countries": the United Kingdom, Ireland and Slovenia are the European countries with the highest proportion of foreign medical doctors. In the United Kingdom, more than one in three medical doctors was trained in a different country. The United Kingdom and Italy also attract particularly high numbers of foreign nurses. The three countries mentioned above are followed by Belgium, Portugal, Spain, Austria, and Sweden which also have a high number of foreign health professionals. By contrast, in all the other European countries, the number of foreign health professionals is moderate or relatively low; some countries could even be characterized as predominantly "sending countries".

There is evidence that EU rules on the recognition of professional qualifications not only foster mobility, but also inspire confidence among citizens. According to the Eurobarometer[61] survey conducted in February / March 2011, two thirds of the population believe that it does not matter where in the EU a doctor qualified for the profession. This suggests that the

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[60] Health Professional Mobility and Health Systems. Evidence from 17 European countries. Edited by M. Wismar et. al. European Observatory on Health Systems and Policies, 2011, p. 30.

[61] Special Eurobarometer 363, forthcoming publication

majority of citizens trust that the training, underpinned by the harmonised EU standards, is of satisfactory quality in all EU countries.

8.4. Success and limits of automatic recognition

It appears from the approximately 200 experience reports from the national authorities competent for the recognition of professional qualifications that the automatic recognition system generally works well. Automatic recognition is seen as efficient and cost-effective.[62] However, specific problems have been pointed out. These are detailed below.

8.4.1. Integration into national health care systems

Some authorities, in particular for nurses and midwives, noted differences in training programmes and the resulting differences in the scope of practice. Professionals need to adapt to the health care system of the host Member State and may be required to carry out tasks for which they might not have been trained. In some cases this could limit the employment opportunities in another Member State.

Integration into a national health care system can also entail continuing professional development (CPD). The Directive leaves the regulation of this aspect of professional activity up to the Member States. Its Article 22 provides that "continuing education and training shall ensure that persons who have completed their studies are able to keep abreast of professional developments". While all stakeholders agree that CPD is becoming increasingly important, only a minority expressed support for its comprehensive regulation at European level. As in many Member States CPD is not yet compulsory and given a great variety among Member States regarding the content, it seems to be premature to require CPD as a condition for recognition of professional qualifications. There is a risk that CPD could become an unreasonable barrier to the mobility of professionals.

However, situations may arise in which professionals who can benefit from automatic recognition by virtue of their diploma lose their right to exercise the profession for which they were qualified in their home Member State (for instance because they failed to comply with national requirements on CPD or, even worse, because they lost their authorisation to practice due to a professional wrongdoing leading to a disciplinary or criminal sanction). A possible solution could be to adapt the rules on automatic recognition to match the regime on temporary provision of services under which professionals are obliged to demonstrate that they have the right to exercise in their home Member State and, in particular, that they are not prohibited from exercising the profession because of failure to fulfil domestic CPD requirements.

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[62] See Berlin Statement of 13 September 2010 of Informal Network of Competent Authorities for doctors, para. 3; EU National Reports on the Implementation of Directive 2005/36/EC for the profession of nursing of 17 September 2010, p. 5; Network of European Midwifery Regulators, Evaluating the Professional Qualifications Directive. National Experience reports for the midwifery profession. Introductory paper of 17 September 2010, p. 3; Patrick Fortuit, Synthesis of the national experience reports on the Directive 2005/36/EC relative to the recognition of qualifications for pharmacists of 17 September 2010, p. 3.

8.4.2. *Integration of recent educational reforms into the training*

Curricula of education and training programmes evolve over time. Further to the Bologna Process, universities gain more autonomy. Other significant changes include the introduction of the European Credit Transfer System (ECTS), more student-centred learning and a two-cycle curriculum (Bachelor / Master) with the objective of promoting entry into the labour market by holders of Bachelor degrees. The ECTS has been introduced in around half of the Member States. However, the Bachelor-Master structure has rarely been used in the training of health professionals. Member States respect the minimum durations of training set out in the Directive (six years for doctors and five years for the remaining five professions) and do not open these professions to holders of bachelor degrees.

In order to strengthen confidence in the automatic recognition system amid these changes, some competent authorities highlighted the need to improve the transparency between Member States on the contents of training programmes. Once a Member State introduces elements of the Bologna process into its domestic universities, notably European Credit Transfer and Accumulation System (ECTS), this is vital information for other Member States. The workshops the Commission held with Member States in May/June 2011revealed a lack of information and transparency between Member States. A regular exchange of information on study programmes should be encouraged through administrative cooperation, albeit without engaging considerable resources.

Some authorities and organisations also suggested linking the process of notification of new diplomas to the quality assurance procedures developed in the context of the Bologna process. Accreditation bodies could verify if the minimum training requirements of the Directive are respected.

8.4.3. *Keeping automatic recognition up to date*

The list of diplomas and titles benefiting from automatic recognition requires regular updates as training curricula change over the time and new diplomas are issued. Under the Directive, Member States have to notify the Commission of any new diploma and the underpinning legal provisions.[63] If the Commission considers that a new diploma complies with the Directive it publishes an appropriate communication in the Official Journal of the European Union. Approximately 230 new or amended diplomas have been published since 2005[64].

One of the problems raised in the course of the evaluation concerns the delays in notifying new diplomas. This issue was examined in the study commissioned by the European Parliament. Notifications are sometimes made only once a training programme is already in place. These late notifications may create difficulties for young graduates who wish to benefit from automatic recognition of their diploma. They are put in the unfair position of having no certainty that their new diploma is actually recognised Europe-wide.

Some competent authorities and professional organisations suggested imposing an obligation on Member States to notify new diplomas at an earlier stage, for example once a new diploma has been approved at national level and before the training programme actually starts.

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[63] See Article 21(7).

[64] All communications published are available at: http://ec.europa.eu/internal_market/qualifications/index_en.htm)

8.4.4. Ex-post evaluation of training programmes

In the course of the evaluation, stakeholders widely discussed the possibility of building on an ex-post evaluation system of veterinary training programmes run by the European Association of Establishments for Veterinary Education (EAEVE) and the Federation of Veterinarians of Europe (FVE). Some stakeholders suggested granting the EAEVE evaluation a formal status, either within individual Member States, or at EU level. The ex-post evaluation could lead to a possible licensing of training programmes. However, similar ex-post evaluation programs do not exist for the other health professions (or for architects). It would be inconsistent to consider such method only for the veterinary profession but not with regard to health professions dealing with patients.

8.4.5. Specific case of pharmacist diplomas - Opening new pharmacies

Article 21(4) of the Directive allows Member States not to give effect to the automatic recognition of a pharmacist's qualifications for the setting up or management of new pharmacies, including those which have been open for less than three years.

This derogation was adopted in the initial Directive which introduced the automatic recognition of pharmacist qualifications[65] to address the concerns of some Member States that the new rules would lead to a high influx of pharmacists from Member States where territorial restrictions on the numbers of pharmacies prevented them from entering the profession.

The Commission proposed to repeal this derogation in the legislative proposal which led to the adoption of the present Directive; however, it was reintroduced by the Council and the European Parliament.

This derogation has been used in some Member States to impose a complete ban on the opening up or management of new pharmacies by fully qualified pharmacists who obtained their qualifications in another Member State. In the Commission's view, this derogation is limited to the principle of automatic recognition. It is settled case law of the European Court of Justice that Member States must comply with their obligations arising from Article 49 Treaty on the Functioning of the European Union (TFEU) in examining any application for authorisation to practise a regulated profession, in so far as the applicant cannot avail himself of the mechanism for automatic recognition laid down by the Directive[66]. The examination should follow the rules under the General System.

Due to the economic developments in the community pharmacy sector (mainly authorization for non-pharmacists to own a pharmacy and the increasing online sale of non-prescribed medicine and other pharmaceutical products) some Member States (United Kingdom and Ireland) who implemented the derogation in the 1980's have already repealed it or intend to abandon it in the close future. Member States who joined the European Union from the 1990's onwards never applied the derogation.

[65] Council Directive 85/433/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy.

[66] See case C-31/00 Dreessen.

8.5. Minimum training requirements

8.5.1. The current basis of automatic recognition

Some of the harmonised minimum conditions for the training of doctors, dental practitioners, nurses, midwives, pharmacists, veterinary surgeons were established date as far back as 35 years ago. It, therefore, comes as no surprise that nearly all stakeholders call for their modernisation. Competent authorities and professional organisations indicated that the existing rules should be reviewed in the light of the scientific and technical progress with respect to some or all of the professions in question (to a lesser extent for veterinarians). Furthermore, many stakeholders (authorities, professional organisations, education bodies) called for the existing objective criteria to be complemented with a more output based approach. The common view was that instead of merely focussing on training duration and contents, the scope for a move towards the use of competencies, in a form best suited to typical training patterns in each sector, should be considered.

8.5.2. Admission requirements for nursing and midwifery training

The admission requirement for nursing training is currently set at minimum ten years of general education (Article 31(1)). The same requirement applies to midwifery training under the so-called "route I" training (Article 40(2)a). Both professions have evolved significantly in the last three decades: community-based healthcare, the use of complex therapies and constantly developing technology presuppose that nurses and midwives are able to work more independently. In several Member States, as a result of the shortage of doctors, nurses and midwives are expected to perform tasks which were previously undertaken by doctors.[67] As a result of these changes, in most Member States, the nursing and midwifery trainings were upgraded and now these professionals are only trained at the higher education level.

Competent authorities and professional associations from several Member States raised the concern that students who entered nursing or midwifery school after only ten years of general school education did not have the necessary basic skills and knowledge to start a training which should prepare them to meet complex healthcare needs. A vast majority of stakeholders suggested raising the admission requirements for both nurses and midwives from 10 years to 12 years of general school education. This is currently, or will soon become, the rule in all but 2 Member States (DE and LU).[68] Professional organisations even expressed a preference for a university entry level.

Nurses can be entrusted with very varied tasks in different Member States and the nature of these tasks is directly linked to the training requirements for the nursing profession. According to an OECD study,[69] in some countries such as France, Portugal or Poland, there is only one category of nurses providing direct care to patients. By contrast, in other countries such as the United Kingdom, Germany, Austria or Finland the majority of nurses are considered to be professional nurses but they are also supported by associate professional

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[67] Since 2000, the number of nurses per capita has increased in all European countries, except in Lithuania and the Slovak Republic. The increase was particularly large in Portugal, Spain, France and Switzerland; see OECD, Health at a Glance: Europe 2010, p. 78.

[68] Workshop on the minimum training requirements for general care nurses and midwives of 27 May 2011 organized by DG Internal Market and Services.

[69] OECD, Health at a Glance: Europe 2010, p. 79.

nurses of a lower level. In another group of countries, the number of lower level nurses is greater than that of higher level nurses. Finally, there are countries (the Netherlands, Spain and France) in which caring personnel without any nursing qualification outnumbers the nurses, whereas countries such as Germany, Sweden, Luxembourg or Ireland do not to appear to rely on any caring personnel other than trained nurses. Figure 4 below illustrates the differences in the nursing profession (distribution between different categories of nurses).

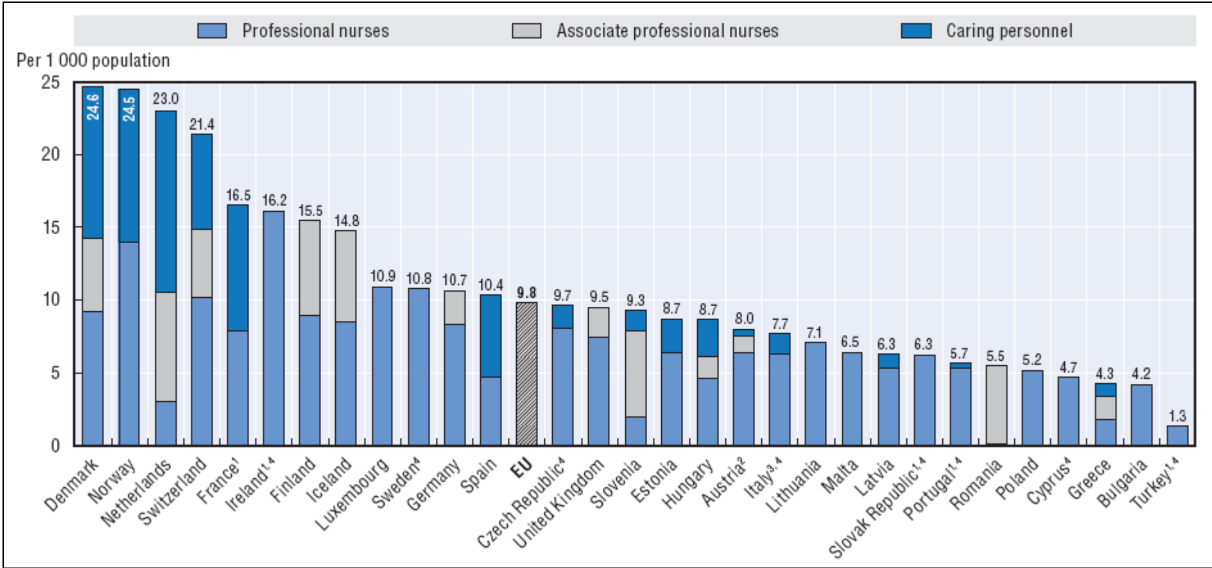

Figure 4: Distribution of the different categories of nurses and caring personnel

Source: OECD, Health at a Glance: Europe 2010

There are also diverging trends in the distribution of tasks between nurses and doctors: in some Member State nurses are expected to perform certain tasks of doctors, notably to address the shortages of doctors in some geographic areas. This presupposes an upgrade in the nursing training.

