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PROPOSAL

from:	the Commission
dated:	19 December 2011
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Subject:	Proposal for a Directive of The European Parliament and of The Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 883 final

EUROPEAN COMMISSION

Brussels, 19.12.2011
COM(2011) 883 final

2011/0435 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System

(Text with EEA relevance)

{SEC(2011) 1558 final}
{SEC(2011) 1559 final}

EXPLANATORY MEMORANDUM

1. CONTEXT AND AIM OF THE PROPOSAL

1.1. General context

Mobility of qualified professionals is low in the European Union. However, there seems to be a major unexploited potential for mobility: according to a 2010 Eurobarometer survey[1], 28% of EU citizens are considering work abroad. Recognition of professional qualifications is key to making the fundamental Internal Market freedoms work effectively for EU citizens. At the same time, mobility should not come at the expense of consumers, and notably patients who expect adequate language skills from health professionals. In addition, the potential of a more integrated services market remains unexploited in the area of professional services; whilst the Services Directive[2] from 2006 offered new opportunities, the main focus of the Professional Qualifications Directive from 2005[3] was consolidation of 15 existing Directives into a single instrument.

Modernising the Directive would also respond to the needs of Member States facing increasing shortages of skilled workforce. Mobility of EU citizens within the single market is an important issue in this regard. Shortages of workforce will not only persist in the future but are projected to increase in particular in the health sector, in the education sector, and also in growth sectors, such as construction or business services.

In its strategy for smart, sustainable and inclusive growth (Europe 2020), the Commission already highlighted the need to promote intra-EU mobility. The New Skills and Jobs Agenda[4] warned that mismatches in the EU labour market persist and that the potential of labour mobility is not sufficiently exploited. The Citizenship Report[5] from 2010 also emphasized the need for modernisation in this area in the interest of EU citizens.

In its Annual Growth Survey for 2011 and 2012[6] and in the Single Market Act[7], the Commission identified recognition of professional qualifications as a major issue. The Single Market Act underlined the need for the modernisation of the existing framework, as part of the twelve levers aiming to boost growth and strengthen confidence amongst citizens. On 23 October 2011, the European Council[8] invited the Institutions to undertake their utmost to reach a political agreement on these 12 initiatives in the Single Market Act, including on a

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1 Eurobarometer n° 363

2 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36)

3 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p.22)

4 "New Skills for New Jobs. Anticipating and matching labour market and skills needs", Communication from the Commission, COM(2008)868, 16.12.2008

5 EU Citizenship Report 2010 "Dismantling the obstacles to EU citizens' rights", COM(2010)603, 27.10.2010

6 "Annual Growth Survey: advancing the EU's comprehensive response to the crisis", Communication from the Commission, COM(2011)11, 12.1.2010

7 Communication from the Commission, Single Market Act, Twelve levers to boost growth and strengthen confidence, "Working together to create new growth", COM(2011)206, SEC(2011)467

8 EUCO 52/11

Commission proposal for modernising this Directive. The European Parliament also called for urgent action in its Report from 15 November 2011[9].

1.2. Aim of the proposal

The Commission is not proposing a new Directive but well targeted modernisation of the existing provisions driven by the following objectives:

- Reducing the complexity of procedures through a European Professional Card which would further exploit the benefits of the already successful Internal Market Information System (IMI) (see section 4.1);
- Reforming the general rules for establishing in another Member State or moving on a temporary basis (see sections 4.2., 4.3 and 4.4.);
- Modernising system of automatic recognition, notably for nurses, midwives, pharmacists and architects (see sections 4.5, 4.6 and 4.7);
- Offering a legal framework in the Directive for partially qualified professionals and for notaries (see section 4.8);
- Clarifying safeguards for patients whose concerns over language skills and risks of malpractice should be better reflected in the legal framework (see section 4.9.);
- Creating the legal requirement for provision of user-friendly and content-driven information on the rules governing the recognition of qualifications underpinned by comprehensive e-government facilities for the whole recognition process (see section 4.10);
- Launching a systematic screening and mutual evaluation exercise for all regulated professions in the Member States (see section 4.11).

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

The initiative is the result of an ex-post evaluation of the Directive and of extensive consultations with all major stakeholders, including competent authorities, professional organisations, academic bodies and citizens.

2.1. Evaluation

The ex-post evaluation was conducted between March 2010 and May 2011. The European Commission reached out to competent authorities and national coordinators for the Directive and received around 200 experience reports, published on the Commissions website[10].

In addition, a study[11] was commissioned from GHK Consulting focusing on the impacts of recent educational reforms on the recognition of professional qualifications.

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9 A7-0373/2011

10 See http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm

2.2. Public consultations

On 7 January 2010, the Commission launched a public consultation on the Directive. The Commission services received 370 contributions[12].

On 22 June 2010, the Commission adopted a Green Paper[13] on "Modernising the Professional Qualifications Directive". About 420 contributions were received. The Commission also held two public conferences on the revision of the Directive.

2.3. Outcome of the consultations

All stakeholders recognised a need to ensure better access to information on the recognition of qualifications. Most citizens and professional organisations supported the simplification of recognition procedures whilst representatives of the health sector also stressed the need to safeguard the quality of services. A large majority of stakeholders within all the categories expressed positive views on the idea of a European professional card. Many professional organisations expressed support for the revision of the concept of common platforms. The majority of competent authorities and professional organisations representing professions benefitting from automatic recognition agreed on the need to modernise the system.

2.4. Steering Group on the European Professional Card

In January 2011, the European Commission set up a steering group with external experts to discuss the need for and the feasibility of a European Professional Card. The Group brought together representatives of various professional associations and competent authorities and completed a number of case studies[14] presented at the Single Market Forum held in Krakow, Poland on 3 and 4 October. In their declaration, the Forum's participants welcomed the idea of a European Professional Card.

2.5. Impact Assessment

The Commission conducted an impact assessment on various policy alternatives.

This analysis identified eight groups of problems, deriving mainly from the outcome of the evaluation and from the reactions to the Green Paper. These groups of problems cover: the access to information on recognition procedures, the efficiency of recognition procedures, the functioning of the automatic recognition system, the conditions applying to establishment and those applying to temporary mobility and the scope of the Directive. Since public health emerged as a particular issue during the evaluation, the protection of patients has also been mentioned in the problem definition. The last problem relates to the lack of transparency and justification of qualifications requirements in regulated professions.

The analysis identified three general objectives: facilitating the mobility of professionals and the intra-EU trade in services, addressing the challenge of filling high-skill jobs and offering

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11 The study, published on 31 October 2011, is available at: http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/final_report_en.pdf

12 See http://ec.europa.eu/internal_market/consultations/2011/professional_qualifications_en.htm

13 COM(2011)367 final

14 See http://ec.europa.eu/internal_market/qualifications/policy_developments/european_professional_card_en.htm

more possibilities for job seekers. These objectives were declined in specific objectives, taking account of the context and problems identified.

A wide range of options were examined for each group of problems and assessed against the following criteria: effectiveness, efficiency, consistency and impacts on stakeholders (benefits and costs on mobile professionals, Member States, consumers and patients, employers).

With respect to access to information, the impact assessment explored different options to facilitate the identification of competent authorities and document requirements and to foster the use of electronic procedures. Extending the scope of the Points of Single Contact (set up under the Services Directive) was considered the preferred option. By further developing existing structures, this option should not lead to significant cost increases.

In relation to the efficiency of recognition procedures, various options were considered to reduce the length of procedures and to ensure a better use of compensation measures. The creation of a European professional card, based on a stronger involvement of the home Member State, was the preferred option, since it creates favourable conditions to accelerate the recognition procedure. This option could incur some administrative costs for certain Member States but would allow professionals to benefit from quicker recognition procedures. In addition, a set of measures was identified to improve the use and organisation of compensation measures. Finally, the analysis considered necessary to overhaul the concept of "common platforms" to further facilitate recognition for certain professions.

Concerning the automatic recognition system, different options were examined to streamline the procedure for notifying and examining new diplomas. The set up of a national compliance function appeared to be the most effective and efficient option. Different sets of options were examined to adjust the minimum training requirements for sectoral professions - in particular for doctors, nurses, midwives, pharmacists and architects -and to modernise the classification of economic activities in Annex IV of the Directive. These options are presented in the executive summary of the impact assessment.

A wide range of options were examined to simplify the conditions applying to permanent establishment. In particular, the impact assessment concluded that the qualifications levels defined in Article 11 should be maintained as a reference point to compare qualifications but should no longer be used to assess the eligibility of an application. The introduction of the principle of partial access in the Directive was identified as another solution which could reduce the obstacles to mobility. The specific requirements applying to professionals coming from non-regulating Member States were considered unnecessary under the establishment regime.

In relation to temporary mobility, the impact assessment analysed different options likely to facilitate this kind of mobility and to improve legal certainty for professionals. One of the selected options consists in simplifying the requirements imposed on professionals from non-regulating Member States accompanying consumers. In addition, the impact assessment concluded that each Member State should produce a list of professions with health and safety implications (for which a prior check of qualifications is required).

The impact assessment explored different policy options to clarify and extend the scope of the Directive to new categories of professionals. The impact assessment concluded in favour of extending the scope of the Directive, under specific conditions, to non-fully qualified professionals and notaries. For third country qualifications, maintaining the status quo was

identified as the preferred option. However, the treatment provided under the Directive to the Union citizens should be extended by the Member States to other third country nationals, in so far as required by international agreements on professional services.

With respect to the protection of patients, different options were assessed to give more guarantees on the status of professionals and on their language skills. The preferred options in this area include the introduction of an alert mechanism combined with increased transparency between Member States on continuous professional development and the clarification of the rules applying to the control of language skills.

Various options were considered to improve the transparency and justification of regulated professions. The preferred option identified in the impact assessment consists in a mutual evaluation exercise on the national legislations regulating the access to certain professions.

The synergies between the different preferred options were considered to ensure the internal coherence of the initiative.

The draft impact assessment was scrutinised by the Impact Assessment Board (IAB) and its recommendations for improvement were integrated into the final report. The IAB opinion is published alongside this proposal, as are the final Impact Assessment and its executive summary.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

This proposal is based on Articles 46, 53(1), Article 62 and 114 of the TFEU.

3.2. Subsidiarity and proportionality

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The aim of the Directive could not be sufficiently achieved through action by Member States which would inevitably result in divergent requirements and procedural regimes increasing regulatory complexity and causing unwarranted obstacles to mobility of professionals. Moreover, changes to the current legal regime imply the modification of an existing Directive which can only be achieved by Union law. The proposal therefore complies with the subsidiarity principle.

The principle of proportionality requires that any intervention is targeted and does not go beyond what is necessary to achieve the objectives. The proposed amendments are limited to what is necessary to ensure a better functioning of the rules on the recognition of professional qualifications and therefore comply with this principle.

3.3. Choice of the instrument

The proposal is based on Articles 46, 53(1), 62 and 114 of the Treaty which foresee the use of a Directive for the mutual recognition of qualifications. Moreover, a Directive is best suited for the task as it provides Member States with the necessary flexibility to implement the rules laid down taking into consideration their national administrative and legal specificities.

However, as an important number of national legislative acts have to be modified by the Member States, it is important that they accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of the Directive and the corresponding part of national transposition instruments.

3.4. European Economic Area

The proposed act concerns a European Economic Area matter and should therefore extend to the European Economic Area.

4. DETAILED EXPLANATION ABOUT THE PROPOSAL

The proposed amendments to Directive 2005/36/EC are presented according to the objectives set out in section 1.2.

4.1. European professional card and Internal Market Information System

4.1.1. European professional card

The European professional card will be an alternative tool which can be implemented for those professions which meet several objectives: bottom-up demand by members of the profession, significant mobility and better cooperation between competent authorities through IMI. The European Professional Card also offers potential for those professions interested mainly in temporary mobility. All in all, the introduction of the European Professional Card will depend on whether professions request its introduction. Its attractiveness should however lead to more and more professions adopting it.

The European professional card aims to facilitate and accelerate the recognition procedure while at the same time making it more transparent. Therefore, the card requires more involvement by the home Member State, which implies the shift of certain costs and administrative burdens from the host Member State to the home Member State. However, the use of IMI should reduce these costs and the new procedure can be carried out by competent authorities in place which are already frequently involved in the preparation of the recognition file of national professionals.

