

Recognition of professional qualifications

2002/0061(COD) - 21/12/2004 - Council position

The Council adopted its common position by qualified majority. The German and the Greek delegations voted against. The amendments made by the common position concern in particular the provision of services, the formal reorganisation of the levels of professional qualification underlying the general regime and the reintroduction of provisions from the *acquis communautaire* which were not included in the Commission proposal.

As regards the debated issue of temporary or occasional cross border services, the Council has introduced the possibility for the professional qualifications of the provider of temporary or occasional cross-border services to be checked prior to the first provision of services in clearly-defined cases: in the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition under Title III, Chapter III; 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 the purposes. The appropriate body to be informed is the competent authority in the host Member State, which should be aware that the service provider is providing a service on its territory; to require the service provider to inform both Member States and to impose further administrative tasks on the competent authority of the Member State of establishment (as the European Parliament has proposed) would be contrary to the aim of facilitating cross-border service provision. Moreover, the Council considers that the service provider should make a corresponding declaration only if the host Member State so requires, and that this declaration may be required only on the first occasion when the service provider moves to the host Member State to provide a service and thereafter once a year if he intends to provide such services in the host Member State in that year. The Council has also introduced the possibility for Member States to require that the declaration be accompanied by a limited number of documents.

In the interests of protecting the health and safety of the service recipient, the Council has added the possibility for the competent authorities of the host member State to ask its counterparts in the Member State of establishment to provide any information concerning the absence of any disciplinary or criminal sanctions of a professional nature.

The points of divergence between the amended proposal and the common position should be highlighted:

- it deletes the reference to a presumption based on a 16-week period to distinguish between the provision of services and establishment;
- the common position enables the Member States to require pro forma registration for all regulated professions in order to facilitate the application of the rules of conduct applying on their territory. This is acceptable insofar as the common position states that it is the responsibility of the competent authority of the host Member State to send a copy of the service provider's declaration to the professional body, thus preventing any additional administrative burden on the provider.

In order to guarantee the availability of information for the host Member State, it is foreseen that the declaration must be addressed by the service provider directly to the competent authority of the host Member State for all regulated professions. This initial declaration must be accompanied by a certain number of documents and updated annually in a simpler form (only the proof of professional insurance must also be renewed annually). The administrative cooperation is limited, according to the common position, to enabling the host Member State to check whether the information it has is precise.

The host Member State with the possibility of carrying out an ex ante check of the service provider's professional qualifications, but only for professions with implications for public health or safety that do not have coordinated minimum training conditions and only insofar as this check is in proportion to the objective of preventing serious damage to the health or safety of the recipient of the service due to a lack of professional qualifications.

Moreover, the common position : introduces notification to the Commission and to the other Member States for diplomas of architects; reintroduces a derogation from the automatic recognition of evidence of training as a pharmacist in cases where a new pharmacy is being established; sets out the principle of automatic recognition for medical and dental specialisations common to 2/5 of the Member States; deletes the references in the amended proposal to the role of the Member States with regard to knowledge of languages and to the express ruling out of systematic examination of such knowledge; adopts existing legislation and limits to the professions of doctor and dental practitioner the obligation of Member States not to require migrants to complete a preparatory period of in-service training and/or a period of professional experience in order to be approved by a health insurance fund.

The Council has introduced new provisions which aim to : clarify the Commission proposal with regard to the cases of subsidiary application of the general regime of recognition, listing the specific situations concerned which are currently governed either by ad hoc rules, provisions of the Treaty, or the general system of recognition; clarify the concept of common platforms and the way in which the substantial differences to be overcome are identified. It also expands the possibility of submitting common platforms to the Member States; lay down a framework for the delegation of powers with a view to the amendment of Annexes IV and V, point 5.1.4; reintroduce the four-month period given to the host Member State for recognition in the case of professions that do not have coordinated minimum training conditions; reintroduces some elements of the *acquis* (automatic derogation from the migrant's choice for professions requiring precise knowledge of national law and in which the provision of advice and/or legal assistance constitutes an essential aspect; special system of automatic derogation for activities covered by Directive 1999/42/EC), and the possibility of automatic derogation from the migrant's choice for cases not currently covered by the general system of recognition and which, by virtue of Article 10 of the proposal, will in future be covered by the general regime.

The common position : introduces the provisions relating to acquired rights of the Accession Treaty of Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Slovakia and Slovenia; adds derogations resulting in acquired rights to ensure automatic recognition for members of the profession who have completed this supplementary training; adds provisions in respect of qualifications for nurses and midwives awarded in Poland, which take account of legislation introduced in Poland since the conclusion of the Acts of Accession; reintroduces the derogation currently applied to Luxembourg with regard to the recognition of professional experience acquired in another Member State for the purposes of granting a State concession to operate a pharmacy open to the public; stipulates that the Commission will draw up a report on the implementation of this Directive every five years.