

Proposal for a Directive on the Recognition of Professional Qualifications Situation of Psychotherapy

1. State of play of the file

The Proposal (COM (2002) 119) was adopted by the European Commission and communicated to the Council and European Parliament (EP) on 7th March 2002.

Since the issue is linked to the achievement of the Internal Market (freedom of movement of workers), the file is of the competence of DG Internal Market and is subject to the co-decision procedure with the European Parliament (EP to play an important role in the procedure).

The EP (Legal Affairs Committee (JURI) is responsible for the file / Rapporteur S. Zappalà) adopted its Report after the first reading on 11th February 2004. The EP's Report included a significant number of amendments, including the following:

- **Amendment 153** that added psychotherapists to the professions listed under article 20 (which benefit from automatic mutual recognition of professional qualifications);
- Amendment 128 defining the levels of education and training required for article 20 to be applicable;
- Amendments 68 & 70 concerning the possibility to avoid divergent national compensations measures thanks to the establishment of European common platforms (article 15).

Since then, the **Commission** has prepared a **Modified Proposal** for the Council. In principle, this document is expected to reflect the EP amendments as far as they are not in contradiction with the Directive's basis and objectives (according to the Commission). It is the basis for the Council's discussion and decision as to the content of its Common Position. In the present case, **the Commission did not take amendments 153 & 128 on board** for purely technical reasons. Indeed, the Directive is intended for coordination of existing sectoral directives, not for regulation of yet un-regulated professions¹. This is all the more the case since the inclusion of any provision implying a modification of national legislation would result in the file requiring a unanimity vote of the Council, which would put the whole directive at risk. As it stands now, the file only requires majority vote.

Based on the Commission's Modified Proposal, the **Council** (Competitiveness Council) adopted its **Political Agreement** during its session of **17-18th May**. This Agreement does therefore not include the amendments concerning psychotherapists. The Political Agreement is the unofficial version of the **Council's** final position, which is called the **Common Position**. The Common Position will be published as soon as the Political Agreement is translated into all EU languages.

As the Council did not retain all the EP amendments, the file will have to be sent back to the EP, which will have 3 months to adopt its Report in 2nd reading. In this respect, the **EP** will have **3 options**:

- Approve the Common Position or abstain from reacting, in which case the Directive will be adopted on the basis of the Common Position;
- Reject the Common Position by an absolute majority of its members, in which case the Directive will not be adopted;

¹ To recap, a regulated profession means a profession, the practice of which is subject to the fulfilment of a set of legal requirements as to the level of education and training deemed necessary.

- **Propose a new set of amendments** adopted by absolute majority of its members, in which case the file goes back to the Council and the Commission for a new round of procedure, i.e. Commission opinion, Council discussion and approval of a position, etc.

The 3rd option is the most usual procedure and appears to be the most likely in the present file.

Considering the current context of the European elections and the restructuring of the Commission (Renewal of President and Commissioners, and integration of 10 new Member States), the timeframe appears especially uncertain. It could be months before the Council Common Position is available and transmitted to the newly elected EP, which itself will not be operational before September. Due to the fact that it is a new Parliament that is going to deal with the file, there is even a possibility that it will start the procedure from the 1st reading stage again. As a result, the **earliest possible timing for the adoption of the EP Report is the beginning of 2005.**

2. Meeting with the Commission on 3rd June

A meeting was organised at DG Internal Market, with the Commission representatives responsible for the file in the Unit “Regulated Professions” on 3rd June.

The meeting was attended by:

For the Commission:

- Mrs Pamela Brumter-Coret, Head of Unit;
- Mrs Ana Rodriguez Pérez, adviser, in charge of the file;
- Mr Abilio Pereira, adviser, in charge of related files;
- Mrs Catherine Heldmaier, adviser.

For the European Association for Psychotherapy:

- Mr Mony Elkaim, member of the board;
- Mrs Annik Lambert.

The purpose of the meeting was:

- To enquire about the Commission’s position on the EAP’s request with regard to article 20 of the Directive and the reasons for it;
- To clarify the situation of the profession of Psychotherapist in the current European legislative framework and identify possibilities granted by the Directive to improve free movement of Psychotherapists in the EU.

