

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance)

TITLE III

FREEDOM OF ESTABLISHMENT

CHAPTER I

General system for the recognition of evidence of training

Article 10

Scope

This Chapter applies to all professions which are not covered by Chapters II and III of this Title and in the following cases in which the applicant, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:

- (a) for activities listed in Annex IV, when the migrant does not meet the requirements set out in Articles 17, 18 and 19;
- (b) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the migrant does not meet the requirements of effective and lawful professional practice referred to in Articles 23, 27, 33, 37, 39, 43 and 49;
- (c) for architects, when the migrant holds evidence of formal qualification not listed in Annex V, point 5.7;
- (d) without prejudice to Articles 21(1), 23 and 27, for doctors, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists and architects holding evidence of formal qualifications as a specialist, which must follow the training leading to the possession of a title listed in Annex V, points 5.1.1, 5.2.2, 5.3.2, 5.4.2, 5.5.2, 5.6.2 and 5.7.1, and solely for the purpose of the recognition of the relevant specialty;
- (e) for nurses responsible for general care and specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of a title listed in Annex V, point 5.2.2, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by specialised nurses without training as general care nurse;
- (f) for specialised nurses without training as general care nurse, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by nurses responsible for general care, specialised nurses without training as general care nurse or specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of the titles listed in Annex V, point 5.2.2;
- (g) for migrants meeting the requirements set out in Article 3(3).

Article 11

Levels of qualification

For the purpose of applying Article 13, the professional qualifications are grouped under the following levels as described below:

- (a) an attestation of competence issued by a competent authority in the home Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State, on the basis of:
 - (i) either a training course not forming part of a certificate or diploma within the meaning of points (b), (c), (d) or (e), or a specific examination without prior training, or full-time pursuit of the profession in a Member State for three consecutive years or for an equivalent duration on a part-time basis during the previous 10 years,
 - (ii) or general primary or secondary education, attesting that the holder has acquired general knowledge;
- (b) a certificate attesting to a successful completion of a secondary course,
 - (i) either general in character, supplemented by a course of study or professional training other than those referred to in point (c) and/or by the probationary or professional practice required in addition to that course,
 - (ii) or technical or professional in character, supplemented where appropriate by a course of study or professional training as referred to in point (i), and/or by the probationary or professional practice required in addition to that course;
- (c) a diploma certifying successful completion of
 - (i) either training at post-secondary level other than that referred to in points (d) and (e) of a duration of at least one year or of an equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education or the completion of equivalent school education of the second secondary level, as well as the professional training which may be required in addition to that post-secondary course; or
 - (ii) in the case of a regulated profession, training with a special structure, included in Annex II, equivalent to the level of training provided for under (i), which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions. The list in Annex II may be amended in accordance with the procedure referred to in Article 58(2) in order to take account of training which meets the requirements provided for in the previous sentence;
- (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, at a university or establishment of higher education or another establishment providing the same level of training, as well as the professional training which may be required in addition to that post-secondary course;

- (e) a diploma certifying that the holder has successfully completed a post-secondary course of at least four years' duration, or of an equivalent duration on a part-time basis, 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.

Article 12

Equal treatment of qualifications

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 Community 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.

Any professional qualification which, although not satisfying the requirements contained in the legislative, regulatory or administrative provisions in force in the home Member State for access to or the pursuit of a profession, confers on the holder acquired rights by virtue of these provisions, shall also be treated as such evidence of formal qualifications under the same conditions as set out in the first subparagraph. This applies in particular if the home Member State raises the level of training required for admission to a profession and for its exercise, and if an individual who has undergone former training, which does not meet the requirements of the new qualification, benefits from acquired rights by virtue of national legislative, regulatory or administrative provisions; in such case this former training is considered by the host Member State, for the purposes of the application of Article 13, as corresponding to the level of the new training.

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 the attestation of competence or evidence of formal qualifications 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 satisfy the following conditions:

- a they shall have been 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 shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host Member State, as described in Article 11.

2 Access to and pursuit of the profession, as described in paragraph 1, shall also be granted to applicants who have pursued the profession referred to in that paragraph on a full-time basis for two years during the previous 10 years in another Member State which does

not regulate that profession, providing they possess one or more attestations of competence or documents providing evidence of formal qualifications.

