

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)

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PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 40, Article 47(1), the first and third sentences of Article 47(2), and Article 55 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) Pursuant to Article 3(1)(c) of the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons and services is one of the objectives of the Community. For nationals of the Member States, this includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their professional qualifications. In addition, Article 47(1) of the Treaty lays down that directives shall be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
- (2) Following the European Council of Lisbon on 23 and 24 March 2000, the Commission adopted a Communication on 'An Internal Market Strategy for Services', aimed in particular at making the free provision of services within the Community as simple as within an individual Member State. Further to the Communication from the Commission entitled 'New European Labour Markets, Open to All, with Access to All', the European Council of Stockholm on 23 and 24 March 2001 entrusted the Commission with presenting for the 2002 Spring European Council specific proposals for a more uniform, transparent and flexible regime of recognition of qualifications.
- (3) The guarantee conferred by this Directive on persons having acquired their professional qualifications in a Member State to have access to the same profession and pursue it in another Member State with the same rights as nationals is without prejudice to compliance by the migrant professional with any non-discriminatory conditions of pursuit which might be laid down by the latter Member State, provided that these are objectively justified and proportionate.

- (4) In order to facilitate the free provision of services, there should be specific rules aimed at extending the possibility of pursuing professional activities under the original professional title. In the case of information society services provided at a distance, the provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market⁽⁴⁾, should also apply.
- (5) In view of the different systems established for the cross-border provision of services on a temporary and occasional basis on the one hand, and for establishment on the other, the criteria for distinguishing between these two concepts in the event of the movement of the service provider to the territory of the host Member State should be clarified.
- (6) The facilitation of service provision has to be ensured in the context of strict respect for public health and safety and consumer protection. Therefore, specific provisions should be envisaged for regulated professions having public health or safety implications, which provide cross-frontier services on a temporary or occasional basis.
- (7) Host Member States may, where necessary and in accordance with Community law, provide for declaration requirements. These requirements should not lead to a disproportionate burden on service providers nor hinder or render less attractive the exercise of the freedom to provide services. The need for such requirements should be reviewed periodically in the light of the progress made in establishing a Community framework for administrative cooperation between Member States.
- (8) The service provider should be subject to the application of disciplinary rules of the host Member State having a direct and specific link with the professional qualifications, such as the definition of the profession, the scope of activities covered by a profession or reserved to it, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety.
- (9) While maintaining, for the freedom of establishment, the principles and safeguards underlying the different systems for recognition in force, the rules of such systems should be improved in the light of experience. Moreover, the relevant directives have been amended on several occasions, and their provisions should be reorganised and rationalised by standardising the principles applicable. It is therefore necessary to replace Council Directives 89/48/EEC⁽⁵⁾ and 92/51/EEC⁽⁶⁾, as well as Directive 1999/42/EC of the European Parliament and of the Council⁽⁷⁾ on the general system for the recognition of professional qualifications, and Council Directives 77/452/EEC⁽⁸⁾, 77/453/EEC⁽⁹⁾, 78/686/EEC⁽¹⁰⁾, 78/687/EEC⁽¹¹⁾, 78/1026/EEC⁽¹²⁾, 78/1027/EEC⁽¹³⁾, 80/154/EEC⁽¹⁴⁾, 80/155/EEC⁽¹⁵⁾, 85/384/EEC⁽¹⁶⁾, 85/432/EEC⁽¹⁷⁾, 85/433/EEC⁽¹⁸⁾ and 93/16/EEC⁽¹⁹⁾ concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, by combining them in a single text.
- (10) This Directive does not create an obstacle to the possibility of Member States recognising, in accordance with their rules, the professional qualifications acquired outside the territory of the European Union by third country nationals. All recognition should respect in any case minimum training conditions for certain professions.