To the extent that a European Professional Card has been introduced for a specific profession, on request from a professional, the home Member State will assess the completeness of the professional's file and, in case of a request for establishment, create a European profession card. The role of the home Member State is even more important in case of temporary mobility, as it will both create and validate the professional card. The use of the Internal Market System becomes compulsory as it will serve as the back office for the European professional card. Both the involvement of the home Member State and the use of IMI will contribute to a reduction in cost and time necessary for the treatment of a recognition request. This creates the conditions for the reduction of the deadlines for the treatment of an application on the basis of the European professional card compared to the current procedure which will continue to exist for professionals preferring not to use the European Professional Card. *4.1.2. Making IMI mandatory under the Directive*

Since the successive extensions of IMI to cover all recognition mechanisms under the Directive, a significant number of competent authorities use IMI regularly with good results. However, the potential of the system is undermined when a competent authority is not

registered or refuses to deal with the information requests due to the non-compulsory nature of the IMI. Moreover, the functioning of the European Professional Card is contingent upon the systematic use of IMI. Therefore, the proposal obliges Member States to use IMI for the exchange of information relating to recognition of professional qualifications.

4.2. Free provision of services

A special regime for the free provision of services on a temporary basis was introduced through Directive 2005/36/EC. It foresees lighter rules for temporary service providers: they can provide services without the prior check of professional qualifications (except for professions with health and safety implications) which is the rule under the recognition mechanisms for establishment.

Several amendments are proposed to clarify the rules on the free provision of services.

By removing the professional experience requirement imposed on service providers from non-regulating Member States when the service provider accompanies the service recipient, the proposal seeks to better cater to the needs of consumers crossing borders. Where the requirement of professional experience still applies, the proposal foresees that it can be acquired in one or several Member States which creates more opportunities for the services providers compared to the current situation.

For professions with health and safety implications, Member States implemented the prior check of qualifications in diverse ways which has led to legal uncertainty for service providers. The proposal addresses this issue by requiring Member States not only to provide a list of all professions they consider as belonging to this category but also to justify their reasons for the inclusion of each profession. This will allow service providers to know in advance the exact requirements they have to fulfil for the free provision of services and, through an increased transparency, reduce the risk of disproportionate or unnecessary obligations.

Finally, the proposal clarifies the list of documents a Member State may require prior to the first provision of services. It also explicitly states that the declaration service providers may be required to make prior to provision of service must be effective for the whole territory of a Member State.

4.3. General system

The first element of the proposal concerns the existing possibility to exclude on the basis of Article 11 certain qualifications from the scope of the Directive when there are two ore more levels of difference between the professionals' training and the requirements in the host Member State. The qualification levels should, in principle, be used only as a benchmarking tool and not as a basis for excluding professionals from the scope of the Directive. The only exception relates to persons whose qualifications are based on professional experience who are seeking access to a profession requiring a university degree. The proposal also reinforces the obligation on Member States to better justify the compensation measures. Moreover, the proposal foresees the obligation for the Member States to organise aptitude tests on a regular basis.

4.4. Partial access

Following the case law[15] of the Court of Justice, it is proposed to introduce the concept of partial access into the Directive. This will bring more legal certainty for professionals and will allow professionals fulfilling the conditions for partial access to establish themselves or to provide services where they were previously excluded from the benefits of the Directive. However, Member States may not apply this principle where there are overriding reasons such as in the case of health professions.

4.5. Automatic recognition based on professional experience

The amendment proposed in this field aims at introducing more flexibility for the Commission to adapt the list of activities contained in Annex IV. This list no longer reflects the current structure of economic activities. This may create difficulties in identifying the professions falling under this system of automatic recognition and result in uncertainties for the professionals.

A modernisation of the classification seems therefore necessary. However, any modification to the current classification should be carefully assessed since it can affect the scope of the regime. Therefore, the amendment proposed gives the Commission the possibility of a review but without reducing the scope of the activities benefiting from automatic recognition. The Commission also intends to launch a study involving stakeholders in 2012.

4.6. Automatic recognition based on minimum training requirements

Stakeholders pointed to a lack of transparency of the training requirements in the Member States which are the basis for the automatic recognition system for the sectoral professions. In order to increase transparency at EU level, the proposal requires each Member State to notify the legislative, regulatory and administrative provisions related to the issuing of new or changed qualifications. Member States will also be obliged to involve an appropriate existing authority or body, such as an accreditation board or a ministry, to report about the compliance of the qualification with the Directive's minimum training requirements.

The evaluation of the Directive has also shown that the minimum duration of trainings for doctors, general care nurses and midwives requires clarification. In addition, in the light of the progress in the implementation of the European Credit Transfer and Accumulation System (ECTS) the proposal foresees specified numbers of ECTS credits as potential duration criteria for professions for which the training is to be delivered at university level.

In order to enhance the mobility of doctors who have already obtained a medical specialist qualification and afterwards wish to follow another specialist training, the proposal allows Member States to grant partial exemptions from some elements of the training if the doctor has already completed those elements during his or her previous medical specialist training programme in that Member State.

New professional requirements related to the general care nurse and midwife professions are reflected in the proposal which requires Member States to upgrade the admission requirement to the trainings of these professions from 10 years of general education to 12 years. This is already the case in 24 Member States.

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[15] See for example case C-330/03, *Colegio de Ingenieros de Caminos, Canales y Puertos*

Organising automatic recognition for nurses during the accession of new Member States in 2004 and 2007 had been complex. In 2012, the Commission services will undertake a technical assessment regarding the qualification of Polish and Romanian nurses whose formal qualifications were awarded or whose training started prior to 1 May 2004 in order to analyse if the additional requirements for Polish and Romanian nurses according to Article 33 (2) are still justified.

The minimum duration of architect training should be updated to better reflect the broadly accepted standards in architectural education, in particular the need to supplement academic training with professional experience under the supervision of qualified professionals. Consequently, the proposal foresees that the minimum duration of architectural training should be at least six years: either at least four years of full-time study at a university level institution and at least two years of remunerated traineeship or at least five years of full-time study at a university level institution supplemented by at least one year of remunerated traineeship.

As to pharmacists, the proposal provides for an extension of their list of activities but also for a deletion of the derogation for Member States, foreseen in Article 21(4), which allows them to prevent pharmacists with foreign qualifications from opening new pharmacies. This exception is no longer used by an increasing number of Member States (such as The Netherlands, Ireland and the United Kingdom). In addition, the Court of Justice allows territorial restrictions only as far as they do not entail discrimination.

4.7. Common training principles – a new regime for automatic recognition

The "common platforms" concept of the 2005 Directive is replaced by common training principles: a common training framework or common training tests. These aim at introducing more automaticity in the recognition of qualifications currently covered by the general system and should better respond to the needs of the professions. While the common platforms offered only the possibility of harmonising compensation measures, the common training principles allow the professionals to be exempted from compensation measures altogether. The qualifications obtained under this regime should be automatically recognised in the Member States which might however benefit from derogations in applying them. In addition, the conditions for setting up common training principles are less difficult to fulfil than the conditions for setting up common platforms.

While the common training principles would not replace national training programmes, professionals with a qualification under this regime would benefit from the same advantages as the professions for which the minimum training requirements are specified in the Directive.

4.8. Extending the scope of the Directive where necessary

4.8.1 Not fully qualified professionals

This proposal extends the scope of the Directive to professionals who hold a diploma but have yet to complete a remunerated traineeship which might be required under the law of the Member State where they graduated (this can apply, for example, to lawyers, architects and teachers). This amendment would bring more legal certainty to this category of professionals,

which currently benefits from the Treaty rules on free movement but not from the procedural safeguards of the Directive. It is based on the case law[16] of the Court of Justice.

4.8.2. Notaries

In May 2011, the Court of Justice decided[17] that nationality requirements cannot be imposed on notaries. As regards the application of the Directive, the Court took the view that the Member States concerned, at the close of the period of the reasoned opinion, could not reasonably be expected to consider that the Directive should be transposed for notaries. The Court did not rule out that there is an obligation to implement the Directive but considered that the obligation was not sufficiently clear at the time of the infringement proceedings. The scope of the directive needs therefore to be clarified. Considering the specificities of the profession, the rules on establishment and free provision of services have to be well tailored: in the first case, Member States should be able to impose the necessary aptitude tests in order to avoid any discrimination in the national selection and nomination procedures. In the case of free provision of services, notaries should not be able to draw up authentic deeds and carry out other activities of authentication which require the seal of the host Member State.

4.9. Clarifying guarantees for patients and consumers of professional services

4.9.1. Language requirements

The proposal clarifies that the checking of language knowledge is to take place only after the host Member State has recognized the qualification. In the case of health professionals, it also specifies that it is up to the national health care systems and patient organizations to check whether competent authorities should carry out language controls where strictly necessary.

4.9.2 Alert mechanism

In line with the responses received to the public consultations, the proposal obliges national competent authorities to alert each other in case a health professional benefiting from automatic recognition under the Directive is prohibited, even temporarily, to practice the profession. In case of other professionals, not covered by the Services Directive, Member States have also to alert each other where necessary.

4.10. E-governance: Access to information and electronic procedures

In order to allow an easy identification of the competent authority and the required documents for a recognition request, the proposal foresees that the points of single contact, created under the Services Directive, become central online access points for all professions covered by the Professional Qualifications Directive. Therefore, the scope of the points of single contact is extended to categories of professionals not covered by the Services Directive (health professionals and job seekers). Through this new provision, professionals could revert to a single structure for all administrative procedures linked to establishment or provision of services in a Member State.

The proposal foresees that the national contact points which exist under the current Directive become assistance centres, therefore avoiding a duplication of information structures. These

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16 See case C-313/01, *Morgenbesser*; C-345/08, *Pesla*

17 Cases C-47/08, C-50/08, C-51/08, C-52/08, C-53/08, C-54/08 and C-61/08.

assistance centres will focus on individual cases providing advice and assistance to citizens such as via phone calls or even allowing face to face meetings. Where necessary, they would liaise with competent authorities and assistance centres of other Member States.

4.11. Transparency and mutual evaluation

Across the 27 Member States, the Professional Qualifications Directive applies to about 800 categories of regulated professions. There is a lack of transparency on the scope of and the justifications for the regulation, which may create obstacles to mobility.

Therefore this proposal provides for the introduction of an obligation for Member States to notify a list of professions they regulate and to assess their legislation on the access to regulated professions against the principles of necessity (public interest), proportionality and non-discrimination. Each Member State would have to report to the Commission the outcome of this assessment. This mutual evaluation exercise would allow Member States to compare their regulatory approaches and to simplify, where necessary, their national legal frameworks for the regulated professions.

5. BUDGETARY IMPLICATION

The proposal is expected to have implications for the EU budget to the extent that the future European Professional Card (EPC) will use the Internal Market Information System ("IMI") as its operational backbone. The IMI will have to be adapted to the EPC processes and storage requirements and supplemented with some additional functions, namely a specific interface, an alert mechanism and a declaration mechanism. The implications for the EU budget are already covered by planned allocations and will however be modest in view of the fact that using the IMI to underpin the EPC will provide important economies of scale and scope. In addition, the main existing IMI capabilities and those currently under development are to a large extent compliant with the requirements of the EPC. The adaptation and development costs will therefore be substantially reduced.

2011/0435 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 46, 53(1), 62 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[18],

Having regard to the opinion of the European Data Protection Supervisor[19],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[20] consolidated a system of mutual recognition which was initially based on 15 Directives. It provides for automatic recognition for a limited number of professions based on harmonised minimum training requirements (sectoral professions), a general system for the recognition of evidence of training and automatic recognition of professional experience. Directive 2005/36/EC also established a new system of free provision of services. It should be recalled that third country family members of Union citizens benefit from equal treatment in accordance with Article 24 of Directive 2004/38/EC. Third country nationals may also benefit from equal treatment with regard to recognition of diplomas, certificates and other professional qualifications, in accordance with the relevant national procedures, according to specific Union

[18] OJ C , , p. .

[19]

[20] OJ L 255, 30.9.2005, p.22.

legislation such as acts on long term residence, refugees, "blue card holders" and scientific researchers.

(2) In its Communication 'Single Market Act, Twelve levers to boost growth and strengthen confidence, "Working together to create new growth"'[21], the Commission identified the need to modernise the Union legislation in this area. On 23 October 2011, the European Council in its conclusions supported such a modernisation and called for an agreement by the end of 2012. In its resolution of 15 November 2011, the European Parliament also invited the Commission to come forward with a proposal. The EU Citizenship report 2010 on dismantling the obstacles to EU citizens' rights[22] underlines the need to lighten the administrative burden linked to the recognition of professional qualifications.