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

- a they shall have been 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 shall attest a level of professional qualification at least equivalent to the level immediately prior to that required in the host Member State, as described in Article 11;
- c they shall attest that the holder has been prepared for the pursuit of the profession in question.

The two years' professional experience referred to in the first subparagraph may not, however, be required if the evidence of formal qualifications which the applicant possesses certifies regulated education and training within the meaning of Article 3(1) (e) at the levels of qualifications described in Article 11, points (b), (c), (d) or (e). The regulated education and training listed in Annex III shall be considered as such regulated education and training at the level described in Article 11, point (c). The list in Annex III may be amended in accordance with the procedure referred to in Article 58(2) in order to take account of regulated education and training which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions.

3 By way of derogation from paragraph 1, point (b) and to paragraph 2, point (b), the host Member State shall permit access and pursuit of a regulated profession where access to this profession is contingent in its territory upon possession of a qualification certifying successful completion of higher or university education of four years' duration, and where the applicant possesses a qualification referred to in Article 11, point (c).

Article 14

Compensation measures

1 Article 13 does 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:

- a the duration of the training of which he provides evidence under the terms of Article 13, paragraph 1 or 2, is at least one year shorter than that required by the host Member State;
- b the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;
- c the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State within the meaning of Article 4(2), and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.

2 If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.

Where a Member State considers, with respect to a given profession, that it is necessary to derogate from the requirement, set out in the previous subparagraph, that it give the applicant a choice between an adaptation period and an aptitude test, it shall inform the

other Member States and the Commission in advance and provide sufficient justification for the derogation.

If, after receiving all necessary information, the Commission considers that the derogation referred to in the second subparagraph is inappropriate or that it is not in accordance with Community law, it shall, within three months, ask the Member State in question to refrain from taking the envisaged measure. In the absence of a response from the Commission within the abovementioned deadline, the derogation may be applied.

3 By way of derogation from the principle of the right of the applicant to choose, as laid down in paragraph 2, for professions whose pursuit requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test.

This applies also to the cases provided for in Article 10 points (b) and (c), in Article 10 point (d) concerning doctors and dental practitioners, in Article 10 point (f) when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by nurses responsible for general care or specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of the titles listed in Annex V, point 5.2.2 and in Article 10 point (g).

In the cases covered by Article 10 point (a), the host Member State may require an adaptation period or an aptitude test if the migrant envisages pursuing professional activities in a self-employed capacity or as a manager of an undertaking which require the knowledge and the application of the specific national rules in force, provided that knowledge and application of those rules are required by the competent authorities of the host Member State for access to such activities by its own nationals.

4 For the purpose of applying paragraph 1 points (b) and (c), ‘substantially different matters’ means 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 duration or 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 acquired by the applicant in the course of his professional experience in a Member State or in a third country, is of a nature to cover, in full or in part, the substantial difference referred to in paragraph 4.

Article 15

Waiving of compensation measures on the basis of common platforms

1 For the purpose of this Article, ‘common platforms’ is defined as a set of criteria of professional qualifications which are suitable for compensating for substantial differences which have been identified between the training requirements existing in the various Member States for a given profession. These substantial differences shall be identified by comparison between the duration and contents of the training in at least two thirds of the Member States, including all Member States which regulate this profession. The differences in the contents of the training may result from substantial differences in the scope of the professional activities.

2 Common platforms as defined in paragraph 1 may be submitted to the Commission by Member States or by professional associations or organisations which are representative

at national and European level. If the Commission, after consulting the Member States, is of the opinion that a draft common platform facilitates the mutual recognition of professional qualifications, it may present draft measures with a view to their adoption in accordance with the procedure referred to in Article 58(2).

3 Where the applicant's professional qualifications satisfy the criteria established in the measure adopted in accordance with paragraph 2, the host Member State shall waive the application of compensation measures under Article 14.

4 Paragraphs 1 to 3 shall not affect the competence of Member States to decide the professional 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.

5 If a Member State considers that the criteria established in a measure adopted in accordance with paragraph 2 no longer offer adequate guarantees with regard to professional qualifications, it shall inform the Commission accordingly, which shall, if appropriate, present a draft measure in accordance with the procedure referred to in Article 58(2).

6 The Commission shall, by 20 October 2010, submit to the European Parliament and the Council a report on the operation of this Article and, if necessary, appropriate proposals for amending this Article.