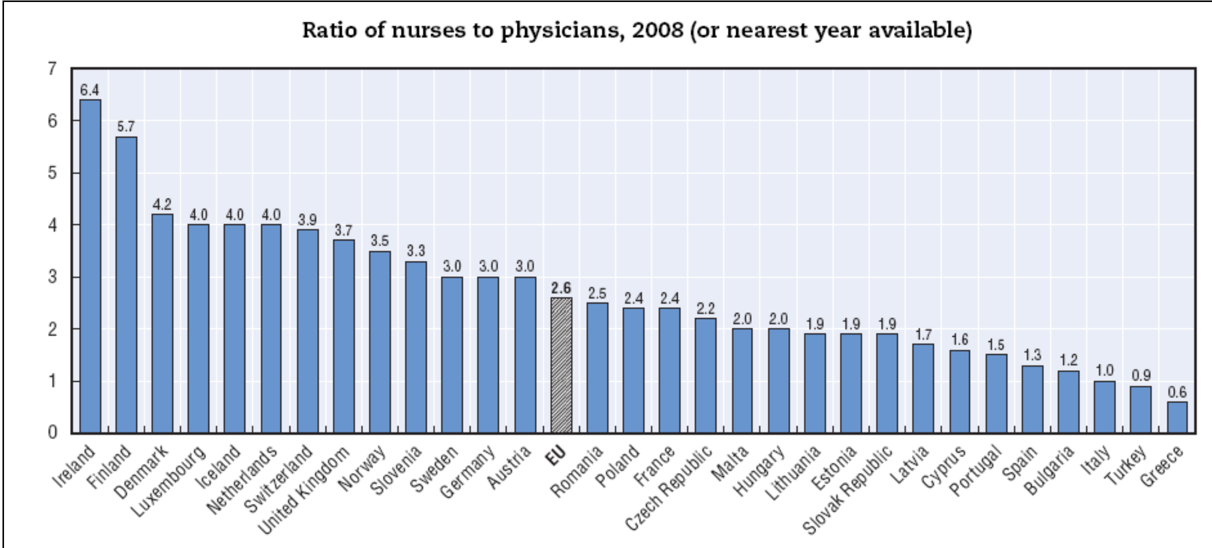

Figure 5: Ratio of nurses to doctors

Source: OECD, Health at a Glance: Europe 2010

A vast majority of stakeholders consider that entry into midwifery training should in all cases be contingent upon 12 years of general education (see section 8.5.1). An increase from 10 to

12 years of school education might have a simplification effect for the midwifery profession. If the general education level were raised to 12 years of education or an equivalent higher education entrance qualification, the training requirements under Art. 41 (a) would become obsolete.

8.5.3. Duration of training for doctors, nurses and midwives

In general, the evidence gathered in the course of the evaluation shows that the duration of training specified in the Directive for the health sector professions benefiting from automatic recognition is still adequate. However, some clarifications and adaptations seem to be necessary with respect to the duration of training of doctors, nurses and midwives as the current arrangements raise doubts as to their correct interpretation.

At present, the minimum duration requirement for the basic medical training and the training for general care nurses is expressed in terms of years *or* training hours (Article 24(2) stipulates that the basic medical training shall be at least six years or 5500 training hours, while Article 31(3) provides that the general care nurse training shall be at least three years or 4600 training hours). This gave rise to misunderstanding as to whether the two criteria (years and training hours) constitute two separate options or if they should be applied cumulatively. The Commission took the view that the two criteria should be cumulative and opened infringement procedures against Member States who implemented trainings which did not respect one of the two criteria. Several Member States and professional organizations requested that the Commission amend the Directive making it clear that the two criteria are cumulative. The same applies to midwives as regards certain specific additional conditions for the recognition of midwifery diplomas in terms of years/months and hours ("two years or 3600 hours" and "18 months or 3000 hours" respectively) (Article 41).

8.5.4. Lists of knowledge and skills

The Directive sets out lists of knowledge and skills that a professional benefiting from automatic recognition should have acquired during the education and training. The Directive currently allows a modernisation of such lists on the basis of the comitology procedure without the need to amend of the Directive through the co-decision process.

Stakeholders indicated in the course of the evaluation that the skills and knowledge of doctors, as defined in the Directive, were too general. Several organisations suggested that the skills and knowledge should be defined more precisely and reflect the developments of modern medical practice more closely.

A majority of respondents to the public consultation in early 2011 stated that the minimum training requirements should be expressed in terms of competencies, in addition to the existing criteria (duration and training subjects). This opinion reflects the recent changes in the sphere of education, especially the move from input-based training to output-based training. Most of the competent authorities advocated an output-based training and requested that the Annex of the Directive also list the competences that graduates must acquire by the time of the completion of the training.

8.5.5. Study programmes listed in Annex V

The study programmes listed in Annex V of the Directive for the professions of dentist, nurse, midwife, pharmacist and veterinary surgeon have never been changed since their first

adoption in the respective "sectoral" directives (between 1977 and 1983). An overwhelming majority of respondents to the public consultation in early 2011 called for an update.

Competent authorities for doctors called for the inclusion of compulsory training subjects also for doctors.

8.6. Medical specialist training

Some Member States or their competent authorities (BG, FI, NL, CZ and to some extent, DK)[70] mentioned that several of their medical specialist training programmes have certain parts in common with each other and that this should be taken into account to a greater extent by the Directive.[71] Most of the contributions in this respect indicated that a significant proportion of the 54 medical specialties listed in the Directive had a close link to either 'internal medicine' or 'general surgery', from which they derived. The following specialties appear to be closely related to internal medicine: immunology, rheumatology, respiratory medicine, gastroenterology, cardiology, endocrine-logy, geriatrics, renal diseases, general haematology, communicable diseases and clinical oncology. As regards the specialties closely linked to general surgery, the following specialties could be suggested: plastic surgery, thoracic surgery, paediatric surgery, vascular surgery, gastroenterological surgery, neurological surgery, orthopaedics, maxillo-facial surgery, stomatology, urology and dental, oral end maxillo-facial surgery.

Some competent authorities signalled that they would like to see the minimum duration of the training for specialist doctors increased (from 3 to 4 or even to 5 years). However, this was not unequivocally supported by Member States in the workshops held in May 2011.

8.7. Acquired rights

The numerous accessions to the Union have necessitated a large number of acquired rights' provisions which has led to a framework of detailed and somewhat complicated transitional rules. As a matter of principle, acquired rights are granted to professionals from acceding Member States whose training began before the accession and therefore does not satisfy the requirements of the Directive. Under the Directive, such pre-accession qualifications are recognized if their holders can demonstrate recent professional experience (in general, three consecutive years during the last five years).

The implementation of acquired rights for the professions benefiting from automatic recognition was considered quite problematic by competent authorities after 2005.

Competent authorities reported problems linked to the assessment of professional experience:

- The system of acquired rights is based on certain periods of "effective and lawful" professional experience; however the interpretation of these requirements varies from one Member State to another. Several competent authorities (doctors, nurses, dentists) called on the Commission to provide a clear definition of "effective and lawful practice". In

[70] Competent authority of ES is considering it.

[71] Competent authorities of BG, DE, DK, AT, PL, SI, UK. The German government also expressed its support in their reply to the public consultation.

March 2011, the Commission presented a document giving an interpretation of this concept to the Group of Coordinators.

- Competent authorities encountered difficulties in assessing the length of professional experience of part-time workers or applicants who had been absent on maternity or long-term sick leave.

Another frequently quoted problem concerns the reliability of the certificates issued by regulators from other Member States. Some competent authorities reported cases of false or incorrect certificates (e.g. certificates mentioning that the applicant was working in the origin country at a time when the individual was already known to be living in the host country).

8.8. Key findings

- The system of automatic recognition continues to offer an effective solution for the mobility of doctors, nurses, dental practitioners, pharmacists, midwives and veterinary surgeons. Its implementation is generally considered to be efficient in terms of time and resources. However, the evaluation underlined some critical issues that merit further considerations.

- The current system of automatic recognition is based on diploma alone and does not take into consideration whether a professional is allowed to practice in the Member State of origin. A professional could be prevented from practising for different reasons ranging from failure to fulfil legal requirements on continuing professional development to serious disciplinary action.

- Automatic recognition is a dynamic process: new training programmes are being developed by higher education institutions, notably in the context of the Bologna process, and new diplomas are being issued. These diplomas need to be inserted into Annex V of the Directive in a more timely manner than is currently the case.

- The derogation from automatic recognition of diplomas in pharmacy with respect to the opening of new pharmacies is being used by fewer Member States. Nonetheless, there is still a risk that this derogation could be used to discriminate against pharmacists qualified in other Member States.

- Automatic recognition is based on minimum periods of training, defined in years or training hours for each of the professions. The definition of minimum duration of training defined in the Directive for doctors, nurses and midwives is considered ambiguous.

- A majority of stakeholders call for an increase of the admission requirements for nurses and midwives, in order to better reflect the evolution of these professions.

- The existing set of rules on minimum training requirements as a whole needs updating in the light of the scientific and technical progress. The question of competencies also merits further examination.

- Competent authorities experience difficulties in the implementation of acquired rights regime for the professions benefiting from automatic recognition, in particular as regards the interpretation of what constitutes "effective and lawful" professional experience and

the assessment of the length of professional experience (guidance provided at the Group of Coordinators in March 2011).

9. AUTOMATIC RECOGNITION FOR ARCHITECTS

Mutual recognition of professional qualifications of architects was introduced more than two decades ago through the 1985 Architects' Directive[72]. The system came to be seen as a success and was integrated, nearly unchanged, into Directive 2005/36/EC (the Directive) which replaced the 1985 Directive.

The principal objectives of the Architects' Directive were to facilitate the effective exercise of the right of establishment and freedom to provide services in respect of activities in the field of architecture, whilst ensuring, through qualitative and quantitative criteria, that the holders of recognised qualifications met appropriate standards. The Architects' Directive also sought progressive alignment of the education and training of architects, which were very varied at the time.

Since 2007, more than 2300 architects obtained recognition of their qualifications to establish in another Member State[73].

9.1. The success and limits of automatic recognition for architects

The evidence gathered during the evaluation exercise gives no reason to question the principle of automatic recognition. The system appears to be a success not only from the perspective of architects themselves, but also the competent authorities responsible for the recognition of their qualifications. The automatic recognition procedures on the basis of diplomas listed in an annex to the Directive have been described by competent authorities as efficient, "light" and easy.

The success of automatic recognition is clearly underpinned by effective administrative cooperation among the competent authorities. The main responsibility for ensuring this lies with the Group of Coordinators set up by the Commission in 2007. The Group promotes cooperation in all areas related to the recognition of professional qualifications. It plays a particularly strong role with respect to the process of examining new diplomas which Member States notify for publication in the relevant annex of the Directive in order that their holders might benefit from automatic recognition. In 2008, the Group set up a Sub-group expressly dedicated to the scrutiny of newly notified diplomas.

Cooperation is further facilitated through the Internal Market Information System (IMI). However, based on the feedback the Commission received in the course of the evaluation, not all of the architects' competent authorities consistently use the IMI. There are even reported instances of queries not being answered at all by the relevant competent authority. This limits its overall impact.

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[72] Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, OJ L 223, 21.08.1985, p.15.

[73] Source: Regulated Professions Database

In contrast to the positive perceptions of automatic recognition itself, there is ample evidence that the procedures for notifying and examining the diplomas which entitle their holders to benefit from this system are not efficient.

Important improvements have already taken place in the last few years. For example, in 2010, the Group of Coordinators agreed on formal deadlines which the Commission and Member States must respect when they raise any doubts or objections to the publication of a newly notified diploma (please see figure A). Overall, this has expedited the publication of new diplomas.