(3) In order to promote the free movement of professionals, while ensuring a more efficient and transparent recognition of qualifications it is necessary to provide for a European Professional Card. In particular that card is necessary to facilitate temporary mobility and recognition under the automatic recognition system, as well as to promote a simplified recognition process under the general system. The card should be issued upon request from a professional and after submission of necessary documents and completion of related review and verification procedures by the competent authorities. The functioning of the card should be supported by the Internal Market Information System (IMI) established by Regulation (EU) No […] on administrative cooperation through the Internal Market Information System[23]. This mechanism should help enhance synergies and trust among competent authorities, while at the same time eliminating duplication of administrative work for the authorities and creating more transparency and certainty for professionals. The process for the application and issuing of the card should be clearly structured and incorporate safeguards and the corresponding rights of appeal for the applicant. The card and the related workflow within IMI should ensure the integrity, authenticity and confidentiality of the data stored and avoid unlawful and unauthorised access to information contained therein.

(4) Directive 2005/36/EC only applies to professionals who want to pursue the same profession in another Member State. There are cases where the activities concerned are part of a profession with a larger scope of activities in the host Member State. If the differences between the fields of activity are so large that in reality a full programme of education and training is required from the professional to compensate for shortcomings and if the professional so requests, a host Member State should under these particular circumstances grant partial access. However, in case of overriding reasons of general interest, such as in the case of a doctor of medicine or other health professionals, a Member State should be able to refuse partial access.

(5) Temporary and occasional provision of services in Member States should be subject to safeguards, notably a requirement of a minimum two years' prior professional experience, in the interest of the protection of local consumers in the host Member State if the profession is not regulated in the home Member State. However, these

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21 COM(2011)206 final, 13.4.2011.
22 COM(2010) 603 final
23 OJ L […].

safeguards are not necessary if the consumers, who have their habitual residence in the Member State of establishment of the professional, have already chosen such a professional and there are no public health or safety implications for third persons in the host Member State.

(6) Directive 2005/36/EC allows Member States to check the professional qualifications of the service provider prior to the first provision of service in the case of regulated professions having public health and safety implications. This has led to legal uncertainty leaving it to the discretion of a competent authority to decide on the need for such prior check. In order to ensure legal certainty professionals should know from the outset whether a prior check of qualifications is necessary and when a decision can be expected.

(7) Directive 2005/36/EC should also cover notaries. For recognition requests for establishment, Member States should be able to impose the necessary aptitude test or adaptation period to avoid any discrimination in the national selection and nomination procedures. In the case of free provision of services, notaries should not be able to draw up authentic instruments and carry out other activities of authentication which require the seal of the host Member State.

(8) In order to apply the mechanism of recognition under the general system, it is necessary to group the various national education and training schemes into different levels. Those levels, which are established only for the purpose of the operation of the general system, should have neither effect upon the national education and training structures nor upon the competence of Member States in this field, including a national policy for implementing the European Qualifications Framework. This can be a tool to promote the transparency and comparability of qualifications and can be a useful additional source of information for the competent authorities examining the recognition of qualifications issued in other Member States. The levels established for the operation of the general system should in principle no longer be used as a criterion for excluding Union citizens from the scope of Directive 2005/36/EC when this would be contrary to the principle of life long learning.

(9) Applications for recognition from professionals coming from non-regulating Member States have to be treated in the same way as those of professionals coming from a regulating Member State. Their qualifications have to be compared to the qualifications requested in the host Member State on the basis of the qualification levels in Directive 2005/36/EC. In case of substantial differences the competent authority should be able to impose compensation measures.

(10) In the absence of harmonisation of the minimum training conditions for access to the professions governed by the general system, it should remain possible for the host Member State to impose a compensation measure. This measure should be proportionate and, in particular, take account of the knowledge, skills and competences gained by the applicant in the course of his professional experience or through lifelong learning. The decision imposing a compensatory measure should be justified in detail in order to enable the applicant to better understand his situation and to seek legal scrutiny before national courts under Directive 2005/36/EC.

(11) The review of Directive 2005/36/EC has shown a need to update and clarify with more flexibility the lists of industrial, commercial and craft activities in Annex IV, while

maintaining for those activities a system of automatic recognition based on professional experience. Annex IV is currently based on the International Standard Industrial Classification of all Economic Activities (ISIC) dated from 1958 and no longer reflects the current structure of economic activities. The ISIC classification has been reviewed several times since 1958. Therefore, the Commission should be able to adapt Annex IV in order to maintain intact the system of automatic recognition.

(12) The system of automatic recognition on the basis of harmonised minimum training requirements depends on the timely notification of new or changed evidence of formal qualifications by the Member States and their publication by the Commission. Otherwise, holders of such qualifications have no guarantees that they can benefit from automatic recognition. In order to increase transparency and facilitate the examination of newly notified titles, Member States should designate an appropriate body, such as an accreditation board or a ministry, to examine each notification and provide a report on compliance with Directive 2005/36/EC to the Commission.

(13) European Credit Transfer and Accumulation System (ECTS) credits are already used in a large majority of higher education institutions in the Union and their use is becoming more common also in courses leading to the qualifications required for the exercise of a regulated profession. Therefore, it is necessary to introduce the possibility to express the duration of a programme also in ECTS. This should not affect the other requirements for automatic recognition. One ECTS credit corresponds to 25-30 hours of study where 60 credits are normally required for the completion of one academic year.

(14) In the interest of enhancing the mobility of medical specialists who have already obtained a medical specialist qualification and afterwards follow another specialist training, Member States should be allowed to grant exemptions from some part of the training if such elements of the training have already been completed during the former medical specialist training programme in that Member State covered by the automatic recognition regime.

(15) The nursing and midwifery professions have significantly evolved in the last three decades: community-based healthcare, the use of more complex therapies and constantly developing technology presuppose a capacity for higher responsibilities for nurses and midwives. In order to prepare them to meet such complex healthcare needs, nursing and midwifery students need to have a solid general education background before they start the training. Therefore, admission to that training should be increased to twelve years of general education or success in an examination of an equivalent level.

(16) To simplify the system for automatic recognition of medical and dental specialities, such specialities should be covered by Directive 2005/36/EC if they are common to at least one third of the Member States.

(17) The functioning of the system of automatic recognition depends on confidence in the training conditions which underpin the qualifications of the professionals. Therefore, it is important that the minimum training conditions of architects reflect new developments in architectural education, notably with respect to the recognised need to supplement academic training with professional experience under the supervision of qualified architects. At the same time, the minimum training conditions should be

flexible enough to avoid unduly restricting the ability of Member States to organise their education systems.

(18) Directive 2005/36/EC should promote a more automatic character of recognition of qualifications for those professions which do not currently benefit from it. This should take account of the competence of Member States to decide the qualifications required for the pursuit of professions in their territory as well as the contents and the organisation of their systems of education and professional training. Professional associations and organisations which are representative at national and Union level should be able to propose common training principles. It should take the form of a common test as a condition for acquiring a professional qualification, or training programmes based on a common set of knowledge, skills and competences. Qualifications obtained under such common training frameworks should automatically be recognised by Member States.

(19) Directive 2005/36/EC already provides for clear obligations for professionals to have the necessary language skills. The review of that obligation has shown a need to clarify the role of competent authorities and employers notably in the interest of patients' safety. Language controls should however be reasonable and necessary for the jobs in question and should not constitute grounds for excluding professionals from the labour market in the host Member State.

(20) Graduates wishing to pursue a remunerated traineeship in another Member State where such traineeship is possible should be covered by Directive 2005/36/EC in order to foster their mobility. It is also necessary to provide for the recognition of their traineeship by the home Member State.

(21) Directive 2005/36/EC provides for a system of national contact points. Due to the entry into force of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market[24] and the establishment of points of single contact under that Directive, there is a risk of overlap. Therefore, the national contact points established by Directive 2005/36/EC should become assistance centres which should focus their activities on providing advice to citizens, including face to face advice, in order to ensure that daily application of internal market rules in individual cases of citizens is followed up at national level.

(22) Whilst the Directive already provides for detailed obligations for Member States to exchange information, such obligations should be reinforced. Member States should not only react to request for information but also alert other Member States in a proactive manner. Such alert system should be similar to that of Directive 2006/123/EC. A specific alert mechanism is however necessary for health professionals benefiting from automatic recognition under Directive 2005/36/EC. This should also apply to veterinary surgeons unless the Member States have already triggered the alert mechanism provided for in Directive 2006/123/EC. All Member States should be alerted if a professional due to a disciplinary action or criminal conviction is no longer entitled to move to another Member State. This alert should be activated through the IMI regardless of whether the professional has exercised any of the rights under Directive 2005/36/EC or of whether he has applied for recognition of

[24] OJ L 376, 27.12.2006, p. 36.

his professional qualifications through the issuance of a European Professional Card or through any other method provided for by that Directive. The alert procedure should comply with Union law on the protection of personal data and other fundamental rights.

(23) One of the major difficulties a citizen who is interested to work in another Member State is facing, is complexity and uncertainty of administrative procedures to comply with. Directive 2006/123/EC already obliges Member States to provide easy access to information and procedure completion through the points of single contact. Citizens seeking recognition of their qualifications under Directive 2005/36/EC can already use the points of single contact if they are covered by Directive 2006/123/EC. However, job seekers and health professionals are not covered by Directive 2006/123/EC and available information remains scarce. There is therefore a need to specify that information, from a user perspective, and to ensure that such information is easily available. It is also important that Member States not only take responsibility at national level but also cooperate with each other and the Commission to ensure that professionals throughout the Union have an easy access to a user-friendly and multilingual information and to procedure completion through the points of single contact. Links should be made available through other websites, such as the Your Europe portal.

(24) In order to supplement or amend certain non-essential elements of Directive 2005/36/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating of Annex I, setting the criteria for the calculation of fees related to the European Professional Card, establishing the details of the documentation necessary for the European Professional Card, the adaptations of the list of activities set out in Annex IV, the adaptations of points 5.1.1 to 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 of Annex V, clarifying the knowledge and skills for medical doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects, adapting the minimum periods of training for specialist medical trainings and specialist dental training, the inclusion in point 5.1.3 of Annex V of new medical specialities, the amendments to the list set out in points 5.2.1, 5.3.1, 5.4.1, 5.5.1 and 5.6.1 of Annex V, inclusion in point 5.3.3 of Annex V of new dental specialities, specifying the conditions of application of common training frameworks, and specifying the conditions of application of common training tests. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(25) In order to ensure uniform conditions for the implementation of Directive 2005/36/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general

principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[25].

(26) The advisory procedure should be used for the adoption of implementing acts in order to lay down common and uniform rules regarding the specification of European Professional Cards for specific professions, the format of the European Professional Card, the translations necessary to support an application for issuing a European Professional Card, details for the assessment of the applications for a European Professional Card, the technical specifications and the measures necessary to ensure integrity, confidentiality and accuracy of information contained in the European Professional Card and in the IMI file, the conditions and the procedures for making available a European Professional Card, the conditions of access to the IMI file, the technical means and the procedures for the verification of the authenticity and validity of a European Professional Card and the implementation of the alert mechanism, due to the technical nature of those implementing acts.

(27) Following the positive experience with the mutual evaluation under Directive 2006/123/EC, a similar evaluation system should be included in Directive 2005/36/EC. Member States should notify which professions they regulate, for which reasons, and discuss amongst themselves their findings. Such system would contribute to more transparency in the professional services market.

(28) Since the objectives of the action to be taken, namely the rationalisation, simplification and improvement of the rules for the recognition of professional qualifications, cannot be sufficiently achieved by the Member States as it would inevitably result in divergent requirements and procedural regimes increasing regulatory complexity and causing unwarranted obstacles to mobility of professionals and can therefore, by reason of coherence, transparency and compatibility be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(29) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(30) Directive 2005/36/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/36/EC

[25] OJ L 55, 28.2.2011, p. 13.

Directive 2005/36/EC is amended as follows:

(1) In Article 1, the following second paragraph is added:

"This Directive also establishes rules concerning partial access to a regulated profession and access to and recognition of remunerated traineeships pursued in another Member State.".

(2) In Article 2, paragraph 1 is replaced by the following:

"1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession or a remunerated traineeship in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis."

(3) Article 3 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Point (f) is replaced by the following:

"(f) 'professional experience': the actual and lawful full-time or equivalent part-time pursuit of the profession concerned in a Member State;"

(ii) The following points are added:

"(j) 'remunerated traineeship': the pursuit of supervised and remunerated activities, with a view to access to a regulated profession granted on the basis of an examination;

(k) 'European Professional Card': an electronic certificate issued to the professional proving the recognition of his qualifications for establishment in a host Member State or that he has met all the necessary conditions to provide services in a host Member State on a temporary and occasional basis;

(l) 'lifelong learning': all general education, vocational education and training, non-formal education and informal learning undertaken throughout life, resulting in an improvement in knowledge, skills and competences.".