- (11) In the case of the professions covered by the general system for the recognition of qualifications, hereinafter referred to as 'the general system', Member States should retain the right to lay down the minimum level of qualification required to ensure the quality of the services provided on their territory. However, pursuant to Articles 10, 39 and 43 of the Treaty, they should not require a national of a Member State to obtain qualifications, which they generally lay down only in terms of the diplomas awarded under their national educational system, where the person concerned has already obtained all or part of those qualifications in another Member State. As a result, it should be laid down that any host Member State in which a profession is regulated must take account of the qualifications obtained in another Member State and assess whether they correspond to those which it requires. The general system for recognition, however, does not prevent a Member State from making any person pursuing a profession on its territory subject to specific requirements due to the application of professional rules justified by the general public interest. Rules of this kind relate, for example, to organisation of the profession, professional standards, including those concerning ethics, and supervision and liability. Lastly, this Directive is not intended to interfere with Member States' legitimate interest in preventing any of their citizens from evading enforcement of the national law relating to professions.
- (12) This Directive concerns the recognition by Member States of professional qualifications acquired in other Member States. It does not, however, concern the recognition by Member States of recognition decisions adopted by other Member States pursuant to this Directive. Consequently, individuals holding professional qualifications which have been recognised pursuant to this Directive may not use such recognition to obtain in their Member State of origin rights different from those conferred by the professional qualification obtained in that Member State, unless they provide evidence that they have obtained additional professional qualifications in the host Member State.
- (13) In order to define the mechanism of recognition under the general system, it is necessary to group the various national education and training schemes into different levels. These levels, which are established only for the purpose of the operation of the general system, have no effect upon the national education and training structures nor upon the competence of Member States in this field.
- (14) The mechanism of recognition established by Directives 89/48/EEC and 92/51/EEC remains unchanged. As a consequence, the holder of a diploma certifying successful completion of training at post-secondary level of a duration of at least one year should be permitted access to a regulated profession in a Member State where access is contingent upon possession of a diploma certifying successful completion of higher or university education of four years' duration, regardless of the level to which the diploma required in the host Member State belongs. Conversely, where access to a regulated profession is contingent upon successful completion of higher or university education of more than four years, such access should be permitted only to holders of a diploma certifying successful completion of higher or university education of at least three years' duration.
- (15) In the absence of harmonisation of the minimum training conditions for access to the professions governed by the general system, it should be possible for the host Member

State to impose a compensation measure. This measure should be proportionate and, in particular, take account of the applicant's professional experience. Experience shows that requiring the migrant to choose between an aptitude test or an adaptation period offers adequate safeguards as regards the latter's level of qualification, so that any derogation from that choice should in each case be justified by an imperative requirement in the general interest.

- (16) In order to promote the free movement of professionals, while ensuring an adequate level of qualification, various professional associations and organisations or Member States should be able to propose common platforms at European level. This Directive should take account, under certain conditions, in compliance with 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 and in compliance with Community law, and in particular Community law on competition, of those initiatives, while promoting, in this context, a more automatic character of recognition under the general system. Professional associations which are in a position to submit common platforms should be representative at national and European level. A common platform is a set of criteria which make it possible to compensate for the widest range of substantial differences which have been identified between the training requirements in at least two thirds of the Member States including all the Member States which regulate that profession. These criteria could, for example, include requirements such as additional training, an adaptation period under supervised practice, an aptitude test, or a prescribed minimum level of professional practice, or combinations thereof.
- (17) In order to take into account all situations for which there is still no provision relating to the recognition of professional qualifications, the general system should be extended to those cases which are not covered by a specific system, either where the profession is not covered by one of those systems or where, although the profession is covered by such a specific system, the applicant does not for some particular and exceptional reason meet the conditions to benefit from it.
- (18) There is a need to simplify the rules allowing access to a number of industrial, commercial and craft activities, in Member States where those professions are regulated, in so far as those activities have been pursued for a reasonable and sufficiently recent period of time in another Member State, while maintaining for those activities a system of automatic recognition based on professional experience.
- (19) Freedom of movement and the mutual recognition of the evidence of formal qualifications of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects should be based on the fundamental principle of automatic recognition of the evidence of formal qualifications on the basis of coordinated minimum conditions for training. In addition, access in the Member States to the professions of doctor, nurse responsible for general care, dental practitioner, veterinary surgeon, midwife and pharmacist should be made conditional upon the possession of a given qualification ensuring that the person concerned has undergone training which meets the minimum conditions laid down. This system should

be supplemented by a number of acquired rights from which qualified professionals benefit under certain conditions.