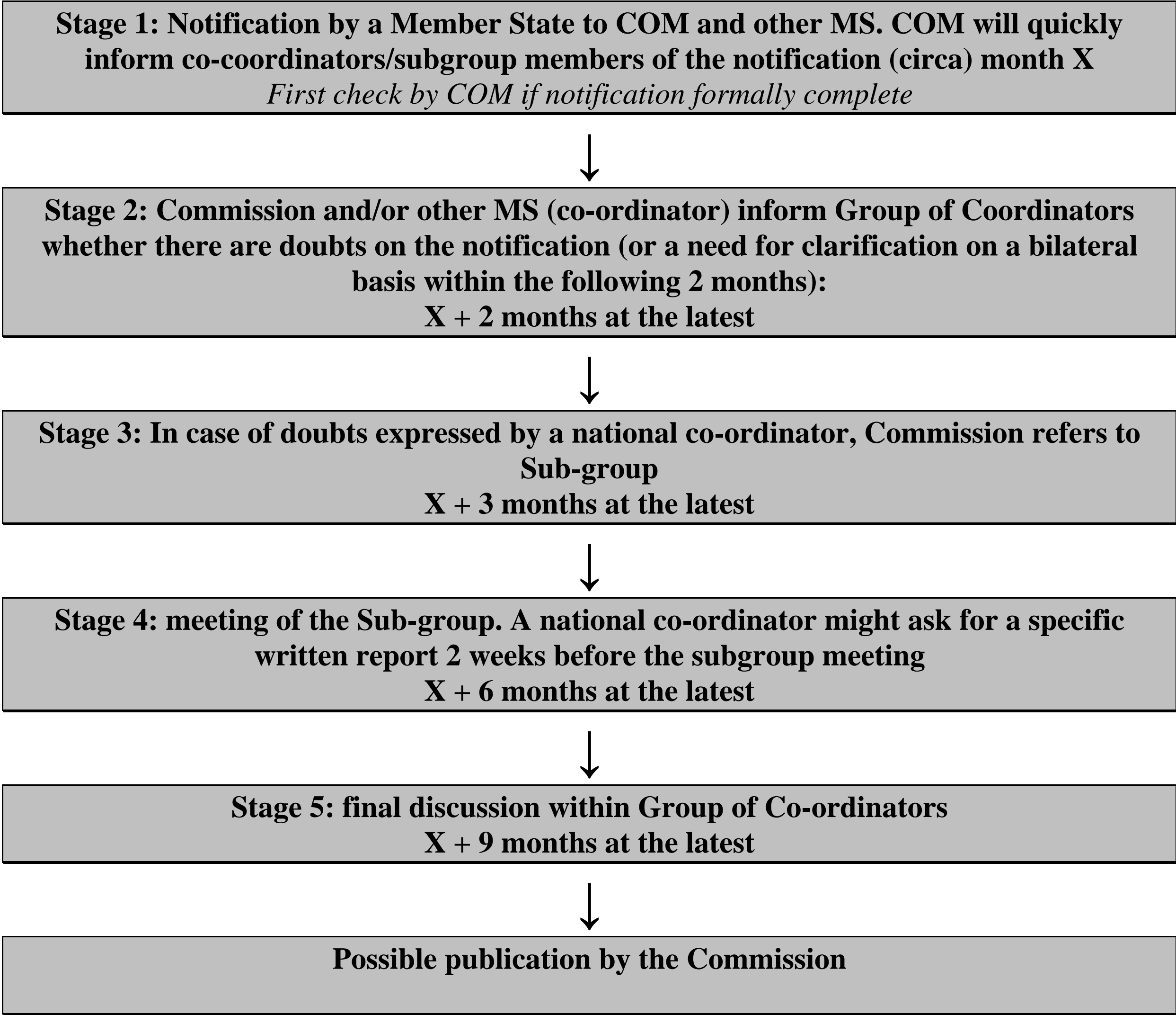

Figure 6: Process for the notification and publication of new diplomas

Despite these improvements, stakeholders have expressed concerns about the process, in particular with reference to the late notification of certain new diplomas, the resources required for their scrutiny, and the frequency of the updates of the annex to the Directive which lists the diplomas. Statistics on the number of new notifications and the time between notification and publication for the period 2008-2010 are presented in Figure 7. There has been marked improvement both in the number of notifications received and the efficiency with which they were examined, especially once the new system based on formal deadlines was put in place in March 2010. However, the data presented in the table only includes official notifications and does not cover diplomas which have been sent in draft or the

notification of which has been signalled but is still outstanding, which by far outnumber the former.

year	number of notifications	average number of months between notification and publication	minimum number of months between notification and publication	maximum number of months between notification and publication	pending notifications
2008	6	18	12	28	nihil
2009	11	16	8	21	3 notifications pending since March 2009
2010	35	9	6	15	6 notifications pending as from June 2010

Figure 7: Average time between notification and publication of new diplomas

The main problem is that new diplomas are frequently notified long after the start of the training. This approach carries the risk that some graduates may not be able to benefit from automatic recognition of their qualifications or at least will face considerable legal uncertainty as to the status of their qualifications. The study carried out for the European Parliament confirms these problems linked to the update of the annex to the Directive. Without a timetable for notifying the Commission and other Member States of new diplomas, some Member States have a considerable backlog of diplomas awaiting notification and publication. For instance, more than 60 notifications have been expected from Germany for several years.

The evaluation has also revealed that the process of examination of the newly notified diplomas is overly burdensome for those called upon to determine their compatibility with the minimum training requirements of the Directive. A major reason for this is that the background documentation supporting notifications is often insufficiently tailored to this purpose, as it is prepared by the universities who do not have previous experience and often receive little guidance. There are also concerns that, given the large numbers of newly notified diplomas and limited resources to examine them, experts may not be in the position to ensure a consistently thorough scrutiny.

These concerns do not appear to outweigh the benefits of automatic recognition. Nevertheless, suggestions have been made to streamline the process, for example by involving national bodies (for instance accreditation bodies) to ensure that notifications are submitted early and are more fit for purpose.

9.2. Minimum training requirements

The Directive's objective of securing sufficiently high standards among architects who benefit from automatic recognition is addressed through a set of requirements for education and training in architecture. These requirements are only the minimum, leaving Member States free to require more nationally (they can also authorise programmes of education and training

which do not meet the harmonised standard, but their graduates cannot benefit from automatic recognition).

The Directive defines both quantitative requirements, i.e. the minimum duration of training of which architecture is the principal component, and qualitative requirements, set out as a list of skills and knowledge which must be acquired in the course of the training.

9.2.1. Duration of training

There is a strong body of opinion among the principal representatives of the profession and certain Member States in favour of increasing the minimum duration of training for architects from four to five years.

The proponents of the increase note that the current minimum is lower than the recommendations of the International Union of Architects (UIA) / UNESCO[74]. They also state that the variety and complexity of tasks which architects execute in the pursuit of their profession has increased. Finally, it has been noted that the majority of schools of architecture in the EU offer a training which lasts at least five years (increasingly in two cycles of Bachelor and Master using ECTS, further to reforms inspired by the Bologna Process).

On the other hand, concerns have been also expressed that an increase of the minimum duration of training required for automatic recognition may unduly constrain the flexibility that Member States need in order to offer educational opportunities in a variety of circumstances.

The experience reports of the competent authorities, submissions to the public consultation and data of the Architects' Council of Europe (ACE) also show that the diversity of approaches to preparing for the practice of architecture remains considerable. This corresponds to the Commission's own experience in examining new diplomas notified for automatic recognition.

Preparation for access to the profession varies from one Member State to another (and often from one institution to another within the same country) not only with regard to the duration of training, but also other factors, such as specialisations offered within the degree or requirements of supervised practical experience, which is broadly considered an essential element in the education of future architects:

- Spain requires University education of six years in order to fully qualify as an architect, while Germany allows academic trainings which last a minimum of four years, but this has to be supplemented by at least two years of supervised practice in the profession before the qualification can be considered as complete;

- some schools of architecture offer relatively short programmes of education and training with an almost exclusive focus on architecture and strictly related subjects; others propose programmes which take longer to complete but offer the possibility of specialising within the architectural profession, acquiring additional skills and knowledge not directly linked to

[74] UNESCO/UIA charter for architectural education (revised version 2005): http://www.uia-architectes.org/image/PDF/CHARTES/CHART_ANG.pdf

architecture, or even simultaneously acquiring qualifications in more than one field (e.g. architecture and engineering).

Finally, it emerges that any increase in the minimum duration of training would also present an additional challenge with respect to the process of notification and examination of diplomas, because it would imply a new assessment of all the diplomas currently listed in the relevant annex of the Directive (these have only been examined against the current requirement of minimum four years of training which is principally in architecture and covers the requisite skills and knowledge throughout the four years). The Commission would thus not be in the position to confirm whether the training programmes leading to these diplomas are of duration of at least five years and whether the training throughout those five years is principally in architecture without the fifth year being, for example, dedicated to a specialisation instead. Consequently, all the currently listed diplomas would have to be covered by an acquired rights regime and then re-notified so that their conformity with the new requirements could be assessed.

9.2.2. Derogations from the durations

The Directive currently foresees a number of derogations from the minimum duration at academic level, notably for training carried out as part of "social betterment schemes"[75] and for the training offered by "*Fachhochschulen*"[76]The evidence from the evaluation suggests that the first option is used and considered important by several Member States. On the other hand, there appears to be no need for maintaining a special derogation for the *Fachhochschulen,* which no longer offer the programmes covered by this derogation; in the future, holders of the diplomas in question could benefit from an acquired rights regime.

9.2.3. Knowledge and skills ("11 points")

Architects should acquire knowledge and skills – expressed in "11 points" in Article 46 – during their academic training. Most stakeholders have indicated that the list of requisite skills and knowledge continues to be relevant and should not be changed. Suggestions have been made to expand it, for example by adding references to energy efficiency/sustainability and cost management. However, the support for expansion of the list appears to be limited. It has been repeatedly argued throughout the evaluation that the existing list is broad enough to cover these new considerations. This view seems to be largely shared between professionals, universities and competent authorities.

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[75] Article 47.2 of the Directive provides for the automatic recognition of qualifications obtained through "training as part of social betterment schemes or part-time university studies which satisfies the requirements of Article 46, as attested by an examination in architecture passed by a person who has been working for seven years or more in the field of architecture under the supervision of an architect or architectural bureau. The examination must be of university level and be equivalent to the final examination referred to in Article 46(1), first subparagraph."

[76] Article 47.1 of the Directive provides for the automatic recognition of qualifications obtained through "training existing as of 5 August 1985, provided by 'Fachhochschulen' in the Federal Republic of Germany over a period of three years" if certain specific additional conditions are fulfilled.

9.3. Supervised practical experience

Whilst the Professional Qualifications Directive specifies the knowledge and skills which must be acquired through architectural training as well as the minimum duration of the training, it does not currently deal with supervised practical experience which the evaluation has identified as an important element of training in the majority of Member States.

Under the Architect's Directive, it was only diplomas specified in the Directive as fulfilling the agreed minimum training requirements that alone formed the basis for automatic recognition. The Architect's Directive did not list any further requirements of supervised practice individual Member States imposed on aspiring architects for access to the profession. If a host Member State required such a period of supervised practice in addition to the diploma, it could impose a period of *stage* on the migrant. If the migrant had already acquired practical experience of the required length, the host Member State had to accept an attestation to that effect from the home Member State.

The provisions of the relevant article of the Architect's Directive[77] were not carried over to Directive 2005/36/EC. As a result, Member States are now required to notify all the elements which are necessary for access to the profession on their territory, including the practical experience. The process of recognition is thus streamlined for fully qualified architects already established in one Member State, in that there is no longer a need to obtain a specific attestation concerning practical experience from their Member State of origin.

The success of this new system depends on a common understanding of who is a 'fully qualified architect' and on all Member States notifying their requirements for access to the profession. This usually takes the form of a certificate accompanying the diploma. The process has been undermined by lack of consistency (with some Member States continuing to apply the procedures of the 1985 Directive) and disparate interpretations of the key concepts (for example, that of the "home Member State"). The result has been confusion on the part of competent authorities and potentially unfair treatment of graduates. There is also a risk of abuse by individuals who might exploit the lack of clarity to gain registration in a Member State without meeting all requirements in their home Member State.

The Commission is already working with Member States to bring about more clarity into the system, notably through increasing transparency about any requirements beyond the diploma. To this end, Member States have been asked since 2010 to notify certificates attesting to the fulfilment of any additional requirements alongside the diplomas, including practical experience or state exams. Through these efforts it has become clear that a majority of Member States require a period of supervised professional experience (the duration of which varies from one Member State to another) following the academic training. However, in as far as the certificates accompanying the diplomas do not provide any detailed information about

[77] Art. 23.2 If in a Member State the taking up of the activities referred to in Article 1 or the pursuit of such activities under the title of architect is subject, in addition to the requirements set out in Chapter II or to the possession of a diploma, certificate or other evidence of formal qualifications as referred to in Article 11, to the completion of a given period of practical experience, the Member State concerned shall accept as sufficient evidence a certificate from the Member State of origin or previous residence stating that appropriate practical experience for a corresponding period has been acquired in that country. The certificate referred to in the second subparagraph of Article 4 (1) shall be recognized as sufficient proof within the meaning of this paragraph.

these requirements, the system still remains open to confusion, unfair treatment and abuse. Given the preponderance of practical experience requirements across the EU, it could be advisable to add this element to the minimum training requirements specified in the Directive to avoid these risks.