(b) In paragraph 2, the third subparagraph is replaced by the following:

"On each occasion that a Member State grants recognition to an association or organisation referred to in the first subparagraph, it shall inform the Commission. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the update of Annex I where that recognition is in compliance with this Directive.

Where the Commission considers that the recognition referred to in the third subparagraph is not in compliance with this Directive, it shall adopt an implementing decision on that non-compliance, within six months of receiving all necessary information.".

(4) In Article 4, paragraph 1 is replaced by the following:

"1. The recognition of professional qualifications by the host Member State shall allow the beneficiary to gain access in that Member State to the same profession or, in the cases referred to in Article 4f, to part of the same profession, as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.".

(5) The following Articles 4a to 4f are inserted:

"Article 4a

European Professional Card

1. Member States shall provide a holder of a professional qualification with a European Professional Card upon his request and on condition that the Commission has adopted the relevant implementing acts provided for in paragraph 6.

2. Member States shall ensure that the holder of a European Professional Card benefits from all the rights conferred by Articles 4b to 4e, upon validation of the Card by the competent authority of the relevant Member State as provided for in paragraphs 3 and 4 of this Article.

3. Where the holder of a qualification intends to provide services under Title II other than those covered by Article 7(4), the European Professional Card shall be created and validated by the competent authority of the home Member State in accordance with Articles 4b and 4c.

4. Where the holder of a qualification intends to establish himself in another Member State under Chapters I to IIIa of Title III or to provide services under Article 7(4), the European Professional Card shall be created by the competent authority of the home Member State and validated by the competent authority of the host Member State in accordance with Articles 4b and 4d.

5. Member States shall designate competent authorities for issuing European Professional Cards. Those authorities shall ensure an impartial, objective and timely processing of applications for European Professional Cards. The Assistance Centers referred to in Article 57b may also act in the capacity of a competent authority to issue a European Professional Card. Member States shall ensure that competent authorities inform citizens, including prospective applicants, on the advantages of a European Professional Card where it is available.

6. The Commission shall adopt implementing acts specifying European Professional Cards for specific professions, establishing the format of the European Professional Card, the translations necessary to support any application for issuing a European Professional Card and details for the assessment of applications, taking into account the particularities of each profession concerned. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.

7. Any fees which applicants may incur in relation to administrative procedures to issue a European Professional Card shall be reasonable, proportionate and

commensurate with the costs incurred by the home and host Member States and shall not act as a disincentive to apply for a European Professional Card. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the setting of criteria for the calculation and distribution of fees.

8. The recognition of qualifications through a European Professional Card shall serve as a procedural alternative to the recognition of professional qualifications under the procedures provided in Title II and III of this Directive.

The availability of a European Professional Card for a specific profession shall not preclude a holder of a professional qualification for that profession from seeking recognition of his qualifications under the procedures, conditions, requirements and deadlines provided for in this Directive other than those for the European Professional Card.

Article 4b

Application for a European Professional Card and creation of an IMI file

1. The Member States shall provide that a holder of a professional qualification may apply for a European Professional Card by any means, including through an on-line tool, with the competent authority of the home Member State.

2. Applications shall be supported by the documentation required by Article 7(2) and Annex VII as appropriate. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the establishment of the details of the documentation.

3. The competent authority of the home Member State shall acknowledge receipt of the application and inform the applicant of any missing document without delay from submission of the application. It shall create a file of the application containing all supporting documents within the Internal Market Information System (IMI) established by Regulation (EU) No […] of the European Parliament and of the Council(*). In case of subsequent applications by the same applicant, the competent authorities of the home or the host Member State may not request the re-submission of documents which are already contained in the IMI file and which are still valid.

4. The Commission may adopt implementing acts specifying the technical specifications, the measures necessary to ensure integrity, confidentiality and accuracy of information contained in the European Professional Card and in the IMI file, the conditions and the procedures for making available a European Professional Card to its holder, including the possibility of downloading it or submitting updates for the file. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.

Article 4c

European Professional Card for the temporary provision of services other than those covered by Article 7(4)

1. The competent authority of the home Member State shall verify the application, create and validate a European Professional Card within two weeks from

the date it receives a complete application. It shall inform the applicant and the Member State in which the applicant envisages to provide services, of the validation of the European Professional Card. The transmission of the validation information to the host Member States concerned shall constitute the declaration provided for in Article 7. The host Member State may not require a further declaration under Article 7 for the following two years.

2. The decision of the home Member State, or the absence of a decision within the period of two weeks referred to in paragraph 1, shall be subject to appeal under national law.

3. If a holder of a European Professional Card wishes to provide services in Member States other than those initially informed pursuant to paragraph 1 or wishes to continue providing services beyond the period of two years referred to in paragraph 1, he may continue to use the European Professional Card referred to in paragraph 1. In those cases the holder of the European Professional Card shall make the declaration provided in Article 7.

4. The European Professional Card shall be valid for as long as its holder maintains the right to practice in the home Member State on the basis of the documents and information contained in the IMI file.

Article 4d

European Professional Card for establishment and for the temporary provision of services under Article 7 (4)

1. Upon receipt of a complete application for a European Professional Card, the competent authority of the home Member State shall, within two weeks, verify and confirm the authenticity and validity of the submitted supporting documents, create the European Professional Card, transmit it for validation to the competent authority of the host Member State and inform that authority on the corresponding IMI file. The applicant shall be informed by the home Member State of the state of the procedure.

2. In the cases referred to in Article 16, 21 and 49a, a host Member State shall decide on validation of a European Professional Card under paragraph 1 within one month as from the date of receipt of the European Professional Card transmitted by the home Member State. In case of justified doubts, the host Member State may request additional information from the home Member State. That request shall not suspend the period of one month.

3. In the cases referred to in Articles 7(4) and 14, a host Member State shall decide on whether to recognise the holder's qualifications or to subject him to compensation measures within two months from the date of receipt for validation of the European Professional Card transmitted by the home Member State. In case of justified doubts, the host Member State may request additional information from the home Member State. That request shall not suspend the period of two months.

4. In case the host Member State subjects the applicant to an aptitude test under Article 7(4), the applicant shall be able to provide the service within one month of the decision being taken in accordance with paragraph 3.

5. Where the host Member State fails to take a decision within the time limits set out in the paragraphs 2 and 3 or to request additional information within one month from the date of receipt of the European Professional Card by the home Member State, the European Professional Card shall be deemed to be validated by the host Member State and to constitute recognition of the professional qualification to the regulated profession concerned in the host Member State.

6. The actions taken by the home Member State in accordance with paragraph 1 shall replace any application for recognition of professional qualifications under the national law of the host Member State.

7. The decisions of the home and of the host Member State under paragraphs 1 to 5 or the absence of decision by the home Member State shall be subject to appeal under the national law of the Member State concerned.

Article 4e

Processing and access to data regarding the European Professional Card

1. The competent authorities of the home and the host Member States shall update in a timely manner the corresponding IMI file with information regarding disciplinary action or criminal sanctions taken or any other serious specific circumstances which are likely to have consequences for the pursuit of activities of the holder of the European Professional Card under this Directive. Such updates include the deletion of information which is no longer required. The holder of the European Professional Card and the competent authorities involved in the corresponding IMI file shall be informed of any updates by the competent authorities concerned.

2. Access to the information in the IMI file shall be limited to the competent authorities of the home and the host Member State and the holder of the European Professional Card in accordance with Directive 95/46/EC of the European Parliament and of the Council(**)

3. Information on individual applicants shall only be processed by the relevant competent authorities of the home and the host Member State for the purposes of the European Professional Card in accordance with the provisions for the protection of public safety and health and Directive 95/46/EC.

4. The information included in the European Professional Card shall be limited to the information that is necessary to ascertain its holder's right to exercise the profession for which it has been issued, in particular name, surname, date and place of birth, profession, applicable regime, competent authorities involved, card number, security features and reference to a valid proof of identity.

5. Member States shall ensure that the holder of a European Professional Card has the right at any time to request the rectification, deletion and blocking of his file within the IMI system upon request and that he is informed of this right at the time of

issuing the European Professional Card, and reminded of it every two years after the issuance of his European Professional Card.

6. In relation to the processing of personal data in the European Professional Card and all files in the IMI, the relevant competent authorities of the Member States shall be regarded as controllers within the meaning of Directive 95/46/EC. In relation to its responsibilities under paragraphs 1 to 4 and the processing of personal data involved therein, the Commission shall be regarded as a controller within the meaning of Regulation (EC) No 45/2001 of the European Parliament and of the Council(***).

7. Member States shall provide that employers, customers, patients and other interested parties may verify the authenticity and validity of a European Professional Card presented to them by the card holder without prejudice to paragraphs 2 and 3.

The Commission shall adopt implementing acts specifying the conditions of access to the IMI file, the technical means and the procedures for the verification referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.

Article 4f

Partial access

1. The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:

(a) differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that in reality the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;

(b) the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State.

For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the home Member State.

2. Partial access may be rejected if such rejection is justified by an overriding reason of general interest, such as public health, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary.

3. Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III in case of establishment in the host Member State.

4. Applications for provision of temporary services in the host Member State concerning professional activities having public health and safety implications shall be examined in accordance with Title II.

5. By derogation from the sixth subparagraph of Article 7(4) and Article 52(1), the professional activity shall be exercised under the professional title of the home Member State once partial access has been granted.

(*) OJ [IMI Regulation]

(**) OJ L 281, 23.11.1995, p. 31

(***) OJ L 8, 12.1.2001, p. 1".

(6) Article 5 is amended as follows:

(a) In paragraph 1, point (b) is replaced by the following:

"(b) where the service provider moves, if he has pursued that profession in one or several Member States for at least two years during the last 10 years preceding the provision of services when the profession is not regulated in the Member State of establishment.

For the purposes of point (b) of the first subparagraph, the condition requiring two years' pursuit shall not apply in any of the following cases:

(a) the profession or the education and training leading to the profession is regulated;

(b) the service provider is accompanying the service recipient, provided that the service recipient's habitual residence is in the service provider's Member State of establishment and the profession does not appear on the list referred to in Article 7(4).

(b) The following paragraph 4 is added:

"4. In the case of notaries, the authentic instruments and other activities of authentication which require the seal of the host Member State shall be excluded from the provision of services.".

(7) Article 7 is amended as follows:

(a) Paragraph 2 is amended as follows:

(i) Point (e) is replaced by the following:

"(e) for professions in the security sector and in the health sector, where the Member State so requires for its own nationals, evidence of neither temporary and final suspensions from exercising the profession nor criminal convictions".

(ii) The following point (f) is added:

"(f) in the case of evidence of formal qualifications referred to in Article 21 (1) and in the case of certificates of acquired rights referred to in Articles 23, 26, 27, 30, 33,

33a, 37, 39, and 43, evidence attesting knowledge of the language of the host Member State".

(b) The following paragraph 2a is inserted:

"2a. A declaration supplied by a service provider shall be valid throughout the entire territory of the Member State concerned.".

(c) Paragraph 4 is replaced by the following:

"4. For the first provision of services, in the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition under Chapter II or III of Title III , the competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services. Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and where this does not go beyond what is necessary for that purpose.

Member States shall notify to the Commission the list of professions for which a prior check of qualifications is necessary in order to avoid serious damage to the health or safety of the service recipient under its national laws and regulations. Member States shall provide the Commission with a specific justification for the inclusion of each of those professions in the list.

Within a maximum of one month of receipt of the declaration and accompanying documents, the competent authority shall inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Where there is a difficulty which would result in delay, the competent authority shall notify the service provider within the first month of the reason for the delay. The difficulty shall be solved within one month following that notification and the decision finalised within the second month following resolution of the difficulty.

Where there is a substantial difference between the professional qualifications of the service provider and the training required in the host Member State, to the extent that that difference is such as to be harmful to public health or safety, and that it cannot be compensated by professional experience or lifelong learning of the service provider, the host Member State shall give the service provider the opportunity to show, in particular by means of an aptitude test, that he has acquired the lacking knowledge or competence. In any case, it must be possible to provide the service within one month of a decision being taken in accordance with the third subparagraph.

In the absence of a reaction of the competent authority within the deadlines set in the third and fourth subparagraphs, the service may be provided.

In cases where qualifications have been verified under the first to fifth subparagraphs, the service shall be provided under the professional title of the host Member State.".

(8) In Article 8, paragraph 1 is replaced by the following:

"1. The competent authorities of the host Member State may ask the competent authorities of the Member State of establishment, in case of doubts, to provide any information relevant to the legality of the service provider's establishment and his good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature. In case of control of qualifications, the competent authorities of the host Member State may ask the competent authorities of the Member State of establishment information about the service provider training courses to the extent necessary to assess substantial differences likely to be harmful to public health or safety. The competent authorities of the Member State of establishment shall provide that information in accordance with Article 56.".