- (20) To allow for the characteristics of the qualification system for doctors and dentists and the related *acquis communautaire* in the area of mutual recognition, the principle of automatic recognition of medical and dental specialities common to at least two Member States should continue to apply to all specialities recognised on the date of adoption of this Directive. To simplify the system, however, automatic recognition should apply after the date of entry into force of this Directive only to those new medical specialities common to at least two fifths of Member States. Moreover, this Directive does not prevent Member States from agreeing amongst themselves on automatic recognition for certain medical and dental specialities common to them but not automatically recognised within the meaning of this Directive, according to their own rules.
- (21) Automatic recognition of formal qualifications of doctor with basic training should be without prejudice to the competence of Member States to associate this qualification with professional activities or not.
- (22) All Member States should recognise the profession of dental practitioner as a specific profession distinct from that of medical practitioner, whether or not specialised in odontostomatology. Member States should ensure that the training given to dental practitioners equips them with the skills needed for prevention, diagnosis and treatment relating to anomalies and illnesses of the teeth, mouth, jaws and associated tissues. The professional activity of the dental practitioner should be carried out by holders of a qualification as dental practitioner set out in this Directive.
- (23) It did not appear desirable to lay down standardised training for midwives for all the Member States. Rather, the latter should have the greatest possible freedom to organise their training.
- (24) With a view to simplifying this Directive, reference should be made to the concept of 'pharmacist' in order to delimit the scope of the provisions relating to the automatic recognition of the qualifications, without prejudice to the special features of the national regulations governing those activities.
- (25) Holders of qualifications as a pharmacist are specialists in the field of medicines and should, in principle, have access in all Member States to a minimum range of activities in this field. In defining this minimum range, this Directive should neither have the effect of limiting the activities accessible to pharmacists in the Member States, in particular as regards medical biology analyses, nor create a monopoly for those professionals, as this remains a matter solely for the Member States. The provisions of this Directive are without prejudice to the possibility for the Member States to impose supplementary training conditions for access to activities not included in the coordinated minimum range of activities. This means that the host Member State should be able to impose these conditions on the nationals who hold qualifications which are covered by automatic recognition within the meaning of this Directive.

- (26) This Directive does not coordinate all the conditions for access to activities in the field of pharmacy and the pursuit of these activities. In particular, the geographical distribution of pharmacies and the monopoly for dispensing medicines should remain a matter for the Member States. This Directive leaves unchanged the legislative, regulatory and administrative provisions of the Member States forbidding companies from pursuing certain pharmacists' activities or subjecting the pursuit of such activities to certain conditions.
- (27) Architectural design, the quality of buildings, their harmonious incorporation into their surroundings, respect for natural and urban landscapes and for the public and private heritage are a matter of public interest. Mutual recognition of qualifications should therefore be based on qualitative and quantitative criteria which ensure that the holders of recognised qualifications are in a position to understand and translate the needs of individuals, social groups and authorities as regards spatial planning, the design, organisation and realisation of structures, conservation and the exploitation of the architectural heritage, and protection of natural balances.
- (28) National regulations in the field of architecture and on access to and the pursuit of the professional activities of an architect vary widely in scope. In most Member States, activities in the field of architecture are pursued, *de jure* or *de facto*, by persons bearing the title of architect alone or accompanied by another title, without those persons having a monopoly on the pursuit of such activities, unless there are legislative provisions to the contrary. These activities, or some of them, may also be pursued by other professionals, in particular by engineers who have undergone special training in the field of construction or the art of building. With a view to simplifying this Directive, reference should be made to the concept of 'architect' in order to delimit the scope of the provisions relating to the automatic recognition of the qualifications in the field of architecture, without prejudice to the special features of the national regulations governing those activities.
- (29) Where a national and European-level professional organisation or association for a regulated profession makes a reasoned request for specific provisions for the recognition of qualifications on the basis of coordination of minimum training conditions, the Commission shall assess the appropriateness of adopting a proposal for the amendment of this Directive.
- (30) In order to ensure the effectiveness of the system for the recognition of professional qualifications, uniform formalities and rules of procedure should be defined for its implementation, as well as certain details of the pursuit of the profession.
- (31) Since collaboration among the Member States and between them and the Commission is likely to facilitate the implementation of this Directive and compliance with the obligations deriving from it, the means of collaboration should be organised.
- (32) The introduction, at European level, of professional cards by professional associations or organisations could facilitate the mobility of professionals, in particular by speeding up the exchange of information between the host Member State and the Member State of origin. This professional card should make it possible to monitor the career of

professionals who establish themselves in various Member States. Such cards could contain information, in full respect of data protection provisions, on the professional's professional qualifications (university or institution attended, qualifications obtained, professional experience), his legal establishment, penalties received relating to his profession and the details of the relevant competent authority.