The results of the evaluation, notably responses to the public consultation in early 2011, support an approximation of the approaches Member States take to supervised practical experience by including it in the minimum training requirements of the Directive.

These responses also point to the need of ensuring that the practical experience requirements can be satisfied in more than one Member State and not necessarily in the Member State where the diploma was awarded. In as far as the automatic recognition regime is limited to "fully qualified professionals", in order to benefit from it, aspiring architects risk being locked into the completion of all access-to-profession requirements – something that can take many years and depend on the availability of professional experience opportunities - in one Member State. Meanwhile, enabling aspiring architects to move easily from one Member State to another is particularly important in the current economic climate when opportunities in the construction sectors of some Member States are severely limited. Recent judgements of the Court of Justice in the *Morgenbesser* and *Pesla* cases offer a possible way forward to resolve this problem (this is discussed in more detail in section 4.1.1.d)

9.4. Key findings

- The current system for the automatic recognition for architects is considered a success by competent authorities and professionals.

- Evidence from experience reports and from the public consultation shows, that the procedure for notifying and examining new diplomas is considered complex and burdensome. The late notification of some diplomas can have a direct impact on graduates who may not be able to benefit from automatic recognition of their qualifications.

- In the majority of Member States, the training for architects lasts at least five years. The architect profession asks for increasing the minimum training requirements set out in the Directive from four to five years. However, the main issue for the mobility of architects is currently not the duration of study programmes but the practical experience required for access to the profession.

10. AUTOMATIC RECOGNITION FOR CRAFT, TRADE AND INDUSTRY

10.1. Introduction

Professional activities related to craft, commerce and industry – as listed in Annex IV of the Directive – benefit from automatic recognition mainly based on the principle of professional experience (and in some instances also on the basis of prior training of two or three years). The details of the required professional experience are set out in Articles 16 to 19 of Directive 2005/36/EC. These rules actually date back to the 1960s when a so-called “transitional regime” in a range of directives had been introduced.

A first simplification was achieved in the former Directive 1999/42/EC which has subsequently been merged into Directive 2005/36/EC. The 1999 Directive merged a whole range of sectoral directives, ranging from craft and industry (Directive 64/229/EEC) to hairdressers (Directive 82/489/EEC); the 1999 Directive also introduced the additional possibility to use the general system for the professionals that do not satisfy the number of years of professional experience qualifying for automatic recognition. The introduction of the general system for these professional activities included the possibility to subject the migrant to compensation measures and left to the host Member State the right to decide between an adaptation period and an aptitude test for professionals (self-employed or manager of an undertaking) envisaging to exercise activities which require the knowledge and the application of the specific national rules. The right of the host Member State to decide on the type of compensation measures has been justified by the need to know local laws and regulations. This stands in contrast to most other professions where the citizen can choose to go for an aptitude test or an adaptation period (see section 5) .The migrant's knowledge of national law could not be tested if the application was examined under the automatic recognition system. The 2005 Directive did not change this framework: automatic recognition remains in place; the general system can be applied in the conditions explained above[78].

Since 2007, about 7400 professionals benefited from this regime, representing notably the professions of mason/bricklayer, painter/decorator, joiner carpenter, plumber and tiler.

10.2. Conditions for automatic recognition

In order to benefit from automatic recognition, a migrant should exercise one of the activities listed in Annex IV of the Directive and satisfy with the requirements set out in Article 16 to 19 of the Directive. These requirements are defined in terms of number of years of professional experience, prior training and status of a professional (self-employed, manager of an undertaking, employed). If professionals do not satisfy the number of years of professional experience qualifying for automatic recognition, they can submit an application under the general system.

Feedback from Member States and competent authorities in 2011 has shown that this system of automatic recognition works overall.

However, in some cases, professionals prefer submitting an application under the general system. It seems that they consider the general system as being easier compared to automatic recognition.
This is for example the cases of hairdressers and electricians. Since 2001, only around 21% of hairdressers and 52% of electricians used the "automatic recognition avenue" whilst others preferred the general system. This situation shows that, for a limited number of professions, the added value of the automatic recognition may be limited. The conditions defined in Articles 16 to 19 may not correspond to the situation of mobile professionals (e.g. young professionals, most likely to migrate to another Member State, who may not yet possess the required number of years of experience in a given position within the company).

A second issue seems to be (highlighted by competent authorities in UK and FR in particular) the complex implementation of the system. The eligibility criteria defined in Article 16 to 19

[78] See in particular Articles 10 (a) and Article 14 (3) last subparagraph of the Directive

are considered particularly difficult to use: when assessing a request of recognition, competent authorities must check whether the professional activity is covered by Annex IV of the Directive (that includes 3 different lists of economic activities linked to different conditions of recognition) and must verify that the conditions for automatic recognition (number of years of professional experience, status of the professional, previous training) are met. This complexity may undermine the efficiency of this system of automatic recognition.

Other authorities (HU, DE) reported difficulties in verifying that the authorities issuing certificates of professional experience are entitled to do so.

Some authorities pointed to the limits of this system of automatic recognition, taking the position that professional experience is not sufficient to grant automatic recognition (PT) or emphasizing the diversity existing in the scope of the professions (CZ, FR).

Finally, the professional organisations concerned strongly support this system of automatic recognition, which is considered adapted to the needs of the professionals. They do not see a need to change the minimum number of years of experience required or even to arrive at a uniform level of professional experience to Articles 16 to 19.

10.3. Classification of professional activities in Annex IV of the Directive

The classification of activities in Annex IV of the Directive is to a large extent based on the International Standard Industrial Classification of All Economic Activities (ISIC) as of 1958. This classification no longer reflects the current structure of economic activities. This may create difficulties for identifying the professions falling under this system of automatic recognition and result in uncertainties for the professionals themselves.

This problem has been raised by many competent authorities, which explained that the broad definition of economic activities in Annex IV of the Directive and the outdated nature of some activities make the identification of a specific profession quite complex. The high number of activities listed in Annex IV of the Directive, which are not always related to a regulated profession, has also been identified as a possible obstacle to the transparency of the system.

In order to facilitate the identification of the professions covered by the system of automatic recognition, some professional organisations suggested replacing the industrial classification used in the Directive by an occupational classification (e.g. the International Standard Classification of Occupations – ISCO- nomenclature[79]). Other stakeholders have also proposed to use the EU common procurement vocabulary[80], which is updated on a regular basis. Another possibility would be to take as a basis the same ISIC classification but in its most recently revised form of 2008[81] which now includes a more precisely defined list of activities.

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[79] Adopted by the International labour Organisation (ILO) and available at:http://www.ilo.org/public/english/bureau/stat/isco/index.htm

[80] See REGULATION (EC) No 2195/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 November 2002 on the Common Procurement Vocabulary (CPV), published in OJ nr L 340/1 of 16.12.2002, as most recently modified in 2009. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:340:0001:0001:EN:PDF

[81] International Standard Industrial Classification of All Economic Activities, Revision 4, 2008: http://unstats.un.org/unsd/publication/SeriesM/seriesm_4rev4e.pdf

On the other hand, some professional organisations representing the craft professions expressed some reserves on a possible review of Annex IV. **They consider that** in many sectors the activities listed therein are still important. They also expressed concerns about a possible modification of the lists of activities, explaining that any change in these lists may have consequences on the rights conferred to the professionals by the Directive.

In addition, in the case of a few professions which are not explicitly quoted in the lists of Annex IV but are deemed covered by a wider category, migrants may have not even been given the opportunity to seek recognition under the automatic recognition regime. This is sometimes the case of electricians, who are deemed to be covered by the sub-category 403 "installation work" (see Annex IV, List I, 1, major group 40 "construction"). Indeed, the ISIC classification of 1958[82] quotes, amongst others, electricians as being part of category 40 "construction". Annex IV also lists the activity of "repair, assembly, and specialist installation of electrical equipment" (List I, 1, sub-group 379). However, the Commission has received several complaints by electricians who sought automatic recognition on the basis of professional experience, which is in principle a more favourable regime. But some host State authorities refused to apply this regime, and accepted to recognise their qualifications only on the basis of the general system of recognition, arguing that electricians were not covered by Annex IV. The same reasoning could concern other professions, for example heating installers or chimney sweeps.

To give an element of comparison, the ISIC classification in its most recently updated version of 2008 specifies, under its now renamed Section F "construction", three divisions. Division 43 "specialized construction activities" has four sub-divisions. Sub-division 432 "electrical, plumbing and other construction installation activities” is again subdivided into 4321 "electrical installation", 4322 "plumbing, heat and air-conditioning installation" and 4329 "other construction installation". Each of these sub-divisions is even further explained in a UN detailed and comprehensive document, specifying which activities are included or excluded. Referring in Annex IV to these more precise and updated sub-categories could limit the legal uncertainty for the migrants, and ensure their rights for automatic recognition.

Another related issue is that Annex IV lists activities, sometimes in broad categories, and not professions as such. Neither does it specify the level of expected qualifications or level of responsibilities, in relation with the size of the project or the scope of the tasks. To come back to the earlier example of an electrician, even if this profession should be covered by Annex IV, some Member States raised the issue of the scope of activities and level of responsibility, arguing that automatic recognition should apply to repairers of electrical equipment but not to those electricians responsible for certifying electrical networks in a whole building, for example. Moreover, it is commonly understood that Annex IV should not apply to professions holding qualifications at a high university level, but the Directive is not very explicit on that either. For example, Annex IV lists "electrical engineering" (List I, 1, major group 37) or "civil engineering; building of roads, bridges, railways, etc." (List I, 1, group 401). While it is clear that engineers as such are not covered, it may be less clear in the case of intermediary

[82] International Standard Industrial Classification of all Economic Activities, Revision 1, 1958; http://unstats.un.org/unsd/cr/registry/regdnld.asp?Lg=1

professions such as skilled technicians, and some Member States may raise the issue of whether the sole general system should apply to them.

Also one find some inconsistencies related to the scope of activities. One concrete example would be the case of hairdressers, covered by the category "hairdressing establishments (excluding chiropodists' activities and beauticians' training schools)" (List I, 3, ex 855). Although hairdressers working in salons are covered by Annex IV, some Member States very strictly interpret Annex IV and refuse to apply the same recognition regime to hairdressers providing services at home, for example to elderly persons. These second type of hairdressers can then only benefit from the general system of recognition.

Finally, Annex IV lists a number of activities which may be covered, partly or totally, by sector-specific EU legislation. In accordance with Recital 42 and Art. 2(3) of the Directive, if it foresees recognition mechanisms, such specific EU legislation takes precedence. Given that the activities in question are specifically quoted in Annex IV, this could potentially be a source of confusion, for example in the case of some activities related to transport or some intermediary activities in the commerce sector. In order to establish possible overlaps, a comprehensive screening of the activities listed in Annex IV against the existing EU sector-specific legislation may be needed.

10.4. Key findings

- The system of automatic recognition based on professional experience is still adapted to the needs of mobile professionals in the area of craft, industry and trades and should be maintained. For a few professions the evaluation shows that the conditions set out in the Directive might not be attractive, notably for hairdressers. In these cases, the possible use of the general system offers an alternative route for the recognition of the qualifications.

- The current classification of economic activities in Annex IV of the Directive does not reflect anymore the organisation of economic activities and makes the identification of professions benefiting from automatic recognition sometimes difficult. Different classifications have been proposed for updating Annex IV[83] (ISIC classification of 2008, common vocabulary used in the area of public procurement, ISCO nomenclature revised in 2008).

[83] See Green Paper "Modernising the Professional Qualifications Directive", section 4.7; http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications_directive/COM267_en.pdf

11. TEMPORARY MOBILITY

This section will analyse the functioning of the new regime of temporary mobility to respond to evaluation question 8.

The introduction of such a lighter regime to facilitate temporary mobility is a major innovation of the 2005 Directive. Under this new regime, there is no obligation for the professional who wishes to provide services on a temporary basis in another Member State to undergo any formal recognition procedure. Professionals may at most be required to send a prior declaration with a number of documents to the competent authority. The underlying legal assumption is that a professional who is "legally established", that is to say who lawfully exercises his profession in one Member State, is sufficiently qualified to pursue this profession on a temporary and occasional basis in the other. Only in the case of regulated professions having public health and safety implications competent authorities may exceptionally check qualifications. Also, under this new regime, the service provider is exempted from a regular registration with professional bodies. Only a pro-forma registration could be required, which should neither condition or even delay the provision of services nor entail any costs to the professional.