(9) Article 11 is amended as follows:

(a) The introductory sentence of the first subparagraph is replaced by the following:

"For the purposes of Article 13 and Article 14(6), the professional qualifications shall be grouped under the following levels:".

(b) In point (c), point (ii) is replaced by the following:

"(ii) regulated education and training or, in the case of regulated professions, vocational training with a special structure, with competences going beyond what is provided for in level b, equivalent to the level of training provided for under point (i), if such training provides a comparable professional standard and prepares the trainee for a comparable level of responsibilities and functions provided the diploma is accompanied by a certificate from the home Member State;".

(c) Points (d) and (e) are replaced by the following:

"(d) a diploma certifying successful completion of training at post-secondary level of at least three and not more than four years' duration, or of an equivalent duration on a part-time basis, or if applicable in the home Member State, of an equivalent number of European Credit Transfer and Accumulation System (ECTS) credits, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course;

(e) a diploma certifying that the holder has successfully completed a post-secondary course of more than four years' duration, or of an equivalent duration on a part-time basis, or if applicable in the home Member State, of an equivalent number of ECTS credits, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course.".

(d) The second paragraph is deleted.

(10) In Article 12, the first paragraph is replaced by the following:

"Any evidence of formal qualifications or set of evidence of formal qualifications issued by a competent authority in a Member State, certifying successful completion of training in the Union, on a full or part-time basis, within or outside formal programs, which is recognised by that Member State as being of an equivalent level and which confers on the holder the same rights of access to or pursuit of a profession or prepares for the pursuit of that profession, shall be treated as evidence of formal qualifications of the type covered by Article 11, including the level in question."

(11) Article 13 is replaced by the following:

"Article 13

Conditions for recognition

1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing an attestation of competence or evidence of formal qualifications referred to in Article 11, required by another Member State, in order to gain access to and pursue that profession on its territory.

Attestations of competence or evidence of formal qualifications shall be issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State.

2. Access to and pursuit of the profession referred to in paragraph 1 shall also be granted to applicants possessing an attestation of competence or evidence of formal qualifications referred to in Article 11 issued by another Member State which does not regulate that profession.

Attestations of competence and evidence of formal qualifications shall satisfy the following conditions:

(a) they are issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;

(b) they attest that the holder has been prepared for the pursuit of the profession in question.

3. In case of an attestation of competence or evidence of formal qualifications referred to in paragraphs 1 and 2 or a certificate certifying regulated education and training or a vocational training with special structure equivalent to the level provided for in Article 11(c)(i), the host Member State shall accept the level attested or certified by the home Member State.

4. By derogation to paragraphs 1 and 2 of this Article, the competent authority of the host Member State may refuse access to and pursuit of the profession to holders of an attestation of competence where the national qualification required to exercise the profession on its territory is classified under points (d) or (e) of Article 11.".

(12) Article 14 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Article 13 shall not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if the training he has received covers substantially different matters with regard to professional activities than those covered by the training in the host Member State."

(b) In paragraph 2, the third subparagraph is replaced by the following:

"Where the Commission considers that the derogation referred to in the second subparagraph is inappropriate or that it is not in accordance with Union law, it shall adopt an implementing decision, within six months of receiving all necessary information, to ask the relevant Member State to refrain from taking the envisaged measure. In the absence of a response from the Commission within that deadline, the derogation may be applied.".

(c) In paragraph 3, the following subparagraph is inserted after the first subparagraph:

"For the profession of notary, the host Member State may, when it determines the compensation measure, take into account the specific activities of this profession on its territory, in particular as regards the law to be applied.".

(d) Paragraphs 4 and 5 are replaced by the following:

"4. For the purposes of paragraphs 1 and 5, 'substantially different matters' shall mean matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the migrant shows important differences in terms of content from the training required by the host Member State.

5. Paragraph 1 shall be applied with due regard to the principle of proportionality. In particular, if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first ascertain whether the knowledge, skills and competences acquired by the applicant in the course of his professional experience and through lifelong learning in any Member State or in a third country is of a nature to cover, in full or in part, the substantially different matters referred to in paragraph 4.".

(e) The following paragraphs 6 and 7 are added:

"6. The decision imposing an adaptation period or an aptitude test shall be duly motivated. In particular, it shall include the following motivation:

(a) indicate the level of the qualification required in the host Member State and the level of the qualification held by the applicant in accordance with the classification set out in Article 11;

(b) indicate the subject or subjects for which substantial differences have been identified;

(c) explain the substantial differences in terms of content;

(d) explain why due to these substantial differences, the applicant cannot perform his profession in a satisfactory manner in the host Member State territory;

(e) explain why these substantial differences cannot be compensated by the applicants knowledge, skills and competences gained in the course of his professional experience and through lifelong learning.

7. The aptitude test referred to in paragraph 1 shall be organized at least twice a year and applicants shall be authorized to resit a test at least once if they failed a first test.".

(13) Article 15 is deleted.

(14) Article 20 is replaced by the following:

"Article 20

Adaptation of lists of activities in Annex IV

The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the adaptations of the lists of activities set out in Annex IV which are the subject of recognition of professional experience pursuant to Article 16 with a view to updating or clarifying the nomenclature, provided that this does not involve any narrowing of the scope of the activities related to the individual categories.".

(15) Paragraphs 4, 6 and 7 of Article 21 are deleted.

(16) The following Article 21a is inserted:

"Article 21a

Notification procedure

1. Each Member State shall notify the Commission of the legislative, regulatory and administrative provisions which it adopts with regard to the issuing of evidence of formal qualifications in the area covered by this Chapter.

In the case of evidence of formal qualifications referred to in Section 8, notification in accordance with the first subparagraph shall also be addressed to the other Member States.

2. The notification referred to in paragraph 1 shall be accompanied by a report demonstrating compliance of the notified evidence of formal qualifications with the relevant requirements of this Directive. The report shall be issued by an appropriate authority or body which has been designated by the Member State and which has the

capability to assess the compliance of evidence of formal qualifications with this Directive.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a in order to adapt points 5.1.1 to 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 of Annex V, by listing and updating the titles adopted by the Member States for evidence of formal qualifications and, where appropriate, the body which issues the evidence of formal qualifications, the certificate which accompanies it and the corresponding professional title.

4. Where the Commission considers that the notified acts referred to in paragraph 1 are not in compliance with this Directive, it shall adopt an implementing decision on that non-compliance, within six months of receiving all necessary information.".

(17) In Article 22, the following second paragraph is added:

"For the purposes of point (b) of the first paragraph, as from [insert date - the day after the date set out in first subparagraph of paragraph 1 of Article 3] and every five years thereafter, the competent authorities in Member States shall submit publicly available reports to the Commission and to the other Member States on their continuing education and training procedures related to doctors of medicine, medical specialists, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives and pharmacists.".

(18) Article 24 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Basic medical training shall comprise a total of at least five years of study, which may also be expressed with the equivalent ECTS credits, and shall consist of at least 5500 hours of theoretical and practical training provided by, or under the supervision of, a university.

For persons who began their studies before 1 January 1972, the course of training referred to in the first subparagraph may comprise six months of full-time practical training at university level under the supervision of the competent authorities.".

(b) The following paragraph 4 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of sciences referred to in point (a) of paragraph 3 in line with scientific and technological progress and the necessary competences that such knowledge should entail;

(b) the degree of sufficiency of understanding of the items referred to in point (b) of paragraph 3 and the necessary competences for such understanding in line with scientific progress and developments in education in Member States

(c) the adequacy of knowledge of clinical disciplines and practices, as referred to in point (c) of paragraph 3, and the necessary competences such knowledge should lead to in the light of scientific and technological progress

(d) the suitability of clinical experience referred to in point (d) of paragraph 3 and the necessary competences that such experience should entail in the light of scientific and technological progress as well as developments in education in Member States.".

(19) Article 25 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Admission to specialist medical training shall be contingent upon completion and validation of a basic medical training programme as referred to in Article 24(2) in the course of which the trainee has acquired the relevant knowledge of basic medicine.".

(b) The following paragraph 3a is inserted:

"3a. Member States may lay down in their national legislations partial exemptions from parts of the specialist medical training, if that part of the training has been followed already during the completion of another specialist training programme which is listed in point 5.1.3 of Annex V and provided that the former specialist qualification has already been obtained by the professional in that Member State. Member States shall ensure that the granted exemption is not more than one-third of the minimum duration of specialist medical training courses as referred to in point 5.1.3 of Annex V.

Each Member State shall notify the Commission and the other Member States of their national legislation concerned together with detailed justification for such partial exemptions.".

(c) Paragraph 5 is replaced by the following:

"5. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the adaptations of the minimum periods of training referred to in point 5.1.3 of Annex V to scientific and technical progress."

(20) In Article 26, the second paragraph is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the inclusion in point 5.1.3 of Annex V of new medical specialties common to at least one third of the Member States with a view to updating this Directive in the light of changes in national legislation.".

(21) In Article 28, the first paragraph is replaced by the following:

"1. Admission to specific training in general medical practice shall be contingent upon completion and validation of a basic medical training programme as referred to in Article 24(2).".

(22) Article 31 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Admission to training for nurses responsible for general care shall be contingent upon completion of general education of 12 years, as attested by a diploma, certificate or other evidence issued by the competent authorities or bodies in a Member State or by a certificate attesting success in an examination, of an equivalent level, for admission to a school of nursing.".

(b) In paragraph 2, the second subparagraph is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning amendments to the list set out in point 5.2.1 of Annex V with a view to adapting it to the educational, scientific and technical progress.".

(c) In paragraph 3, the first subparagraph is replaced by the following:

"The training of nurses responsible for general care shall comprise at least three years of study consisting of at least 4 600 hours of theoretical and clinical training, the duration of the theoretical training representing at least one third and the duration of the clinical training at least one half of the minimum duration of the training. Member States may grant partial exemptions to persons who have received part of their training on courses which are of at least an equivalent level.".

(d) The following paragraph 7 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of the sciences of general nursing, as referred to in point (a) of paragraph 6, in line with scientific and technological progress as well as the necessary competences such knowledge should entail in line with scientific and technological progress and recent developments in education;

(b) the degree of sufficiency of understanding of the items referred to in point (a) of paragraph 6 and the necessary competences following from such understanding in line with scientific and technological progress and recent developments in education;

(c) the degree of sufficiency of knowledge about the items referred to in point (b) of paragraph 6 and the necessary competences following from such knowledge in line with scientific progress and recent developments in education;

(d) the adequacy of clinical experience referred to in point (c) of paragraph 6 and the necessary competences following from such adequate clinical experience in line with scientific and technological progress and recent developments in education.".

(23) Article 33 is amended as follows:

(a) The following paragraph 1a is inserted:

"1a. Member States shall recognize automatically those general care nurse qualifications where the applicant started the training before [insert date – entry into force of the amended Directive], and the admission requirement was ten years or

equivalent level of general education, but the qualification otherwise complies with all the training requirements stipulated in Article 31.".

(b) Paragraph 3 is replaced by the following:

"3. Member States shall recognise evidence of formal qualifications in nursing awarded in Poland, to nurses who completed training before 1 May 2004, which did not comply with the minimum training requirements laid down in Article 31, attested by the diploma 'bachelor' which has been obtained on the basis of a special upgrading programme contained in Article 11 of the Act of 20 April 2004 on the amendment of the Act on professions of nurse and midwife and on some other legal acts (Official Journal of the Republic of Poland of 30 April 2004 No 92, pos. 885), and the Regulation of the Minister of Health of 12 April 2010 amending the Regulation of the Minister of Health of 11 May 2004 on the detailed conditions of delivering studies for nurses and midwives, who hold a certificate of secondary school (final examination — matura) and are graduates of medical lyceum and medical vocational schools teaching in a profession of a nurse and a midwife (Official Journal of the Republic of Poland of 21 April 2010, No 65, pos. 420), with the aim of verifying that the person concerned has a level of knowledge and competence comparable to that of nurses holding the qualifications which, in the case of Poland, are defined in point 5.2.2. of Annex V.".

(24) Article 34 is amended as follows:

(a) In paragraph 2, the first and the second subparagraphs are replaced by the following:

"Basic dental training shall comprise a total of at least five years of full-time theoretical and practical study, which may also be expressed with the equivalent ECTS credits, comprising at least the programme described in Annex V, point 5.3.1 and given in a university, in a higher institute providing training recognised as being of an equivalent level or under the supervision of a university.