- (33) The establishment of a network of contact points with the task of providing the citizens of the Member States with information and assistance will make it possible to ensure that the system of recognition is transparent. These contact points will provide any citizen who so requests and the Commission with all the information and addresses relevant to the recognition procedure. The designation of a single contact point by each Member State within this network does not affect the organisation of competencies at national level. In particular, it does not prevent the designation at national level of several offices, the contact point designated within the aforementioned network being in charge of coordinating with the other offices and informing the citizen, where necessary, of the details of the relevant competent office.
- (34) Administering the various systems of recognition set up by the sectoral directives and the general system has proved cumbersome and complex. There is therefore a need to simplify the administration and updating of this Directive to take account of scientific and technical progress, in particular where the minimum conditions of training are coordinated with a view to automatic recognition of qualifications. A single committee for the recognition of professional qualifications should be set up for this purpose, and suitable involvement of representatives of the professional organisations, also at European level, should be ensured.
- (35) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁰⁾.
- (36) The preparation by the Member States of a periodic report on the implementation of this Directive, containing statistical data, will make it possible to determine the impact of the system for the recognition of professional qualifications.
- (37) There should be a suitable procedure for adopting temporary measures if the application of any provision of this Directive were to encounter major difficulties in a Member State.
- (38) The provisions of this Directive do not affect the powers of the Member States as regards the organisation of their national social security system and determining the activities which must be pursued under that system.
- (39) In view of the speed of technological change and scientific progress, life-long learning is of particular importance for a large number of professions. In this context, it is for the Member States to adopt the detailed arrangements under which, through suitable ongoing training, professionals will keep abreast of technical and scientific progress.
- (40) Since the objectives of this Directive, namely the rationalisation, simplification and improvement of the rules for the recognition of professional qualifications, cannot be sufficiently achieved by the Member States and can therefore be better achieved

at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

- (41) This Directive is without prejudice to the application of Articles 39(4) and 45 of the Treaty concerning notably notaries.
- (42) This Directive applies, concerning the right of establishment and the provision of services, without prejudice to other specific legal provisions regarding the recognition of professional qualifications, such as those existing in the field of transport, insurance intermediaries and statutory auditors. This Directive does not affect the operation of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁽²¹⁾, or of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained⁽²²⁾. The recognition of professional qualifications for lawyers for the purpose of immediate establishment under the professional title of the host Member State should be covered by this Directive.
- (43) To the extent that they are regulated, this Directive includes also liberal professions, which are, according to this Directive, those practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public. The exercise of the profession might be subject in the Member States, in conformity with the Treaty, to specific legal constraints based on national legislation and on the statutory provisions laid down autonomously, within that framework, by the respective professional representative bodies, safeguarding and developing their professionalism and quality of service and the confidentiality of relations with the client.
- (44) This Directive is without prejudice to measures necessary to ensure a high level of health and consumer protection,

HAVE ADOPTED THIS DIRECTIVE:

- (1) OJ C 181 E, 30.7.2002, p. 183.
- (2) OJ C 61, 14.3.2003, p. 67.
- (3) Opinion of the European Parliament of 11 February 2004 (OJ C 97 E, 22.4.2004, p. 230), Council Common Position of 21 December 2004 (OJ C 58 E, 8.3.2005, p. 1) and Position of the European Parliament of 11 May 2005 (not yet published in the Official Journal). Council Decision of 6 June 2005.
- (4) OJ L 178, 17.7.2000, p. 1.
- (5) OJ L 19, 24.1.1989, p. 16. Directive as amended by Directive 2001/19/EC of the European Parliament and of the Council (OJ L 206, 31.7.2001, p. 1).
- (6) OJ L 209, 24.7.1992, p. 25. Directive as last amended by Commission Decision 2004/108/EC (OJ L 32, 5.2.2004, p. 15).
- (7) OJ L 201, 31.7.1999, p. 77.
- (8) OJ L 176, 15.7.1977, p. 1. Directive as last amended by the 2003 Act of Accession.
- (9) OJ L 176, 15.7.1977, p. 8. Directive as last amended by Directive 2001/19/EC.
- (10) OJ L 233, 24.8.1978, p. 1. Directive as last amended by the 2003 Act of Accession.
- (11) OJ L 233, 24.8.1978, p. 10. Directive as last amended by the 2003 Act of Accession.
- (12) OJ L 362, 23.12.1978, p. 1. Directive as last amended by Directive 2001/19/EC.
- (13) OJ L 362, 23.12.1978, p. 7. Directive as last amended by Directive 2001/19/EC.
- (14) OJ L 33, 11.2.1980, p. 1. Directive as last amended by the 2003 Act of Accession.
- (15) OJ L 33, 11.2.1980, p. 8. Directive as last amended by Directive 2001/19/EC.
- (16) OJ L 223, 21.8.1985, p. 15. Directive as last amended by the 2003 Act of Accession.
- (17) OJ L 253, 24.9.1985, p. 34. Directive as amended by Directive 2001/19/EC.
- (18) OJ L 253, 24.9.1985, p. 37. Directive as last amended by the 2003 Act of Accession.
- (19) OJ L 165, 7.7.1993, p. 1. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).
- (20) OJ L 184, 17.7.1999, p. 23.
- (21) OJ L 78, 26.3.1977, p. 17. Directive as last amended by the 2003 Act of Accession.
- (22) OJ L 77, 14.3.1998, p. 36. Directive as amended by the 2003 Act of Accession.