11.1. Scope of the regime

11.1.1. Temporary and occasional nature

Member States transposed the provisions in question by closely following the wording of the Directive. Nearly all transposition measures literally stick to the Directive's provision according to which "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"[84]. This means that, in most cases, it is left to the competent authorities to decide at their own discretion whether or not the provision of the service is to be considered temporary and occasional.
Feedback received from the competent authorities in the experience reports indicates that they encounter problems when it comes to assessing the temporary or occasional nature of a service. There seems to be no consistent approach across Member States: for the same profession, competent authorities in different Member States might assess the temporary nature of an activity with reference to varying time periods (3 months, 6 months or other), or on the basis of individual projects or contracts. Both competent authorities dealing with the recognition under the general system and competent authorities responsible for the "sectoral" professions underlined this difficulty.

Experience from the Commission's own handling of complaints also suggests a lack of understanding of the temporary mobility regime by the competent authorities.

Some competent authorities expressed the view that the Directive makes it impossible to monitor the service providers' activities on the ground and to check whether or not they are really temporary and occasional. However, the objective of the regime for temporary mobility

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[84] Only few Member States put rules in place which slightly differ from the Directive's wording ("short-term provision of services", "exercise without establishment", "dependent on the nature of the service");

is to foster intra-EU trade; controls should be limited to professional activities which have public health or safety implications.
Feedback received in the context of the public consultation confirms these difficulties. Some authorities stated that a case by case analysis was impractical or contrary to the equality of treatment between migrants and that there was a risk of abuse of the regime for temporary mobility. Others acknowledged that it was impossible to develop a one-size-fits-all definition as it depended on the nature of the services.

Some Member States suggested that the Commission looks into how the terms "temporary and occasional" could be clarified further in order to increase legal certainty (for example, definitions could be developed on a sector specific basis and guidelines could be introduced into the Code of Conduct).

However, no provision of the Treaty affords a means of determining, in an abstract manner, the duration or frequency with which the supply of a service in another Member State can be regarded as provision of services within the meaning of the Treaty (Case C-171/02, Commission v. Portugal [2004] ECR I-05645, § 26; Case C-215/01 Schnitzer [2003] ECR I-0000, § 30 & 31). According to a constant case-law, the temporary or occasional nature of the service needs to be assessed on a case by case basis. While it would seem difficult for the Commission to provide a "one size fits fit all" definition of the temporary and occasional provision of services, it could consolidate and further explain the existing case-law. Indeed, a number of Court judgements shed light on how this notion must be interpreted.

11.1.2. Requirement of two years of professional experience

In case of temporary mobility from a non-regulating Member State to a Member State where the profession is regulated, the new regime is open only to those who can prove two years of professional experience or provide evidence that they have followed "regulated education and training". These requirements, which apply for establishment under the general system, have been examined in section 4.2.1. The clarification of the concept of regulated education proposed in section 4 would also apply to the regime of temporary mobility. However, the requirement of two years of professional experience has a different purpose under this regime, where competent authorities do not carry out a prior check of qualifications (except for professions with public health and safety implications). In this context, two years of professional experience constitutes an important guarantee for the protection of consumers.

In the context of the experience reports, the majority of Member States did not report any problems related to the requirement of having two years of professional experience for temporary mobility. Some Member States applied this requirement in a quite flexible way, to avoid penalizing professionals exercising a seasonal activity in tourism or in the sport professions.

However, a few Member States (DE; UK) noted the particular difficulty to meeting these conditions for tourist guides. For example, it has been explained that tourist guides are working 100 to 160 days per year for different tour operators and do not have a permanent employment. An additional obstacle for this profession is that the Directive foresees two years of professional experience in the Member State of establishment. Tourist guides accompanying clients may gain professional experience in other Member States than the one in which they are established.

The difficulty to prove two years of professional experience has also been raised by mountain guides, who are self employed and whose work is typically seasonal. The complaints received

by the Commission, the feedback of the public consultation early 2011 and the study of the European Parliament confirm this difficulty, in particular for professionals working on a free lance basis or on short-term contracts.

This requirement seems particularly disproportionate for temporary mobility when consumers travelling to another Member State choose to be accompanied by professionals from their home Member State (for example tourist guides or architects). In this case, the migrant professional does not have any contact with service recipients from the host Member State. He accompanies consumers from his home Member State who chose to have a service provided by a professional of their choice in their own language.

11.2. Declaration requirements for the temporary mobility

As explained in the Transposition Report published in October 2010, Member States made an extensive use of all the optional safeguards foreseen by the Directive allowing Member States to keep the provision of services on their territory under supervision (requirement of a declaration, pro forma registration, and long list of exceptions to the regime etc.).

Under the Directive, Member States may require a 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 this possibility and 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 (see table below).

Declarations required	All Member States
Declaration required for all professions	Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Greece (?), Spain, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Poland, Portugal, Romania, United Kingdom
Declaration not required for all professions	Austria, Denmark, Finland, France, Hungary, Netherlands, Swede, Slovenia, Slovakia

Figure 8: Use of the declaration system in Member States

As to the actual implementation of the regime of temporary mobility based on declaration, it results from the enquiry made in summer 2010 with the National Contact Points and the Your Europe Advisors that a significant number of professionals do not use it

The proper report drawn up by Your Europe Advice Experts in 2009[85] pointed to the same problem of lack of awareness of a specific regime for temporary mobility. Professionals, in general, believe that there is only one regime and, some expect a formal procedure while other expect a quasi-automatic recognition of their qualification.

The limited use of the regime of temporary mobility is confirmed by feedback from the competent authorities in the context of the experience reports. Competent authorities

[85] See Your Europe Advice Report of 25.10.2010: http://ec.europa.eu/citizensrights/front_end/docs/css_report_on_prq_220310.pdf;

generally report very limited experience with the provisions concerning temporary mobility, with only some exceptions, notably for professions of the construction, tourism and sport sectors and for some health professions[86].
The statistics provided by the Member States in the Regulated Professions Database reflect the same. Since 2007, only 3842 declarations have been filed in the context of the temporary provision of services regime[87]. This low figure can be explained by the fact that the statistics provided in the Database by Member States are incomplete; some competent authorities did not monitor the number of declarations or did not collect statistics. Furthermore, competent authorities fear that many temporary activities remain undeclared. This concerns both professions falling under the general system and professions benefiting from automatic recognition.

The Regulated Professions Database gives useful information on the professions that made most use of the new regime of temporary mobility and on the procedures applied:

- The professions concerned are primarily related with the construction sector (Master builder; Electrical Engineering / Electromechanical engineering; Fork lift truck operator; Joiner/Carpenter; Painter-decorator). A certain number of declarations have also been received for tourist guides, physiotherapists, architects and doctors.

- In 55% of the cases, the competent authorities did not check the qualifications of the professional, but just may have checked the completeness and correctness of the declaration and accompanying documents to make sure that the professional meets the conditions to provide temporarily services in the host Member State.

The implementation of the temporary mobility regime is not homogeneous, some Member States ask professionals to provide some additional information or impose specific conditions for accepting a declaration:

- 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). This is contrary to the Directive.

- Other Member States stipulate that a declaration has to be made well in advance (for example 15 days or one month before the provision of services, or "annually, by 31 January of the given calendar year"), while 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.

[86] Germany noted the importance of cross-border services for the area of crafts. Luxembourg and Austria reported a strong interest in the provisions concerning temporary mobility for Annex IV professions: in Luxembourg the demand for this type of mobility is greater than for establishment. Italy noted a significant number of prior declarations received for tourist guides. Poland reported a high level of interest for temporary mobility from engineers. Austria reported a growing number of declarations for sport professions (ski trainers in particular). UK received a significant number of declarations for health professionals. As far as sectoral professions are concerned, a few member States report interest for temporary mobility as far as architects are concerned (DE, LU, CY, AT).

[87] This figure appears very low compared to establishment cases for the same period (2007-2010): 4.457 decisions under the General system, 12.008 decisions for crafts, trade & industry, 42.814 for sectoral professions. See the Commission's Database on Regulated professions which is fed-in with information from the Member States.

- In a few Member States, professionals are required to submit a declaration for each individual service provision, while the Directive foresees a declaration valid for one year.

- In one case, a competent authority informed a professional that the free provision of services was possible only if he was able to present a document confirming the authorisation to provide services on a temporary basis (confirmation sent by the competent authority after receipt of the declaration and subject to the payment of fees).

- In some Member States, services providers are allowed to exercise only in a limited period of time.

- In some Member States, declarations for temporary provisions of services at required at regional level, creating additional obstacles for a professional wishing to provide services in different regions.

In the context of the experience reports, most competent authorities however support the need for a declaration system. The most common reasons put forward to justify such a system are public safety and consumer protection. In particular for health professions, competent authorities see this system as being vital to protect patients. However, two Member States (SI, UK) noted that requiring prior declarations for tourist guides is cumbersome, ineffective, and ill-suited to the industry and constitutes an unnecessary and restrictive practice.

Competent authorities reported that they use the information sent by services providers along with the prior declaration to do some checks (e.g. check of qualifications in case of health and safety implications, check of compliance with professional obligations, existence of liability insurance, no disciplinary measures). Some authorities enter the basic details of the professional in a temporary register (UK, BG, and SI for health professionals).

Feedback received in the context of the public consultation also confirms this mixed position: most stakeholders are satisfied with the current declaration regime. However some stakeholders consider that it creates particular difficulties for certain professions (e.g. tourist guides) and that it needs to be further simplified. Some stakeholders suggested practical improvements to the current system: further use of electronic means to transmit the declarations, possibility to submit a declaration only once every 5 or 10 years, lighter information requirements thanks to the development of professional cards. It has also been suggested to clarify in the Directive the right of a professional to exercise his profession temporarily in the host Member State from the first day onwards, irrespective of whether his notification is being processed and to require that professionals get the right to do the declaration once at national level.

11.3. Prior checks of qualifications (Article 7(4))

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 and frequently applied by competent authorities.

The statistics from the Regulated Professions Database indicate that 44% of the 3842 declarations submitted from 2007 to 2010 for temporary provision of services were considered under Article 7(4) as they concerned services with health and safety implications.

However, for these declarations considered under article 7(4), a prior check of qualifications was undertaken only in 34% of the cases, for example for the professions of physiotherapists and radiographers and for some professions of the construction sector (representing 15% of all declarations received). That means that in 85% of cases, competent authorities do not perform any checks on the qualifications of the mobile professional. The outcome of the prior checks of qualifications has been positive in nearly all cases and compensation measures have not been used in this context.

In some Member State, the laws transposing the Directive contain lists of professions which, by virtue of national law, are considered to have public health and safety implications within the meaning of the Directive. In many cases, these lists appear to be long, which shows that the notion of professions with health and safety implications seems to be interpreted very largely.

A significant number of Member States leave it to the competent authorities to decide on a case by case basis whether or not a service could even have public health and safety implications justifying a prior check of the qualifications of the service provider. This situation does not guarantee any legal certainty for professionals and can create inconsistencies in the treatment of their declarations.

Feedback received from the public consultation indicates that the prior check of qualifications for professions with health and safety implications is considered essential by many stakeholders. However, some stakeholders consider that such check is not justified and should be abolished for certain professions and that a peer review process should be organised to make sure that such exception to the normal rules is interpreted narrowly, which is not always the case. To ensure a better transparency, many stakeholders stress the need for Member States to clarify which professions have public health implications.

In the context of the experience reports collected in 2010, one competent authority suggested that it might be justified to enlarge the scope of prior checks of qualifications to health professionals benefiting from automatic recognition, noting the case of a doctor who failed to obtain recognition and then decided to go for temporary provision of services, where just a notification procedure is needed. There seems to be a loop hole in the system.

11.4. 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, and 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). In all cases, pro-forma registration is cost-free.

Feedback received in the context of the public consultation indicates that according to the majority of stakeholders, the pro-forma registration is necessary for health professionals (for control and disciplinary measures) and more generally to ensure that all professionals are treated equally. However, some stakeholders consider that the pro-forma registration requirement should be removed or that the exchange of information via IMI could replace it.

11.5. Key findings

- The new regime for free provision of services will encounter an increasing interest from professionals. While the number of declarations is still low compared to requests of recognition under the establishment regime, temporary mobility will be an increasing phenomenon in a more integrated Single Market.

- Competent authorities report difficulties as to what "temporary and occasional" services are. This shows that competent authorities encounter some difficulties in applying this regime. This also entails a risk of inconsistent application of this regime, undue refusal by competent authorities of the right to benefit from this regime or abuse of this regime by professionals.