The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the adaptations of the list set out in point 5.3.1. of Annex V with a view to adapting it to scientific and technical progress.".

(b) The following paragraph 4 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of science of dentistry and the degree of understanding of scientific methods, as referred to in point (a) of paragraph 3, and the necessary competences following from such degree of knowledge and understanding in line with scientific and technological progress and recent developments in education;

(b) the adequacy of knowledge of the items referred to in point (b) of paragraph 3, and the necessary competences following from such degree of knowledge in line with scientific and technological progress and recent developments in education;

(c) the adequacy of knowledge of the items referred to in point (c) of paragraph 3, and the necessary competences following from such degree in line with scientific and technological progress;

(d) the adequacy of knowledge of clinical disciplines and methods, as referred to in point (d) of paragraph 3, and the necessary competences following thereof in line with scientific and technologic progress;

(e) the suitability of clinical experience as referred to in point (e) of paragraph 3 in line with recent developments in education.".

(25) Article 35 is amended as follows:

(a) In paragraph 2, the second subparagraph is replaced by the following:

"Full-time specialist dental courses shall be of a minimum of three years' duration, which may also be expressed with the equivalent ECTS credits, and shall be supervised by the competent authorities or bodies. It shall involve the personal participation of the dental practitioner training to be a specialist in the activity and in the responsibilities of the establishment concerned.".

(b) In paragraph 2, the third subparagraph is deleted.

(c) The following paragraph 4 is added:

"4. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the adaptations of the minimum period of training referred to in paragraph 2 with a view to adapting it to scientific and technical progress.

The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the inclusion in point 5.3.3. of Annex V of new dental specialties common to at least one third of the Member States, with a view to updating this Directive in the light of changes in national legislation.".

(26) Article 38 is amended as follows:

(a) In paragraph 1, the first and the second subparagraphs are replaced by the following:

"The training of veterinary surgeons shall comprise a total of at least five years of full-time theoretical and practical study, which may also be expressed with the equivalent ECTS credits, at a university or at a higher institute providing training recognized as being of an equivalent level, or under the supervision of a university, covering at least the study programme referred to in Annex V, point 5.4.1.

The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the adaptations of the list in point 5.4.1. of Annex V with a view to adapting it to scientific and technical progress.".

(b) The following paragraph 4 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of the sciences, as referred to in point (a) of paragraph 3, and the necessary competences following from such degree of knowledge in line with scientific and technological progress;

(b) the adequacy of knowledge of the structure and functions of healthy animals, as set out in point (b) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(c) the adequacy of knowledge of behaviour, protection and diseases of animals, as set out in points (c) and (d) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(d) the adequacy of knowledge of preventive medicine, as referred to in point (e) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(e) the adequacy of knowledge of the items set out in point (f) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(f) the adequacy of knowledge of clinical and other practical experience as referred to in point (h) of paragraph 3 and the necessary competences such degree of knowledge should entail in line with recent educational developments.".

(27) Article 40 is amended as follows:

(a) In paragraph 1, the second subparagraph is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the amendment of the list in point 5.5.1. of Annex V with a view to adapting it to the educational, scientific and technical progress.".

(b) Paragraph 2 is replaced by the following:

"2. Access to training as a midwife shall be contingent upon one of the following conditions:

(a) completion of at least the 12 years of general school education or a certificate attesting success in an examination, of an equivalent level, for admission to a midwifery school for route I;

(b) possession of evidence of formal qualifications as a nurse responsible for general care referred to in point 5.2.2. of Annex V for route II.".

(c) The following paragraph 4 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of the sciences on which the activities of midwives are based, as set out in point (a) of paragraph 3 and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(b) the degree of knowledge of the items set out in point (c) of paragraph 3 and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(c) the adequacy of clinical experience, as referred to in point (d) of paragraph 3, and the necessary competences such degree of knowledge entails in line with recent educational reforms as well as scientific and technological progress;

(d) the adequacy of understanding of the training of health personnel and experience of working with such, as referred to in point (e) of paragraph 3 and the necessary competences such degree of understanding entails in line with recent educational reforms as well as scientific and technological progress.".

(28) In Article 41, paragraph 1 is replaced by the following:

"1. The evidence of formal qualifications as a midwife referred to in Annex V, point 5.5.2 shall be subject to automatic recognition pursuant to Article 21 in so far as they satisfy one of the following criteria:

(a) full-time training of at least three years as a midwife;

(b) full-time training as a midwife of at least two years consisting of at least 3 600 hours, contingent upon possession of evidence of formal qualifications as a nurse responsible for general care referred to in Annex V, point 5.2.2;

(c) full-time training as a midwife of at least 18 months consisting of at least 3 000 hours, contingent upon possession of evidence of formal qualifications as a nurse responsible for general care referred to in Annex V, point 5.2.2 and followed by one year's professional practice for which a certificate has been issued in accordance with paragraph 2.".

(29) In Article 43, the following paragraph 1a is inserted:

"1a. As regards evidence of formal qualifications of midwives, Member States shall recognize automatically those qualifications where the applicant started the training before [insert date – entry into force of the amended Directive], and the admission requirements for such training was ten years or equivalent level of general education for route I, or completed a general care nurse training with 10 years or equivalent admission requirement before starting a midwifery training falling under route II.".

(30) Article 44 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. Evidence of formal qualifications as a pharmacist shall attest to training of at least five years' duration, which may also be expressed with the equivalent ECTS credits, including at least:

(a) four years of full-time theoretical and practical training at a university or at a higher institute of a level recognised as equivalent, or under the supervision of a university;

(b) at the end of the theoretical and practical training, a six-month traineeship in a pharmacy which is open to the public or in a hospital under the supervision of that hospital's pharmaceutical department.

The training cycle referred to in this paragraph shall include at least the programme described in point 5.6.1 of Annex V. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the amendment of the list in point 5.6.1 of Annex V with a view to adapting it to scientific and technical progress.

The amendments referred to in the second subparagraph must not entail, for any Member State, any amendment of existing legislative principles relating to the structure of professions as regards training and the conditions of access by natural persons.".

(b) The following paragraph 4 is added:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of medicines and the substances used in the manufacture of medicines, as set out in point (a) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(b) the adequacy of knowledge of the items set out in point (b) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(c) the adequacy of knowledge of the items set out in point (c) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress;

(d) the adequacy of knowledge to evaluate scientific data, as referred to in point (d) of paragraph 3, and the necessary competences such degree of knowledge entails in line with scientific and technological progress.".

(31) In paragraph 2 of Article 45, the following point (h) is added:

"(h) report the adverse reactions of pharmaceutical products to the competent authorities.".

(32) Article 46 is replaced by the following:

"Article 46

Training of architects

1. The duration of the training as an architect must be at least six years which may also be expressed with the equivalent ECTS credits. The training in a Member State shall comprise any of the following:

(a) at least four years of full-time study at a university or comparable teaching institution leading to successful completion of a university-level examination and at least two years of remunerated traineeship;

(b) at least five years of full-time study at a university or comparable teaching institution leading to successful completion of a university-level examination and at least one year of remunerated traineeship."

2. The study, which must be at university level, and of which architecture is the principal component, must maintain a balance between theoretical and practical aspects of architectural training and guarantee the acquisition of the following knowledge, skills and competences:

(a) ability to create architectural designs that satisfy both aesthetic and technical requirements;

(b) adequate knowledge of the history and theories of architecture and the related arts, technologies and human sciences;

(c) knowledge of the fine arts as an influence on the quality of architectural design;

(d) adequate knowledge of urban design, planning and the skills involved in the planning process;

(e) understanding of the relationship between people and buildings, and between buildings and their environment, and of the need to relate buildings and the spaces between them to human needs and scale;

(f) understanding of the profession of architecture and the role of the architect in society, in particular in preparing briefs that take account of social factors;

(g) understanding of the methods of investigation and preparation of the brief for a design project;

(h) understanding of the structural design, constructional and engineering problems associated with building design;

(i) adequate knowledge of physical problems and technologies and of the function of buildings so as to provide them with internal conditions of comfort and protection against the climate;

(j) the necessary design skills to meet building users' requirements within the constraints imposed by cost factors and building regulations;

(k) adequate knowledge of the industries, organisations, regulations and procedures involved in translating design concepts into buildings and integrating plans into overall planning.

3. The remunerated traineeship must be carried out in a Member State, under the supervision of a person providing adequate guarantees regarding their ability to provide practical training. It must be undertaken after the completion of the study referred to in paragraph 1. The completion of the remunerated traineeship must be attested to in a certificate accompanying the evidence of formal qualifications.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a to specify:

(a) the adequacy of knowledge of items as set out in point (i) of paragraph 2, and the necessary competences such degree of knowledge entails in line with technical progress and recent educational developments;

(b) the need for design skills as referred to in point (j) of paragraph 2, and the necessary competences such degree of skills entails in line with technical progress and recent educational developments.".

(33) Article 47 is replaced by the following:

"Article 47

Derogations from the conditions for the training of architects

By way of derogation from Article 46, the following shall also be recognised as satisfying Article 21: training as part of social betterment schemes or part-time university studies which satisfies the requirements referred to in 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 the first subparagraph of Article 46(1).".

(34) In Article 49, the following paragraph 1a is inserted:

"1a. Paragraph 1 shall also apply to evidence of formal qualifications as an architect listed in Annex V, where the training started before [*insert the date – two years after the date set out in first subparagraph of paragraph 1 of Article 3*].".

(35) In Title III, the following Chapter IIIA is inserted:

"Chapter IIIA

Automatic recognition on the basis of common training principles

Article 49a

Common training framework

1. For the purpose of this Article, 'common training framework' shall mean a common set of knowledge, skills and competences necessary for the pursuit of a specific profession. For the purpose of access to and pursuit of such profession, a Member State shall give evidence of qualifications acquired on the basis of such

framework the same effect in its territory as the evidence of formal qualifications which it itself issues, on condition that such framework fulfils the criteria set under paragraph 2. Such criteria shall respect the specifications referred to in paragraph 3.

2. A common training framework shall comply with the following conditions:

(a) the common training framework enables more professionals to move across Member States in comparison to the general system for recognition of evidence of training provided for in Chapter I of Title III;

(b) the profession concerned is already regulated in at least one third of all Member States;

(c) the common set of knowledge, skills and competences combines the knowledge, skills and competences defined in the systems of education and training applicable in at least one third of all Member States;

(d) the knowledge, skills and competences for such common training framework shall refer to levels of the European Qualifications Framework, as defined in Annex II of the Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning(*);

(e) the profession concerned is neither covered by another common training framework nor regulated already under Chapter III of Title III;

(f) the common training framework has been prepared following a transparent due process, including with stakeholders from Member States where the profession is not regulated;

(g) the common training framework permits nationals from any Member State to be eligible for acquiring the qualification under such framework without being required to be a member of any professional organisation or to be registered with such organisation.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a specifying the common set of knowledge, skills and competences as well as the qualifications on the common training framework.

4. Member States shall notify to the Commission the professional title to be acquired in accordance with the common training framework referred to in paragraph 3.

5. A Member State may request a derogation from the application of common training framework referred to in paragraph 3 on its territory if it were otherwise compelled to introduce a new regulated profession in its territory, if it were required to amend existing fundamental domestic principles relating to the structure of professions as regards training and the conditions of access to such professions or if the Member State does not wish to relate its national qualifications system to the qualifications set out in that common training framework. The Commission may adopt an implementing decision, in order to grant such derogation to the Member States concerned.Article 49b

Common training tests

1. For the purpose of this Article, a common training test shall mean an aptitude test assessing the ability of a professional to pursue a profession in all Member States which regulate it. Successful completion of a common training test shall allow for access to and pursuit of the professional activities concerned in a Member State under the same conditions as the holders of professional qualifications acquired in that Member State.

2. The common training test shall comply with the following conditions::

(a) the common training test enables more professionals to move across Member States in comparison to the general system for recognition of evidence of training provided for in Chapter I of Title III;

(b) the profession concerned is regulated in at least one third of all Member States;

(c) the common training test has been prepared following a transparent due process, including with stakeholders from Member States where the profession is not regulated;

(d) the common training test permits nationals from any Member State to participate in such a test and in the practical organisation of such tests in Member States without being required to be a member of any professional organisation or to be registered with such organisation.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the conditions for such common training test

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(*) OJ C 111, 6.5.2008, p.1.".

(36) In Article 50, the following paragraph 3a is inserted:

"3a. In the event of justified doubts, the host Member State may require from the competent authorities of a Member State confirmation of the fact that the applicant is not suspended or prohibited from the pursuit of the profession as a result of serious professional misconduct or conviction of criminal offences relating to the pursuit of any of his/her professional activities.".