The results of the discussion are as follows:

- ✓ The Commission representatives were very positive about the EAP’s efforts to achieve free movement for its members.
- ✓ They however confirmed that the main purposes of the directive are:
 - to compile and coordinate existing directives in the field of regulated professions, not regulate those, like psychotherapy, which are not;
 - to clarify rules of mutual recognition;
- ✓ This is the technical reason why the EP’s amendments on psychotherapists were not retained.
- ✓ Furthermore, considering the very wide divergences between EU national legislations regulating the area of psychotherapy, it will be a long time before the regulation of the profession can be harmonised at EU level, all the more so with the arrival of the 10 new Member States.
- ✓ Positively, in its Political Agreement, the **Council has retained article 15 and the concept of a common platform** that can be established by European professional Associations (as well as by Member States) with a view to facilitating the free movement

of their members. The result of the platform should be to a) harmonise compensation measures throughout Member States and b) subsequently, facilitate the free movement of professionals, who will know in advance which conditions they have to fulfil.

- ✓ A condition for the common platform to be taken into account by the Commission is that the **professional association**, which establishes it, **must be truly representative of the European market**.
- ✓ As this is a brand new procedure, even the Commission has no clear views as to how it is to be implemented in practice. There is no example available and the Commission has no plans to draw up any kind of model. So any international association wanting to use article 15 will have to find its own way through the procedure.
- ✓ The **Commission representatives however encouraged EAP representatives** to work on the basis of article 15 and confirmed their availability to provide advice whenever useful. They emphasised that the establishment of such a common platform would involve an agreement on a satisfactory level of compensation, compared to most demanding national legislations, and not the establishment of a common, harmonised level of education and training, as was intended in amendment 128.

3. Stocktaking of situation and defining of actions to be taken

So far, the rules applied to the free movement of psychotherapists under the current European legislation have proved unsatisfactory insofar as the compensations measures imposed in a number of Member States are so stringent that they often prevent psychotherapists from moving. This is the case both for free establishment and for the free provision of services.

Divergences between Member States legislations make any EU initiative to harmonise national rules in the short term most unlikely. This is all the more so because any such initiative could not be considered by the Commission without a need being expressed by a sufficient number of Member States. So far, there has been no such request. Psychotherapists will therefore not be in a position to benefit from automatic mutual recognition as laid down under article 20 of the Directive before an un-appreciable number of years.

As such, it appears that the only way to improve the current situation is to use the new article 15 of the Directive (see Annex) and thus to undertake the establishment of a common platform for psychotherapists.

As mentioned above, it is important to note that what article 15 means by “common platform” is **not the establishment of a new harmonised European complete curriculum for psychotherapists** as intended in amendment 128. According to article 15, a common platform is 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**”. To establish these criteria, professional associations need to identify the differences between Member States systems & legislations by comparing the duration and the content of the training in at least 2/3 of the Member States, necessarily including all Member States that regulate the profession.

As a result, the steps, which need to be taken are as follows:

- **Concerning the outstanding procedure:**

Further lobby of the EP could prove useful, not to re-introduce amendment 153, but to ensure that article 15 is maintained in the Directive and, possibly, to improve the procedure that it introduces. In this respect, there is a need for thorough assessment of article 15.

At Council level, it would be useful to find out which are the Member States opposed (some very strongly) to the principle of article 15, so as to allow more focused lobby, also at national level.

▪ **Concerning the implementation of article 15:**

One has to keep in mind that nothing is final before the Directive is adopted, which will take sometime. However, considering that the principle of article 15 has obviously been approved by the 3 institutions, i.e. Commission, EP and Council, there appears to be a reasonable chance that it will be maintained throughout the rest of the procedure, although not necessarily with the same drafting. It may therefore be useful to already start with the first steps of the procedure, because the process could prove to be long and difficult. Indeed, the practical effect of article 15 is to shift the preparatory work of compiling and comparing national systems and legislations from the Commission to the European professional associations. The whole process is indeed expected to lead at the adoption of European legislation.

In this respect, the following practical measures should be considered:

1. **Gather a) existing legislations** regulating psychotherapy profession (all Member States regulating the profession must be covered) and **b) information on national systems** in Member States which do not regulate the profession;
2. **Compare the different sets of legislation and systems** with a view to **identifying the differences** in the requirements imposed on psychotherapists in terms of education and training: content and duration. This comparison must cover at least 2/3 of Member States (17) and necessarily all those that regulate the profession (this involves translating the various texts);
3. Based on this comparison, **establish a (draft) set of criteria for compensation** of national differences. This should be done with a view to being satisfactory to the most demanding systems. (NB: a common platform adopted on the basis of article 15 will however not be enforceable on Member States, which, for example, require psychiatry certificate for psychotherapy practice.)
4. These different steps will most certainly require **regular contact with the Commission**.
5. Further procedure as laid down by article 15 covers notification of the agreed common platform to the Commission, which, in turn, will consult Member States and possibly propose European regulation.