- The majority of stakeholders considers that the conditions to benefit from the temporary mobility regime in case of mobility from non-regulating to a regulating country are generally justified but may be restrictive in certain cases. In particular, the requirement of two years of professional experience is doubtful in the case of professionals moving on a temporary basis with their own clients. In addition, some professionals experience difficulties in providing documents proving two years of professional experience.

- Most stakeholders consider that the requirement of a prior declaration is necessary to protect consumers and ensure compliance with professional rules and deontological standards. However, it is generally acknowledged that professionals are frequently not aware of these requirements and in the cases where they are aware they sometimes perceive them as an administrative hurdle (in particular, with respect to the accompanying documents that have to be submitted).

- A significant number of Member States have opted for a case by case assessment of the notion of professions with health and safety implications by competent authorities, thus giving the possibility to exercise a prior check of the qualifications of the service provider. This risks to unduly restrict the scope of the temporary provision of services regime to the detriment of professionals who should benefit from lighter procedures.

12. LANGUAGE KNOWLEDGE

12.1. Introduction

Article 53 of the Directive requires "*persons benefiting from the recognition of professional qualifications [to] have the knowledge of languages necessary for practising the profession in the host Member State.*" It is inserted into Title IV of the Directive, entitled "*Detailed rules for pursuing the profession*".

It is a provision which incorporated the case law of the European Court of Justice[88]. It is intended to safeguard the interest of consumers and patients but at the same time to avoid language testing to be used as an easy way to prevent foreign professionals to exercise a profession in the host Member State.

It allows Member States to control the language knowledge of professionals, but stipulates they can organise language testing only under exceptional circumstances. The level of language knowledge required should be defined according to the type of activity and the framework in which it will be conducted ("*knowledge of languages necessary for practising the profession*").

The provision is placed in Title IV of the Directive, which does not deal with the recognition procedure, but already with the exercise of a profession. The wording of the provision ("*persons benefiting from the recognition of professional qualifications"*) also implies that language testing shall not be part of the recognition procedure and the lack of language knowledge cannot be a reason for refusing recognition of professional qualifications as such. This means that the competent authority of the host Member State may only check the language knowledge of migrant professionals after the recognition took place.

This section will focus on how the provisions of the Directive on language requirements have been applied in practice (evaluation question 9) and will assess the effectiveness of this system in the light of consumer protection and patient safety.

12.2. Application to all professions

In the context of the experience reports, the majority of competent authorities (except the authorities in the health sector – see below) stated in 2010 that they are not aware of major problems linked to insufficient language skills. A few authorities reported that they have been contacted by employers who experienced difficulties with the profession of teachers.

Most of competent authorities consider that it is up to employers to check language skills after the recognition of qualifications. Competent authorities dealing with professions falling under the general system consider that submitting an application in the language of the host Member State is often indirectly a means to control language skills in any event. In the same vein, language skills can be indirectly checked during the compensation measures (test submitted in the national language or adaptation period).

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[88] See in particular the judgement of 4.7.2000, Salomone Haim v. Kassenärzliche Vereinigung Nordrhein (C-427/97).

12.3. Health sector, notably doctors

Language knowledge is primarily an issue in the health sector. Competent authorities and professional associations dealing with health care professionals raised several questions related to language knowledge of health professionals.

The issue is gaining more importance as there is a substantial shortage of health professionals in many Member States and their migration within the EU has increased significantly. In some Member States even a public debate, such as in the UK, is ongoing on language requirements for migrant health professionals

The situation is considered problematic in the case of professionals who benefit from automatic recognition, because under the general system the competent authority in most cases requires the applicant to pass an aptitude test or complete an adaptation period which in itself presupposes that the applicant has a good level of language knowledge. In case of automatic recognition, this "indirect filter" is completely missing.

Competent authorities provided anecdotal evidence from employers and patients about the insufficient language knowledge of health professionals. In a few cases professional misconduct related to the lack of elemental language skills led even to disciplinary actions against them.

Many of the competent authorities consider that Article 53 of the Directive is unclear on the assessment of language skills, and they would need more guidance regarding the role of competent authorities and employers ensuring the language knowledge of migrant professionals.

Point 16 of the Code of Conduct for the Directive gives guidance about the application of Article 53, however the Code of Conduct is not a binding legislative instrument, and it is unknown by many competent authorities.

Competent authorities also mentioned that language control is substantially more difficult for them if language testing cannot be part of the recognition procedure. This is especially the case for self-employed professionals like dentists, where there is neither employer who could check the language knowledge after the recognition of the migrant professionals' qualifications nor social security institutions which could review language knowledge when entering into an agreement with a professional.

Representatives from consumers and patients indicated that an adequate mechanism should be in place to ensure that a professional speaks fluently the language of the host Member State.

12.4. Key findings

- There is no specific problem linked to control of language skills for the professions falling under the general system: most competent authorities consider that it is the employer's responsibility to check if the professional has a sufficient knowledge of the host Member State's language. In addition, compensation measures offer a possibility to indirectly assess the language skills of an applicant.

- However, according to some stakeholders, the provisions of the Directive concerning the assessment of language skills are not sufficiently clear for health professionals who benefit from automatic recognition and who will treat patients.

13. THIRD COUNTRY QUALIFICATIONS

The Directive applies to EU citizens holding qualifications obtained in a EU Member State. The recognition of third country qualifications is left to Member States according to their national rules (Art. 2(2)). However, to a limited extent, the Directive also addresses qualifications obtained by EU citizens in third countries. Firstly, Member States which recognize third country qualifications of the sectoral professions[89] (see section 8) shall respect the set of minimum conditions laid down in the Directive for the respective professions (Article 2(2). Secondly, under the Directive a third country qualification is deemed to be a EU qualification if it has been recognized by a Member State and if the holder of the qualification has three years' professional experience in the same Member State. Such a qualification benefits from all procedural safeguards foreseen under the general system of the Directive (Art. 3 (3) read in conjunction with Art. 10 (g)).

While Directive 2005/36/EC only confers rights on EU citizens, there are other Directives (the legal immigration Directives) extending these rights to third country nationals. This applies namely to family members of EU citizens,[90] long-term residents[91], refugees[92] and suitably qualified people and their families (Blue Card holders).[93] The Directives in question all provide for equal treatment with nationals of the host Member State with respect to recognition of professional qualifications.

13.1. Evaluation of the current functioning

There is little evidence of the application and impact of recognition of third country qualifications.

Competent authorities encounter difficulties in obtaining the documentation from competent authorities of the Member State that firstly recognised the qualification (reported for doctors). They also expressed concerns about cases of recognition improperly granted by the first EU Member State and difficulties to verify the following information:

- on which criteria the first recognition has been granted;
- how the competent authorities ensure the respect of minimum training requirements harmonised at EU level (Article 2(2) of the Directive).
- whether the first recognition was a professional recognition or just an academic recognition

Some competent authorities, in particular for health professions, reported concerns about possible abuse of the system by shopping around (a migrant may be tempted to introduce multiple requests for recognition in several Member States simultaneously and to use the

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[89] These professions are doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects,

[90] Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

[91] Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

[92] Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

[93] Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

recognition obtained in a Member State where they do not want to settle in order to obtain recognition in another Member State).

In addition, many competent authorities consider that the three years work experience condition is not sufficiently clear and asked some guidance on how to apply it in specific cases (part-time work, maternity or long sick leave) and how to deal with applicants that do not meet this condition.

These difficulties with the processing of applications show that the treatment of third country qualifications is quite complex, in part because it depends on a first recognition granted outside the Professional Qualifications Directive and also because documents attesting a qualification obtained in a third country are more difficult to obtain.

The relevance of this system needs however to be questioned in the light of current and future shortages of skilled workforce and with consideration of the equal treatment of certain third country nationals (family members of EU citizens, long term residents, refugees, and "blue card" holders).

13.2. Key findings

- The treatment of third country qualifications under the Directive is considered quite complex by competent authorities, mainly because it is based on a first recognition granted by a EU Member State outside the framework of the Directive.

- The situations of labour market may call for a wider use of the existing provisions on third country qualifications, notably in cases of third country nationals benefiting from equal treatment under legal immigration Directives.

14. ADMINISTRATIVE COOPERATION

This section provides an answer to the evaluation question 11. The focus is notably on efficiency and acceptability of administrative cooperation in the context of the Directive.

Whereas, in the past, only few information obligations existed, the 2005 Directive requires competent authorities from the host and home Member States to fully cooperate and to exchange all necessary information (Articles 8, 50, and 56).

In practice, different administrative cultures, structures and languages as well as a lack of agreed procedures and clearly identified partners create significant barriers to Member States working together efficiently. The Internal Market Information system (IMI) has been developed from 2007 with the view to overcoming these difficulties. The entry into force of the Services Directive has made the use of IMI mandatory for all professions falling under its scope. Today, the functioning of administrative cooperation is based on a large extent on the use of this system.

14.1. Benefits of administrative cooperation

The obligations of administrative cooperation included in the Professional Qualifications Directive were intended to support the daily implementation of recognition procedures. Nearly all competent authorities reported a concrete positive experience of administrative cooperation.

Exchange of information with competent authorities of other Member States is considered very useful to simplify and accelerate the examination of an application: for example, it helps to clarify the content of a qualification or the scope of a profession. It is also very useful when the applicant does not provide all necessary information. Effective administrative cooperation also simplifies the procedure for the migrants, since the relevant information is exchanged between competent authorities, without the need to burden the applicants with additional requests for clarifications or translations.

Frequent exchanges of information also contribute to a better understanding of qualifications systems and legislations of the other Member States and improve confidence between competent authorities.

Feedback received from competent authorities in the health sector showed that administrative cooperation is also considered useful to identify cases of fraud (e.g. use of false diplomas), thus enhancing patients' safety.

14.2. Role of IMI

The contribution of IMI to a smooth application of the Professional Qualifications Directive and to efficient recognition procedures was assessed during the evaluation exercise though it is not mandatory for professions outside the Services Directive.

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 is a secure online application, accessible via internet without the need to install any additional software. 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. IMI is currently used for two legal areas: the Professional Qualifications Directive and the Services Directive.

The use of IMI has been instrumental in developing administrative cooperation; however some competent authorities noted that it does not fully replace direct contact between desk officers. These authorities emphasized the importance of personal contacts with their counterparts, through e-mail, telephone and meetings. Many competent authorities welcome meetings with their counterparts to share best practices and practical issues on the implementation of the Directive.

14.2.1. Evidence on the use of IMI

The 2010 Annual Report on IMI provides detailed evidence on the use of IMI in the context of the Professional Qualifications Directive. In addition, competent authorities largely commented the use of IMI in their experience reports.

Initially "tested" on four professions in 2008 (doctors, pharmacists, physiotherapists, accountants), IMI was progressively extended to other professions (teachers, dentists, architects, nurses, midwives, veterinary surgeons, craft professions, tourist guides, psychologists, engineers, etc). In October 2010 the module "Professional Qualifications" of IMI covered 35 professions.

More than 1000 competent authorities are registered with the Professional Qualifications module of IMI in May 2011. Nearly all competent authorities involved in the experience reports indicated that they are registered with IMI.

The number of requests has steadily increased in the last three years. Between 2008 and 2010, 3620 requests were launched on professional qualifications. The number of requests quadrupled between 2008 and 2009 and increased by another 30% in 2010 (1836 requests in one year). The volume of requests is coherent with the purpose of IMI and its value added for competent authorities: IMI should not be used systematically but only in cases of questions or doubts on applications (e.g. to clarify incomplete date or to verify the authenticity of a diploma). In 2010, most requests concerned doctors, followed by requests about secondary school teachers, nurses and dentists. A certain number of competent authorities, in particular for architects, indicated that they have either not used it at all or use it very rarely.

Some Member States are more active than others in using IMI, reflecting in part the mobility flows: the United Kingdom accounts for 34% of the requests launched in 2010, followed by Germany (11%) and the Netherlands (10%). Member States receiving more requests are Romania (16%), Poland (14%), Germany (9%) and Greece (8%).

Most of the requests (67%) concerns cases of establishment; while other requests are general questions (31%). Only 2% of requests are related to cases of temporary mobility.

14.2.2. Views of competent authorities on the functioning of IMI

The great majority of competent authorities consider that IMI is well functioning and has improved administration cooperation. In particular, competent authorities appreciate the possibility to have a direct, quick and safe exchange of information with their counterparts. One of the main advantages of IMI is the easy identification of the right competent authorities in other Member States. Only in specific cases (e.g. several competent authorities for one profession in one Member States or competent authorities not registered), competent

authorities still encounter difficulties to identify their counterpart. Some authorities consider that the fact that IMI is not compulsory for all professions and that all competent authorities are not registered reduces the efficiency of the system. In addition, competent authorities signalled specific problems when the profession is not regulated in the home Member State.

Many authorities took the view that IMI contributes to speed up the exchange of information, allowing for a quicker processing of each application without further correspondence with the applicant. Other competent authorities complained about long answering times and suggested to impose formal deadlines to answer the questions. One authority indicated that the delays are often due to the validation of requests by a coordinator (request coordinator with approval rights).