(37) In Article 52, the following paragraph 3 is added:

"3. A Member State may not reserve the use of the professional title to the holders of professional qualifications if it has not notified the association or organisation to the Commission and to the other Member States in accordance with Article 3(2).".

(38) In Article 53, the following second paragraph is added:

"A Member State shall ensure that any controls of the knowledge of a language are carried out by a competent authority after the decisions referred to in Articles 4d, 7(4) and 51(3) have been taken and if there is a serious and concrete doubt about the

professional's sufficient language knowledge in respect of the professional activities this person intends to pursue.

In case of professions with patient safety implications, Member States may confer to the competent authorities the right to carry out language checking covering all professionals concerned if it is expressly requested by the national health care system, or in case of self-employed professionals not affiliated to the nationals health care system, by representative national patient organisations.

Any language control shall be limited to the knowledge of one of the official languages of the Member State according to the choice of the person concerned, it shall be proportionate to the activity to be pursued and free of charge for the professional. The person concerned shall be allowed to appeal such controls before national courts.".

(39) In Title IV the following Article 55a is inserted:

"Article 55a

Recognition of remunerated traineeship

With a view to grant access to a regulated profession, the home Member State shall recognise the remunerated traineeship pursued in another Member State and certified by a competent authority of that Member State.".

(40) The title of Title V is replaced by the following:

"Title V

ADMINISTRATIVE COOPERATION AND RESPONSIBILITY TOWARDS CITIZENS FOR IMPLEMENTATION".

(41) In Article 56, the first subparagraph of paragraph 2 is replaced by the following:

"The competent authorities of the host and home Member States shall exchange information regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under this Directive, respecting personal data protection legislation provided for in Directive 95/46/EC and Directive 2002/58/EC of the European Parliament and of the Council (*).

(*) OJ L 201, 31.07.2002, p. 37.".

(42) The following Article 56a is inserted:

"Article 56a

Alert mechanism

1. The competent authorities of a Member State shall inform the competent authorities of all other Member States and the Commission about the identity of a professional who has been prohibited by national authorities or courts from pursuing, even temporarily, on the territory of that Member State the following professional activities:

(a) doctor of medicine of general practice possessing evidence of a formal qualification referred to in point 5.1.4 of Annex V;

(b) specialist doctor of medicine possessing a title referred to in point 5.1.3 of Annex V;

(c) nurse responsible for general care possessing evidence of a formal qualification referred to in point 5.2.2 of Annex V;

(d) dental practitioner possessing a professional qualifications listed in, point 5.3.2 of Annex V;

(e) specialist dentists possessing evidence of a formal qualification referred to in point 5.3.3 of Annex V;

(f) veterinary surgeon possessing evidence of a formal qualifications referred to in point 5.4.2 of Annex V, unless they notified it already under Article 32 of Directive 2006/123/EC of the European Parliament and of the Council(*);

(g) midwife possessing evidence of a formal qualification referred to in point 5.5.2 Annex V;

(h) pharmacist possessing evidence of a formal qualification listed in point 5.6.2 of Annex V;

(i) holders of certificates mentioned in point 2 of Annex VII attesting that the holder completed a training which satisfies the minimum requirements listed in Articles 24, 25, 31, 34, 35, 38, 40, or 44 respectively, but which started earlier than the reference dates of the qualifications listed in points 5.1.3, 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 of Annex V.

(j) holders of certificates of acquired rights as referred to in Articles 23, 27, 29, 33, 37 and 43.

The information referred to in the first subparagraph shall be sent at the latest within three days from the date of adoption of the decision prohibiting the professional concerned from exercising a professional activity.

2. In the cases not covered by Directive 2006/123/EC, where a professional established in a Member State carries out a professional activity under a professional title other than those referred to in paragraph 1 and within the framework of this Directive, a Member State shall inform without delay other Member States concerned and the Commission upon gaining actual knowledge of any conduct, specific acts or circumstances which is related to such activity and which could cause serious damage to the health or safety of persons or to the environment in another Member State. That information shall not go beyond what is strictly necessary to

identify the professional concerned and shall include the reference to the decision of a competent authority prohibiting him or her from pursuing the professional activities. Other Member State may request further information under the conditions set out in Articles 8 and 56.

3. The processing of personal data of the purpose of the exchange of information according to paragraphs 1 and 2 shall be carried out in accordance with Directives 95/46/EC and 2002/58/EC. The processing of personal data by the Commission shall be carried out in accordance with Regulation (EC) No 45/2001.

4. Member States shall provide that professionals on which alerts are sent to other Member States are informed in writing of decisions on alerts at the same time as the alert as such, may appeal to national courts against the decision or apply for rectification of such decisions and shall have access to remedies in respect of any damage caused by false alerts to other Member States and in such cases the decision shall be qualified to indicate that it is subject to proceedings by the professional.

5. The Commission shall adopt implementing acts for the application of the alert mechanism. The implementing act shall include provisions on the competent authorities entitled to sending and/or receiving alerts, on complementing the alerts with additional information, on the withdrawal and closure of alerts, on rights of access to data, ways of correcting the information contained in the alerts, and measures to ensure the security of processing and retention periods. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.

(*) OJ L 376, 27.12.2006, p. 36.".

(43) Article 57 is replaced by the following:

"Article 57

Central online access to information

1. Member States shall ensure that the following information is available online and regularly updated through the points of single contact:

(a) a list of all regulated professions within the meaning of Article 3(1)(a) in the Member State including contact details of the competent authorities for each regulated profession and the assistance centre referred to in Article 57b;

(b) a list of the professions for which a European Professional Card is available, the functioning and the competent authorities for issuing the card;

(c) a list of all professions for which the Member State applies Article 7(4) in the national laws and regulation;

(d) a list of regulated education and training and training with a special structure, referred to in Article 11(c)(ii);

(e) all requirements, procedures and formalities referred to in this Directive for each profession regulated in the Member State, including all related fees to be paid by citizens and documents to be submitted by citizens;

(f) how to appeal decisions of competent authorities under national laws and regulations.

2. Member States shall ensure that the information referred to in paragraph 1 is provided in a clear and comprehensive way for users, that it is easily accessible at a distance and by electronic means and that it is kept up to date.

3. Member States shall ensure that the points of single contact and the competent authorities respond as quickly as possible to any request for information addressed to the point of single contact. To this end, they may also refer such request for information to the assistance centers mentioned in Article 57b and inform the citizen concerned.

4. Member States and the Commission shall take accompanying measures in order to ensure that points of single contact make the information provided for in paragraph 1 available in other official languages of the Union. This shall not affect the legislation of Member States on the use of languages in their territory.

5. Member States shall cooperate with each other and the Commission for the purpose of implementing paragraph 1, 2 and 4.".

(44) The following Article 57a is inserted:

"Article 57a

Procedures by electronic means

1. Member States shall ensure that all requirements, procedures and formalities relating to matters covered by this Directive may be easily completed, at a distance and by electronic means, through the relevant point of single contact.

2. Paragraph 1 shall not apply to the carrying out of an aptitude test or the adaptation period within the meaning of Article 14(1).

3. Where it is justified for Member States to ask for advanced electronic signatures, within the meaning of Directive 1999/93/EC of the European Parliament and of the Council(*) , for the completion of procedures referred to in paragraph 1, Member States shall accept electronic signatures in compliance with Commission Decision 2009/767/EC(**) and provide for technical measures to process advanced e-signature formats defined by Commission Decision 2011/130/EU(***).

4. All procedures shall be carried out in accordance with the provisions of Directive 2006/123/EC relating to the points of single contact. Any time limits for Member States to be complied with procedures or formalities set out in this Directive shall commence at the point when an application has been submitted by a citizen to a point of single contact.

(*) OJ L 13, 19.1.2000, p. 12.

(**) OJ L 274, 20.10.2009, p. 36.

(***) OJ L 53, 26.2.2011, p. 66.".

(45) The following Article 57b is inserted:

"Article 57b

Assistance centres

1. Each Member State shall designate, no later than [insert date – transposition deadline] an assistance centre whose remit shall be to provide citizens and centres of the other Member States with assistance concerning the recognition of professional qualifications provided for in this Directive, including information on the national legislation governing the professions and the pursuit of those professions, social legislation, and, where appropriate, the rules of ethics.

2. The assistance centres in host Member States shall assist citizens in exercising the rights conferred on them by this Directive, in cooperation, where appropriate, with the assistance centre in the home Member State and the competent authorities and the points of single contact in the host Member State.

3. Any competent authority in the host Member State shall be required to fully cooperate with an assistance centre in the host Member State and provide information about individual cases to such assistance centres in the host Member States upon their request.

4. At the Commission's request, the assistance centres shall inform the Commission concerning enquiries with which the Commission is dealing within two months after receiving such a request.".

(46) Article 58 is replaced by the following:

"Article 58

Committee procedure

1. The Commission shall be assisted by a Committee on the recognition of professional qualifications. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.".

(47) The following Article 58a is inserted:

"Article 58a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4) 49a(3) and 49b(3) shall be conferred on the Commission for an indeterminate period of time from [insert the date - date of entry into force of the amending Directive].

3. The delegation of power referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4), 49a(3) and 49b(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4), 49a(3) and 49b(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.".

(48) Article 59 is replaced by the following:

"Article 59

Transparency

1. Member States shall notify to the Commission a list of existing regulated professions according to their national law by [insert date – end of transposition period]. Any change to this list of regulated professions shall also be notified to the Commission without delay. The Commission shall set up and maintain a publicly available database for such information.

2. Member States shall examine whether under their legal system requirements restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, is compatible with the following principles:

(a) requirements must be neither directly nor indirectly discriminatory according to the nationality nor the residence;

(b) requirements must be justified by an overriding reason relating to a public interest;

(c) requirements must be suitable for securing the attainment of the objectives pursued and must not go beyond what is necessary to attain the objective.

3. Paragraph 1 shall also apply to professions regulated in a Member State by an association or organisation within the meaning of Article 3(2) and any requirements related to the need for membership.

4. By [insert date - end of transposition period], Member States shall provide information on the requirements they intend to maintain and the reasons for considering that their requirements comply with paragraph 2. Member States shall provide information on the requirements they subsequently introduced and the reasons for considering that those requirements comply with paragraph 2 within six months of the adoption of the measure.

5. By [insert date - end of transposition period], and every two years thereafter, Member States shall also provide a report about the requirements which have been removed or made less stringent.

6. The Commission shall forward the reports to the other Member States which shall submit their observations within six months. Within the same period, the Commission shall consult interested parties, including the professions concerned.

7. The Commission shall provide a summary report based on the information provided by Member States to the Group of Coordinators established under Commission Decision No 2007/172/EC*, which may make observations.

8. In light of the observations provided for in paragraphs 6 and 7, the Commission shall [insert date – one year after end of transposition period] submit its final findings to the Council and to the European Parliament, accompanied where appropriate by proposals for further initiatives

(*) OJ L 79, 20.3.2007, p. 38.".

(49) In Article 61, the second paragraph is replaced by the following:

"Where appropriate, the Commission shall adopt an implementing decision to permit the Member State in question to derogate from the relevant provision for a limited period of time.".

(50) Annexes II and III are deleted.

(51) In point 1 of Annex VII, the following point (g) is added:

"(g) where the Member State requires so for its own nationals, evidence of neither temporary suspension from exercising the profession nor criminal convictions.".

Article 2

Amendment to [IMI Regulation]

Point 2 of Annex I to *[IMI Regulation]* is replaced by the following:

"2. Directive 2005/36/EC of the European Parliament and of the Council(*): Articles 4a to 4e, Article 8, Article 21a, Article 50, Article 51, Article 56 and Article 56a.

(*) OJ L 255, 30.09.2005, p. 22.".

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*insert the date – two years after the entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19.12.2011

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

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LEGISLATIVE FINANCIAL STATEMENT

6. FRAMEWORK OF THE PROPOSAL/INITIATIVE

6.1. Title of the proposal/initiative

Directive No. xxx of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications.

6.2. Policy area(s) concerned in the ABM/ABB structure[26]

Internal market – Knowledge based economy

Internal Market — Services

6.3. Nature of the proposal/initiative

☐ The proposal/initiative relates to **a new action**

6.4. Objectives

6.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

In its Communication "Single Market Act, twelve levers to boost growth and strengthen confidence" (COM(2011) 206 final), the Commission proposed that modernising the legislation on recognitions of professional qualifications. In that context, the SMA clearly mentioned the creation of a European Professional Card ("EPC") as a tool (in terms of an electronic certificate) to facilitate mobility of professionals, whilst strengthening confidence between the competent authorities of the Member States and ultimately benefiting consumers and employers.