The 2010 Annual Report on IMI[94] provides interesting figures on the response times within the system: in 2010, 42% of requests were handled within one week and 15% within two weeks. Statistics overall show a remarkably quick reaction time: in 11% of all requests, Member States respond on the same day and in 26% within three days. However, there are remarkable differences between Member States in the speed of responses: whereas in 10 Member States 60% or more of all requests were handled within one week, this figure is around 20% or less for six countries.

Various comments were received by competent authorities suggesting possible improvements of IMI. The European Parliament study also contains some concrete ideas to develop further the functionalities of IMI.

– Several authorities found the set of standard questions difficult to use and not appropriate for all cases. It is often seen by competent authorities as an obstacle to an efficient communication with their counterparts. Some authorities suggested to further developing the set of standard questions in order to cover a larger number of requests; others asked the possibility to use free questions.

– Some authorities consider that IMI is time-consuming and not user-friendly enough. One authority suggests to improve the interface, by better grouping the questions and highlighting those most frequently used.

– Various competent authorities noted that the translation tool should be improved. IMI contained a machine translation for free text for several language pairs. However, following the judgment of the General Court in case t-19/07 Systran vs. Commission of 16 December 2010, the Commission decided to suspend operation of the machine-translation tool which had been used in IMI. A new translation tool is being developed by the European Commission and a partial service should be available in 2012 for IMI.

A few authorities complained about the quality of the responses provided via IMI, which they considered very heterogeneous (e.g. the information exchanged is sometimes inaccurate or misleading).

[94] IMI: Annual Report for 2010: http://ec.europa.eu/internal_market/imi-net/docs/annual_report_2010_en.pdf

14.3. Enlarging the scope of administrative cooperation

The Services Directive made the use of IMI mandatory for all professions and all requirements within its scope. It is not mandatory for the activities excluded from the Services Directive (in particular, health professions and job seekers).

Feedback received from the public consultation showed strong and broad support for a mandatory use of the system, beyond the professions already covered by the Services Directive

The Services Directive also introduced an alert mechanism allowing competent authorities to inform each other, under certain conditions, of any service activities that might cause serious damage to the health or safety of persons or the environment. This alert mechanism already applies to the professions covered by the Services Directive and can be used where there is sufficient likelihood of risks or damage occurring. This means that competent authorities should consider any factors indicating that the professional is likely to be active in other Member States. Nearly all respondents to the public consultation are in favour of an alert mechanism for health professions.

Currently, information about the right to practice can be requested through IMI, but this is not a proactive system and there is no obligation to answer such requests. Approaches differ from a country to another and this exchange of information is not systematically due to differences in data protection law. Some authorities expressed concerns about obligations to comply with national data protection rules, which in any case would not allow them to exchange this kind of information proactively.

The acceptability for professionals of an alert system has to be carefully examined. This proactive exchange of information is considered appropriate in case of interdiction/suspension to practice or disciplinary sanctions and in case of fraud (presentation of falsified documents to obtain the recognition). However, most respondents to the public consultation warned about the use of an alert in case of pending judgments and considered that alerts should not be triggered before a decision has been made. Exchanging information on professionals under investigation may reduce the acceptability of this solution.

Some competent authorities for health professions have already worked on developing the exchange of information on health professionals in order to improve assurance of current fitness to practise and patient safety. The "Certificate of current professional status" was developed for this purpose by cooperation between numerous European healthcare regulators and professions. The purpose of this certificate is to facilitate the exchange of information between competent authorities on the identification of healthcare professionals and on their fitness to practice. However, this certificate relies upon the fact that the professionals need registration under national law. Such registration requirement does neither exist at European level nor in all Member States (for instance not in Spain for doctors and not in Denmark for pharmacists).

14.4. Fostering networks

The Group of coordinators, composed of representatives of each Member State, was set up in March 2007 with the aim of coordinating the activities of the various national competent authorities and promoting a uniform application of the Directive. Through regular meetings

and exchanges of information, the Group constitutes the basis of administrative cooperation. The Group has been very active in the evaluation of the Directive.

Some competent authorities have developed formal and informal networks (e.g. European Network of Architects' Competent Authorities, informal network of competent authorities for doctors, European Network of Midwifery Regulators) in order to exchange information and good practice in the recognition of qualifications. Networks of competent authorities for sectoral professions played a strong role in the evaluation process: they were in charge of collecting the "experience reports" of national competent authorities and organised meetings to discuss these reports. The study carried out for the European Parliament in 2010 presenting these networks as very useful forums of discussion suggests fostering the development of these networks for highly mobile professions and building on the technical expertise they can offer.

14.5. The professional card: a possibility to improve administrative cooperation?

14.5.1. The professional card under the 2005 Directive

Recital 32 of the Professional Qualifications Directive foresees the possibility for professional associations and organisations to develop professional cards in order to facilitate the mobility of professionals, "in particular by speeding up the exchange of information between the host Member State and the Member State of origin". Professional cards are presented under this recital as an instrument to "monitor the career of professionals who establish themselves in various Member States". The concept of a professional card as defined in this recital is very limited. The benefits and rights associated to the professional card are not specified in recital 32, making the value added of the card for professionals unclear. According to recital 32, a professional card could include data on professional qualifications (education and experience), legal establishment, details of the relevant competent authority, but also penalties linked to the exercise of the profession, etc.

The concept of professional card introduced in the 2005 Directive is linked to professional associations which should appear as issuing body. However, the outcome of the public consultation early 2011 shows that nearly all stakeholders reject this idea. They strongly prefer competent authorities to issue a card in order to avoid conflicts with commercial or professional interests.

The introduction of European professional cards has also been examined in a resolution of the European Parliament[95]. In this resolution, the European Parliament emphasizes the possible added value of such a card for the protection of consumers and patients, the reduction of administrative costs and the development of temporary and cross-border mobility. However, it has been cautious with a view to the implementation challenges.

[95] See § 13 of the European Parliament resolution of 19 February 2009 on the creation of a European professional card for service providers, IMCO report A6-0029/2009 (Rapporteur: Charlotte Cederschiöld), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0066+0+DOC+XML+V0//EN .

14.5.2. Attempts to develop a professional card in practice

Various professions worked on the development of professional card projects, in particular lawyers, engineers, mountain guides and health professionals. Since the adoption of Directive 2005/36/EC, the Commission actively participated in the discussions on professional cards with professional organisations.

Two professional card projects have been developed pursuant to Recital 32 of the Directive – the HPRO card for health professionals and the FEANI professional card for engineers ("EngineerING card").

Following the implicit recommendation of Directive 2005/36/EC, the European Federation of National Engineering Associations (FEANI) and EUROCADRES completed a feasibility study concerning primarily a European professional card for engineers. A part of the study was financed by a grant of the Commission (DG EMPL - December 2006). Their conclusion was that the development and implementation of such a professional card is technically feasible but requires the recognition of public authorities. This first project, which was quite ambitious, was abandoned at the end of 2008. More recently, one of the FEANI members, the VDI (Verein Deutscher Ingenieure) launched a new initiative for a professional card. The objective was to enhance mobility but also to facilitate the assessment by employers of engineering qualifications acquired abroad. This model of card was approved by FEANI general assembly in October 2010. Various national associations of engineers have started issuing the EngineerING card in 2011.

A second professional card project, called HPROCard, has been developed by a working group created in July 2007 representing European wide health professional associations and competent authorities for five health professions. The HPRO card project aims to promote mobility for health professionals, but also patients' safety by providing secure means for the authentication of health professionals, and communication among competent authorities. This card project is based on the interoperability of the different existing database of healthcare professionals. The Commission (DG EMPL) decided in 2008 to give a grant supporting their research regarding interoperability and implementation of the card, identification of national competent authorities and existing national cards.

There are also other professional card projects developed by professional organisations which are stand-alone initiatives having no direct link to Recital 32 of the Directive. For example, after the adoption of the Directive on service provision by lawyers[96] in 1977, the Council of Bars and Law Societies of Europe (CCBE) created the CCBE identity card (in 1978) to facilitate access to courts and other public institutions for lawyers active outside their home jurisdiction. Other professional organisations have developed cards with the aim to inform clients and employers of the affiliation of the professional to an organisation. For example the Union Internationale des Associations de Guides de Montagne (UIAGM) issues an ID card for mountain guides satisfying the training requirements required by the association.

However, many difficulties emerged when assessing the added value of these professional card projects on the basis of recital 32. This recital foresees that professional cards introduced by professional associations could speed up the exchange of information between the home

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[96] Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17–18).

and host Member States. However, cards issued by professional associations do not confer any rights to the cards holder. In addition, competent authorities may be reluctant to use in the recognition procedures if a professional card is issued by a private body.

14.6. Key findings

- The provisions of the Professional Qualifications Directive allowed strengthening and simplifying administrative cooperation. The cooperation between competent authorities in the home and host Member States contribute to a better functioning of the Directive, which is beneficial for migrant professionals. However, the exchange of information is still limited in some areas: the majority of competent authorities do not proactively exchange information on disciplinary sanctions and fitness to practice.

- The Group of Coordinators has had an essential role in promoting a uniform understanding and application of the Directive and in encouraging the exchange of information between Member States. The emerging networks of competent authorities also constitute an interesting forum for the exchange of information and experience on the recognition of qualifications.

- The use of IMI as from 2008 significantly contributed to simplify and accelerate the exchange of information between competent authorities; however the fact that its use is not mandatory for all professions and competent authorities limit the overall efficiency of administrative cooperation.

- Various projects of professional card have been developed by professional organisations; however they did not deliver concrete results in the context of the Directive. The concept of professional card as defined in the Directive (recital 32) is not sufficiently clear and does not offer any additional rights to the professionals.

15. ASSISTANCE TO PROFESSIONALS / ACCESS TO INFORMATION

Under the 2005 Directive, Member States are required to set up National Contact Points to assist professionals with information about the recognition procedures. More generally, the Commission has developed a large array of instruments to support professionals in this context. Nevertheless difficulties remain.

This section will explore how the provisions of the Directive concerning communication and assistance to professionals have been applied (evaluation question 12).

15.1. A large number of instruments, but…

To inform and assist professionals with the recognition procedures, the 2005 Directive provides for the creation of National Contact points. Their role is to help professionals realising their rights under the Directive. Today, all Member States have set up a contact point[97]. Their workload, the resources allocated to them and the time they need on average to reply to requests vary across Member States. Generally, they can be contacted by various means (phone, fax, email) and most of them have also an office available to the public.

To promote the "network"[98] of contact points the Commission has organised meetings once per year since 2008 and put in place a forum which allows easy exchange of information and facilitates bilateral and multilateral discussions. As citizens are often not aware of the difference between professional recognition of qualifications (contact points) and academic recognition of their diplomas (NARIC centres), the Commission also encouraged Member States to set up single access points for the two types of recognition of qualifications or at least to create a link between them (e.g. a common web page or a visible link to the other procedure/network). Indeed most Member States created a link between the contact points concerning professional recognition of qualifications and NARIC centres.

Beyond the National Contact Points, 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"[99] portal gives practical information (deadlines, types of documents that can or cannot be requested etc.) and provides a link to the User's Guide[100], 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[101] 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.

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

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[97] There is one contact point on recognition of their professional qualifications per Member State. Under the "Services Directive" there might be a contact point by sector.

[98] Recital 33 of the Directive refers to a "network of contact points".

[99] See http://ec.europa.eu/youreurope/citizens/work/jobseeker/qualifications-for-employment/index_en.htm?profile=0

[100] See http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf

[101] 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

(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[102] 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[103] 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 each Member State.

15.2. Difficulties to access information

Despite the large array of instruments put at the disposal of professionals to inform them and assist them in the recognition procedures, professionals still face considerable difficulties to finding information.

It results from the enquiry made in summer 2010 with the National Contact Points and the Your Europe Advisors that amongst the main difficulties that face professionals seeking recognition of their professional qualifications are:

- the identification of the responsible competent authorities (particularly difficult when there are several competent authorities for the same profession, depending on the specialisation or regional divisions)
- the lack of knowledge on which procedure to follow and which documents to provide. In particular there seems to be confusion between the procedures for academic recognition and for professional recognition.

The report drawn-up by Your Europe Advice in 2009 notes similar difficulties. It also indicates that the role of National Contact Points to addressing these difficulties is marginal. According to the report, there is a visibility problem. 14,5% of the enquiries Your Europe Advise received in 2009 regarding the recognition of professional qualifications concerned "Access to information". The national contact points are often not mentioned on the websites or other information material of the authorities that people are most likely to turn to in the first place, before knowing about their existence, i.e. ministries and professional bodies.

The outcome of the public consultation in early 2011 confirms these difficulties. Nearly all respondents consider that there is a need to improve access to information. Many of them note that there are currently too many structures and their respective role is not always clear. The main problems are the access to competent authorities and the information on the procedure to follow and the documents to submit. In addition, some stakeholders note that national contact points are under-resourced and require further support. Some stakeholders also made critical comments on the Database for Regulated professions considering that it gives often poor and misleading translation of national titles and that it needs to be updated and made more user-friendly. Finally, some stakeholders note that the website of competent authorities

[102] 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

[103] See http://ec.europa.eu/solvit/site/index_en.htm

gives misleading information (for example it leads to academic recognition in cases where professional recognition applies; it discourages applicants stating that aptitude test is very difficult etc.).

15.3. Limited use of electronic procedures

The entry into force of the Services Directive and the setting up of "Points of Single Contact" foreseen in the Directive should allow professionals[104] to obtain all relevant information and complete all the administrative procedures necessary to provide their services on-line, including those procedures relating to the recognition of professional qualifications. Indeed, the Points of Single Contact are meant to become fully fledged e-government portals open to all service providers covered by the Services Directive (including their seconded staff and self-employed professionals)[105]. Although a lot of information is already available on the PSC portals, it is often not yet possible to submit forms/applications online. In many cases, it is also not yet possible to use the PSC across borders due to lack of interoperability of electronic procedures. Efforts need to be pursued in order to make the PSC fully operational in all Member States and to facilitate their cross-border use.

Feedback from the experience reports also indicates that the use of electronic means by competent authorities responsible for recognition procedures is still rather limited. The majority of competent authorities accept informal contacts with the applicants by email (for queries on the procedure and documents) but they generally do not accept applications submitted electronically (applications should be sent by ordinary post or submitted in person). For some competent authorities the submission of on-line applications (as a first step) is possible but documents and certificates still need to be sent by post or submitted in person in order to ensure their authenticity (certified copies or originals are sometimes requested). Nevertheless, some Member States indicated their intention to accept documents sent electronically in the future or to develop on-line procedures, supported by e-signature and e-authentification tools.

15.4. Other difficulties within the recognition procedures

Beyond substantial rules on the criteria that must apply in the context of recognition, the 2005 Directive also provides to EU professionals procedural guarantees. These relate first of all to the deadline within which competent authorities must acknowledge receipt of a notification and indicate any missing documents (1 month) and the deadline for deciding on an application (3 months with one additional month possible in justified cases). The Directive also specifies the documents and certificates that can be requested from an applicant (article 50 and Annex VII).

The Code of Conduct agreed between the Commission and the Group of Coordinators also clarifies how these procedural rules must apply in practice (see section 4.3.1 for further explanation on the Code of Conduct). For example, it explains that translations may only be required if genuinely needed for processing an application and that certified or approved translations must be confined to essential documents (certified translations of standard documents such as identity cards or passports may not be required). It also recalls that

[104] Apart from those excluded from the scope of the Services Directive, such as health professionals.

[105] See the Commission staff working paper on the transposition and implementation of the Directive, 22.10.2010, SEC(2010) 1292, http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf

competent authorities cannot require originals or documents authenticated by the consular authorities or the national administration (for example by the means of the marginal note provided for in the Hague Convention).

Nevertheless, feedback from the enquiry conducted in summer 2010 with the National Contact Points and Your Europe Advisors indicates that citizens still face difficulties concerning translations and costs. Some competent authorities seem to request that original documents are sent and the number of requested documents is perceived as being too high. In addition, citizens often complain about the length of administrative procedures. The deadlines fixed by the Directive are not always respected and recognition procedures drag-on for a long time.

The 2010 SOLVIT report also indicates frequent breach of the procedural rights granted to professionals under the Directive. In particular the deadlines for informing professionals of any missing documents and deciding on the application are frequently missed.

15.5. Key findings

- Despite the efforts to put up in place structures assisting people with the recognition procedures and the definition of procedural rights to streamline the process, a lot of difficulties remain.

- Access to information on the recognition of professional qualifications is unsatisfactory: the information on recognition procedures exists but is currently fragmented (competent authorities, National Contact Points, Single Points of Contact, Your Europe portal). Professionals face difficulties to identify the competent authority, the applicable procedure and the documents they need to submit.

- Electronic procedures are developing but their use is still marginal. In particular, formal applications, supporting documents and certificates often still have to be submitted in paper.

- Professionals complain about the length of the procedures and the difficulty to put together all the documents in the requested form (translations & certifications). The procedural rules foreseen by the Directive are not always complied with.

16. CONCLUSIONS

16.1. Synthesis of the main findings

The answers provided to the evaluation questions can be summarised as follows:

Question 1: *To what extent has the recognition of qualifications been simplified under the general system? What are the remaining barriers for professionals?*

Overall, the general system is an effective solution for professions for which the training requirements have not been harmonised. It does not require any radical changes. In most cases, professionals obtain the recognition of their qualifications without compensation measures.

The general system relies on individual treatment of each application. This case-by-case assessment requires a series of documents that make the recognition procedure burdensome, both for applicants and for competent authorities. The document requirements under the general system can have a negative impact on the cost and length of the recognition procedures.

Two elements of the general system can be considered obstacles to the mobility of professionals. The first one concerns professionals from non-regulating Member States: currently, they need to gain two years of professional experience before presenting a request for the recognition of their qualifications in another Member State. The second element concerns the classification of qualifications defined in Article 11: according to the current provisions, professionals whose qualification is classified at two levels below the level required in the host Member State cannot benefit from the procedural rights offered by the Directive.

Question 2: *What use has actually been made of compensation measures?*

The frequency with which compensation measures are used depends on the profession. Where the activities carried out by a profession differ significantly between Member States, training programmes are also likely to show substantial differences and competent authorities are likely to opt for compensation measures before granting recognition. In these cases, compensation measures allow migrant professionals to acquire the missing skills necessary to exercise the profession in the host Member State. Compensation measures can also be helpful in more generally supporting the integration of migrants into the host Member State.

However, decisions taken by competent authorities on compensation measures are not always transparent and justified. The reasons given by authorities do not systematically reflect a sound analysis of the substantial differences between the migrant's qualification and the qualification required in the host Member State.

Question 3: *Is the general system still relevant in the light of educational reforms and economic / demographic needs?*

The general system continues to represent a pragmatic solution to assess requests of recognition. The impact of educational reforms on the contents of qualifications offered in Member States seems to be quite limited so far: these reforms have not led to a convergence of training contents that would allow a more automatic recognition of qualifications.

Demographic needs make the mobility of professionals across the EU even more important, notably to face the current and future shortages of skills workers in some Member States. In this context, the general system may need to be adapted in order to allow for more flexibility (use of the partial access to a profession and mobility of "not yet fully qualified professionals").

Question 4: *What use has actually been made of common platforms?*

Various professions expressed their interest in building a common platform in order to facilitate the recognition of qualifications. However, the development of common platforms, as currently defined in the Directive, has proved to be a challenging exercise for professional organisations. On one hand, there is a lack of common understanding of the purpose of common platforms; on the other hand the conditions set out in the Directive may be too difficult to meet. Nevertheless, professional organisations confirmed their interest in a solution allowing a move towards automatic recognition beyond the few professions for which such a regime already exists.

Question 5: *How is the system of automatic recognition working for health professions?*

The system of automatic recognition is an effective solution for the mobility of health professionals, which is particularly relevant in the current demographic context. Automatic recognition based on harmonised minimum training requirements allows an efficient processing of applications. However, efforts are still needed to reinforce the conditions (recognition to be based not only on diploma but also on fitness to practise) and the effects of automatic recognition (in particular for the opening of new pharmacies). In addition, the minimum training requirements agreed more than 30 years ago, may need to be adapted in line with the evolution of the professions and with the required skill levels (raising admission requirements for nurses and midwives, updating study programmes, adding competencies).

Question 6: *How is the system of automatic recognition working for architects?*

Automatic recognition works well also for architects. The efficiency of this system is however limited by a complex procedure for the notification and examination of new diplomas and by the delays of some Member State in notifying their new architects' diplomas. The minimum training requirements (duration of study programme and supervised practical experience) need to be further examined in order to assess how they could better reflect the access conditions existing in each Member State.

Question 7: *Does the mechanism in place for the automatic recognition of professions referred to in Annex IV of the Directive work smoothly in practice? Is Annex IV adapted to the current needs of professionals and small and medium enterprises (SMEs) in the areas of craft, commerce and industry?*

The system of automatic recognition based on periods of professional experience is adapted to the needs of most professionals in the craft, trade and industry. However the classification of economic activities as set out in Annex IV of the Directive does not always ensure an easy and immediate identification of the professions likely to benefit from this system.

Question 8: *To what extent does the new regime for temporary mobility as currently applied in the Member States meet the needs of professionals?*

The provisions on temporary mobility offer a much lighter regime (no prior checks of qualifications[106]) for professionals interested in providing services in another Member State on a temporary or occasional basis. This system has been used in a limited way until now, though some professions have shown a clear interest in the regime (notably craft, tourism and sport professions as well as some health professions). Other professionals consider that the administrative requirements foreseen by the Directive under this regime could be further simplified. Some inconsistencies have been identified in the implementation of the regime in the Member States, in particular with regards to the understanding of "temporary and occasional" provision of services and the declaration requirement.

Question 9: *How has the provision of the Directive concerning language knowledge (art. 53) been applied in practice*?

The majority of competent authorities consider that the assessment of language skills is the responsibility of employers. Under the general system, some authorities indirectly check the language skills of applicants through compensation measures. For the professions benefiting from automatic recognition, and in particular for health professions, some competent authorities consider that the provisions of the Directive are not sufficient.

Question 10: *Is the treatment of third country qualifications under the Directive effective and relevant?*

The treatment of third country qualifications under the Directive is not fully effective: competent authorities encounter some difficulties in recognising qualifications first recognised according to national rules, which can vary from one Member State to another. However, allowing the recognition of third country qualifications is particularly relevant in the current labour market situation.

Question 11: *In what way does current administrative cooperation contribute to the smooth functioning of the Directive? How did the use of IMI contribute to this cooperation? How has the idea of a professional card been used to support cooperation?*

Administrative cooperation largely contributes to the correct functioning of the Directive: exchange of information between the host and home competent authorities is often necessary to understand a qualification issued in other Member State and to verify that the applicant meets the conditions set out in the Directive for obtaining the recognition of his/her qualification. The use of IMI has made the exchange of information between authorities more efficient. The introduction of an alert mechanism could allow the scope of administrative cooperation to be enlarged by supporting the proactive exchange of information on disciplinary sanctions and fitness to practice. The idea of a professional card, as defined in the Directive, has not allowed new solutions to be put in place to support this cooperation or to offer concrete benefits to professionals.

Question 12: *To what extent have the provisions on assistance to citizens been applied?*

The National Contact Points foreseen by the Directive have been set up in all Member States, together with other information tools (Your Europe portal, PSC websites) and assistance structures (SOLVIT). However, citizens still encounter difficulties in finding practical

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[106] except for professions with public health and safety implications

information on how to obtain the recognition of their qualifications in another Member State. In addition, the limited use of electronic means for recognition procedures generates additional constraints for citizens applying for the recognition of their qualifications.

16.2. General conclusions

The evidence presented in the previous sections on the concrete functioning of the recognition of professional qualifications allows us to assess to what extent the objectives of the legislation (presented in section 2.1) have been achieved.

a) The legislation on the recognition of professional qualifications has been effective in facilitating labour mobility within the EU, in particular for the professions benefiting from automatic recognition. The mobility of professionals is determined by a variety of factors (language, family situation, education, remuneration) and in most cases, the recognition of professional qualifications does not constitute an obstacle but rather supports access to the profession in another Member State. The experience gained by competent authorities in the recognition of qualifications will be particularly helpful in tackling the decline of the active working population in the EU and the increasing demand for highly-qualified jobs.

b) The acquis on professional qualifications constitutes a pragmatic approach to the differences existing between Member States in the regulation of professions and in education systems. The procedures set out in the Directive offer guarantees for professionals seeking the recognition of their qualifications, including in cases where the profession is not regulated in the host Member State. However, the objective of establishing transparent, uniform and quick recognition procedures has not been achieved: the findings of the evaluation show that there are still concerns about access to information and the complexity and length of procedures, in particular under the general system.

c) The new system introduced for the free provision of services constitutes a first simplification for professionals moving on a temporary basis. The outcome of the evaluation shows that there is still space for further simplification of the administrative requirements under this regime.

d) The legislation on the recognition of professional qualifications has not undermined the quality of professional services. Some provisions of the Directive need to be further examined in order to reach the right balance between the need to facilitate mobility and the public interest (e.g. provisions on language skills to be clarified in the view of strengthening patients' safety; minimum training requirements to be reviewed in order to adapt to the evolution of the professions).