The creation of the EPC should increase the efficiency of the current recognition procedures and will help reduce costs. One of the main characteristics of the EPC will be the use of a common EU back-office functionality, namely the Internal Market Information System ("IMI") which will be further enhanced with new EPC functionality.

The EPC should become a tool voluntary for interested professionals but mandatory for competent authorities. Apart from the EPC, the IMI back-office function should also be used to put in place a European wide alert mechanism, for Member States should alert each other about professionals no longer allowed to practice due to a disciplinary or criminal sanction, and to support notification of new diplomas..

IMI is an on-line communication tool developed by the European Commission and offered as a free service to Member States since 2008. It is currently used for the exchange of information pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of

[26] ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

professional Qualifications and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

IMI allows national, regional and local authorities to communicate quickly and easily with their counterparts across borders, following uniform working methods agreed by all Member States. IMI helps its users (i) to find the right authority to contact, (ii) communicate with them using pre-translated sets of questions and answers and (iii) follow the progress of the information request through a tracking mechanism.

The proposal to use the IMI as a back-office for the issuance and the on-going monitoring of EPCs, and an alert mechanism is in line with expressed Commission policy. Thus, in its Communication on the Single Market Act the Commission indicated that preferential use should be made of this system as a partnership tool for implementing Single Market rules in future Commission proposals.

Under the expansion strategy for IMI as adopted by the Commission, a tool for notifications by Member States to the Commission and to other Member States will be developed in IMI. This should also be used for notifications of new diplomas under the Directive.

6.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No. 8: Facilitate free movement of qualified professionals inside the EU

A key activity within this objective is the development of a proposal for the revision of the Professional Qualifications Directive with the aim of significant simplification and modernisation of the whole process, including the introduction and use of European Professional Cards.

The overall objective of this measure is to increase the amount and accelerate decisions on the recognition of professional qualifications requests.

In order to achieve these objectives, we envisage the following activities:

1. increase transparency of the whole procedure through the setting up of a public interface to allow professionals (i) to see list of documents required for their application, (ii) to apply for, and obtain from, relevant competent authorities an EPC on line;

2. upgrade the involvement of the home Member State in the procedure so as to facilitate the treatment of applications by the host Member States through the mandatory use of the IMI as a back-office functionality by all competent authorities. In order to cope with its increased role in the procedure, IMI should be further developed to support the EPC;

3. facilitate the dissemination of alerts concerning professionals.

4. facilitate the notifications of evidence of formal qualifications (diplomas) by the means of IMI.

Specific objective No 12: Develop the full potential of the Internal Market Information System (IMI) to support improved implementation of single market legislation.

The use of IMI is mandatory under the Services Directive and will become so under the revised Professional Qualifications Directive. The current proposal for the use of the IMI System for the issuance and handling of the EPC, an alert mechanism and a notification scheme for new diplomas is in line with the Commission policy for the future expansion of IMI to other areas of Union law (as expressed in its Communication 'Better governance of the Single Market through greater administrative cooperation: A strategy for expanding and developing the Internal Market Information System (COM(2011) 75 final) ('the IMI Strategy Communication').)

ABM/ABB activity(ies) concerned

12/02 01: Mise en oeuvre et développement du marché intérieur

6.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal will provide:

1. A high level of legal certainty with respect to the processing of requests for recognition of professional qualifications of EU citizens by means of IMI;

2. A high level of transparency as regards the processing of requests for recognition of professional qualifications of EU citizens;

3. Facilitation and reduction of the administrative burden by national competent authorities;

4. Cost savings by re-using and re-engineering an existing IT tool in new areas instead of developing new single-purpose tools, either at EU or national level so as to benefit from economies of scale and of scope;

6. Filling of gaps in the cooperation between Member States given that the Services Directive already foresees an alert mechanism on many professionals save for health professionals where the risk for public health is very significant.

6.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The proposal will contribute to a more effective application of Union law in the professional qualifications area and will save IT development, maintenance and running costs.

Its direct impact could be measured using the following indicators:

- the number of professions that would rely on the EPC/IMI mechanism for the recognition of professional qualifications in the EU. In fact, the EPC is not to be introduced or imposed on all regulated professions in an automatic way;

- the number EPC requests taking place by means of IMI on a yearly basis;

- the average speed of the EPC procedure

- the number of competent authorities actively using the system for the exchange of information (i.e. not simply registered as users);

- the number of notifications made for new diplomas.

- user satisfaction as measured via surveys.

6.5. Grounds for the proposal/initiative

6.5.1. Requirement(s) to be met in the short or long term

The proposal will increase the efficiency of the professional qualification recognition procedures and the temporary mobility for professionals as only one procedure will apply across the board and will be based on a common pan-European IT platform. The EPC/IMI system will apply to professions that have requested to be covered by this novel process and will be expanded progressively to additional professions. In that respect initial costs will be more limited and future expansions will benefit from economies of scale.

In addition, the establishment of an alert mechanism for professionals barred from practicing needs to be established.

At the same time, in view of the pre-existence of the IMI system, the new processes will ensure a high level of legal certainty with respect to the processing of personal data in IMI, in line with the IMI Regulation currently under discussion in Council and European parliament. It will also benefit from economies of scope.

6.5.2. Added value of EU involvement

Given the nature of IMI as a centralised communication tool developed and hosted by the Commission, it is clear that it will facilitate the introduction and the smooth running of the EPC issuance as well as an efficient alert mechanism between Member States. The Commission will offer IMI as a free service to Member States, ensuring maintenance and development, a helpdesk and hosting the computing infrastructure. These tasks could not be performed in a decentralised manner.

IMI overcomes obstacles to cross-border cooperation, such as language barriers, different administrative and working cultures and the lack of established procedures for information exchange. Because of the involvement of Member States in designing the system, IMI offers uniform working methods agreed by all Member States.

6.5.3. Lessons learned from similar experiences in the past

IMI was launched in 2008. Around 6.700 competent authorities and 11.000 users are currently registered in the system. Some 2.000 information exchanges took place in 2010.

IMI has been in use in the context of the Professional Qualifications Directive since 2008. The experience has been very positive, as demonstrated by the number of requests etc., and the existing agreement with Member States to extend it to all professions. There is demand by Member States to use it further at all possible levels where close cooperation is seen as indispensible.

The reason for this demand is the fact that current recognition procedures are too long and too cumbersone. In addition, an alert mechanism for health professions is missing. Addressing this lacuna is a request by a majority of stakeholders. Finally,

the effective hadling of a notification system without an IT tool is too complex and cumbersome.

6.5.4. Coherence and possible synergy with other relevant instruments

The Commission Communication 'Better governance of the Single Market through greater administrative cooperation: A strategy for expansion and further development of the Internal Market Information System ('IMI')' (COM(2011) 75 final) set out plans for the future expansion of IMI to other areas of EU law.

The Commission Communication 'A Single Market Act' stressed the importance efficient recognitions of professional qualifications and the creation of a European Professional Card[27]. As to an alert mechanism, the Services Directive (Directive 2006/123/EC) already foresees alert obligations for certain but not all professionals providing professional services. The most important gap concerns health professionals to whom the Services Directive does not apply.

Access to the public interface for requests for European Professional cards can be given, inter alia, via the Points of Single Contact.

[27] See footnote 6 above

6.6. Duration and financial impact

☐ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2013 to 2014,

– followed by full-scale operation. The hosting, operational and maintenance costs are included in the relevant costs for the operation of the IMI System.

6.7. Management mode(s) envisaged[28]

☐ **Centralised direct management** by the Commission

7. MANAGEMENT MEASURES

7.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission produces an annual report on the development and performance of IMI. In that respect, the use of IMI for EPC requests, alerts and diploma notifications will be adequately reported. In addition, a report on IMI data protection issues, including security, will be submitted to the European Data Protection Supervisor periodically.

7.2. Management and control system

7.2.1. Risk(s) identified

One of the main characteristics of the proposal is that the EPC, the alert mechanism and the declaration will be based on IMI functionalities. The Commission is the 'system owner' of IMI, and responsible for its daily operation, maintenance and development. Operational risks in that respect have already been identified in the context of the IMI operation and in the proposal for an IMI Regulation.

In addition to the operational risks identified above, additional risks could be the non-adoption by professions and professionals of the EPC facility. In other words, the risk that the EPC is fully developed and operational but meets with little or no demand. Further, competent autthorities might find adaptation difficult and might not provide adequate ressources to process requests properly and in a timely fashion.

The introduction of the European Professiona Card and an alert mechanism also raises data protection issues, including the treatment of unjustified alerts. A sound new legal framework also requires careful daily management.

[28] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

7.2.2. Control method(s) envisaged

As to the aspects of the EPC, the alert mechanism and the declarations that are dependend upon the operation of IMI, these have to be considered in the context of the IMI operation and the draft IMI regulation.

Addressing the remaining risks as identified under section 2.2.1 above, the Commission will provide assistance (e.g., workshops, etc.) to all stakeholders (e.g., Member States authorities, professional bodies etc.) and actively promote the introduction and attractivity of the new system.

7.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions normally applicable to the activities of the Commission, including Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), will apply in the context of IMI without any restriction.

8. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

8.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description……...…….]	DA/NDA (29)	from EFTA[30] countries	from candidate countries[31]	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1A	12.02.01 Implementation and development of the Internal Market	DA	YES	NO	NO	NO
1A	12.01.04 Implementation and development of the Internal Market – Expenditure on administrative management	NDA	YES	NO	NO	NO
1A	26.03.01.01 Interoperability Solutions for European Public Administrations (ISA)	DA	YES	YES	NO	NO

29 DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations.

30 EFTA: European Free Trade Association.

31 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

8.2. Estimated impact on expenditure

8.2.1. Summary of estimated impact on expenditure

EUR (to 3 decimal places)

Heading of multiannual financial framework:	1B	Implementation and development of the Internal Market

DG: <…….>			Year 2013	Year 2014						**TOTAL**
• Operational appropriations										
12.02.01	Commitments	(1)	362.500	362.500						**725.000**
	Payments	(2)	362.500	362.500						**725.000**
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3	362.500	362.500						**725.000**
	Payments	=2+2a +3	362.500	362.500						**725.000**

The present proposal and the relevant development costs is expected to come into force in 2013 and to extend into 2014.

For details on the IMI general funding, please refer to the finacial statement attached to the proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the internal Market information System ("the IMI Regulation") (COM(2011) 522final. In this context, the possibility to finance development costs through the ISA program will be examined.

• TOTAL operational appropriations	Commitments	(4)	362.500	362.500						**725.000**
	Payments	(5)	362.500	362.500						**725.000**
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations	Commitments	=4+ 6	362.500	362.500						**725.000**

under HEADING 1A of the multiannual financial framework	Payments	=5+ 6	362.500	362.500						**725.000**

8.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR (to 3 decimal places)

Indicate objectives and outputs			Year 2013		Year 2014		Year **N+2**		Year **N+3**		… enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
			OUTPUTS															
⇩	Type of output[32]	Average cost of the output	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
SPECIFIC OBJECTIVE No 1 Increased transparency																		
- Output	Public interface	380.000		190.000		190.000												380.000
Sub-total for specific objective N°1				190.000		190.000												380.000
SPECIFIC OBJECTIVE No 2 Back-office functionality																		
- Output	Back-office functionality	124.000		62.000		62.000												124.000
Sub-total for specific objective N°2				62.000		62.000												124.000
SPECIFIC OBJECTIVE No 3 Alert																		

[32] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

mechanisms																		
- Output	Alert mechanism	160.000		80.000		80.000												160.000
Sub-total for specific objective N°3				80.000		80.000												160.000
SPECIFIC OBJECTIVE No 4 Notification facilities …																		
- Output	Notification facilities	61.000		30.500		30.500												61.000
Sub-total for specific objective N°4				30.500		30.500												61.000
TOTAL COST				362.500		362.500												725.000

8.2.3. Estimated impact on appropriations of an administrative nature

8.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of administrative appropriations

8.2.3.2. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources

8.2.4. Compatibility with the current multiannual financial framework

– ☐ Proposal/initiative is compatible with the current multiannual financial framework (2013).

– Proposal/initiative is compatible the future (2014-2020) multiannual financial framework. The proposal will be covered by allocations already foreseen under the internal market budget line. Concerning exercise 2013 the appropriations are included in the official financial programming of the Commission; concerning 2014 and following years they are included in the proposal of the Commission for the next Multiannual Financial Framework.

8.2.5. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties

8.3. Estimated impact on revenue

– ☐ Proposal/initiative has no financial impact on revenue.