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**CONSULTATION PAPER BY DG INTERNAL MARKET AND SERVICES ON THE
PROFESSIONAL QUALIFICATIONS DIRECTIVE**

Important comment: this document is a working document of the Internal Market and Services Directorate General of the European Commission for discussion and consultation purposes. It does not purport to represent or pre-judge any formal position or proposal of the Commission

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1 INTRODUCTION

1.1 Success story or untapped potential for the Single Market?

Gaining employment or providing services in another Member State is a concrete example of how a citizen can participate in the Single Market. In the past, qualified professionals used to find themselves in the position of having to prove that they had acquired a qualification in the Member State where they wished to work. A host Member State's insistence on the possession of a domestic qualification could exclude a citizen from the Single Market.

It has long been recognised that restrictive regulations of professional qualifications had the same stifling effect on mobility as discrimination on the grounds of nationality. Recognition of foreign qualifications thus became a fundamental building block of the Single Market. The first directive in this area was introduced as early as 1964. The year 2014 will mark its fiftieth anniversary.

Today, mobility remains low in the EU: in 2009, only 2.4% of the European Union's population (12.5 million out of nearly 500 million) live in a Member State other than that of their nationality. In the last thirteen years, about 200.000 citizens took advantage of the *acquis* in seeking recognition of their professional qualifications¹. If you focus on individual citizens, recognition of qualifications has often proven to be a success story. If you consider the economy as a whole, there seems to be much untapped potential to get the Single Market working more efficiently.

In the future, attracting qualified people will be a significant factor of growth in each Member State. The current shortages of doctors and engineers in most Member States are the first portent of challenges ahead. In the coming years, markets across Europe will increasingly compete for qualified professionals: the labour force will decline²; just as demand for highly-qualified workers is projected to rise³. In its strategy for smart, sustainable and inclusive growth (**Europe 2020**), the Commission highlights the need to promote intra-EU mobility to match labour demand and supply more effectively⁴. In the same vein, the **New Skills and Jobs Agenda**⁵ warns that mismatches in the EU labour market persist and that the potential of labour mobility is not sufficiently exploited.

¹ Calculated on the basis of the statistics including the Commission's Regulated Professions Database (see http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.about). This figure does however not include professionals moving on a temporary basis.

² By 2050, the EU labour force will decline by 68 million workers (in the absence of immigration and at constant labour force participation). See the Report to the European Council by the Reflection Group on the Future of the EU 2030, "Project Europe 2030, Challenges and Opportunities", p. 24, http://www.reflectiongroup.eu/wp-content/uploads/2010/05/reflection_en_web.pdf

³ By 2020, demand for highly-qualified workers is projected to rise by over 16 million jobs. See CEDEFOP study: http://www.cedefop.europa.eu/EN/Files/9021_en.pdf

⁴ Commission Communication "Europe 2020, A strategy for smart, sustainable and inclusive growth", 03.03.2010, COM(2010) 2020, <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>

⁵ Commission Communication, "An Agenda for new skills and jobs, A European contribution towards full employment", COM(2010) 682, 11.2010.

It should therefore come as no surprise that the Commission, in the **Single Market Act**⁶, published in October 2010, suggests modernising the *acquis* on the recognition of professional qualifications. Adopted in 2005, the Professional Qualifications Directive⁷ sets the rules for mutual recognition of professional qualifications between Member States. It mainly consolidates and simplifies 15 previous Directives adopted several decades ago. The only major innovation in this Directive is a new regime on temporary mobility.

The Commission services launched a major **evaluation** of the Professional Qualifications Directive in March 2010. As a first step, its staff published, in October 2010, a transposition report as well as more than 180 experience reports drawn up by competent authorities in the Member States. This public consultation by DG Internal Market and Services is the next step in preparation for the Commission Green Paper that is intended to be published alongside the final evaluation report in the autumn of 2011.

This consultation document focuses on three major challenges to consider for the future.

1.2 The first challenge: simplification for individual citizens

A professional seeking to move to another Member State is subjected to various requirements which together create a complex jigsaw of procedures. This can be a barrier to efficient matching of labour supply and demand within the EU. Under conditions where mobility is low, whilst a well qualified labour force is a factor of growth, simplification of the framework for recognition of qualifications between Member States will become more and more important.

1.3 The second challenge: integrating professions into the Single Market

The 2005 Directive features provisions on two innovative tools which could be developed by the professions to facilitate mobility: professional cards and common platforms. The related projects, however, have not led to concrete deliverables. Do we need fresh thinking about a professional card? Do we need to rethink the concept of common platforms?

A major innovation in the 2005 Directive has been to facilitate temporary mobility for professionals. Professionals attach high importance to the possibility to move on a temporary basis. Such innovative elements obviously trigger a reflex in Member States to maintain checks of qualifications as far as they can. This has led to a declaration system which is not easy to implement.

1.4 The third challenge: injecting confidence into the system

Most parts of the *acquis* on professional qualifications were agreed between the six or nine Member States of the then European Economic Community. The world has changed and maintaining mutual confidence has become more challenging: the European Union is today composed of twenty seven Member States; educational reforms in Member States, such as the Bologna process, as well as scientific and technical progress might require a

⁶ Commission Communication "Towards a Single Market Act For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another", 27.10.2010, COM(2010) 608 final, http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf

⁷ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L255 of 30.09.2005, p. 22).

review of the *acquis* for those professions which benefit from automatic recognition; free movement can lead to difficult incidents, such as professionals sanctioned in one Member State for serious professional misconduct using free movement rules to start practising again, in another Member State. Finally, communication between citizens and authorities, as well as services provided by professionals to their clients are increasingly organised online and by electronic means.

2 A CALL FOR SIMPLIFICATION

A declining working population and potential skilled work force shortages in the Member States will, over the coming years, lead to a sea change: it will be less a question of citizens asking for access to a profession in a host Member State and more about the Member State seeking to encourage qualified professionals to come. Given time, market forces alone could drive a simplification of procedures for the recognition of professional qualifications. However, concerted effort to simplify the Professional Qualifications Directive could bring many advantages today. This is all the more important as the current situation does not appear to be fully satisfactory and citizens legitimately expect better from the EU.

2.1 Why simplification

Today, the Professional Qualifications Directive refers to authorisations, attestations, certificates, declarations and other types of document issued at the discretion of Member States when a professional wishes to move. Each of them might have been introduced for good reasons, but together they complicate and slow down the mobility of professionals.

"Contact points" certainly play an important role under the Professional Qualifications Directive in providing information to the citizens and assisting them with the recognition procedures. The entry into force of the Services Directive and the setting up of "Points of Single Contact" foreseen in the Directive should allow service providers⁸ to obtain all relevant information and complete all the administrative procedures necessary to provide their services on-line, including those procedures relating to the recognition of professional qualifications.

Simplification could help to reduce a major gap between citizens' expectations and the reality of moving as a professional from one Member State to another. According to a Eurobarometer survey published in March 2010⁹, only 4% of the population in Member States feel concerned that if going abroad their qualification would not be recognised by other Member States. However, on a Europe-wide average, only 70% of recognition requests reach a quick and successful outcome whereas the remaining 30% are cases which turn out to be difficult or in which recognition is denied¹⁰. While some citizens'

⁸ Apart from those excluded from the scope of the Services Directive, such as health professionals.

⁹ Your Europe Advice is an EU advice service for the public, operating under contract with the European Commission. It consists of a team of lawyers who cover all EU official languages and are familiar with national laws in all EU countries. See "YEA feedback report on professional qualifications" - March 2010, http://ec.europa.eu/public_opinion/flash/fl_263_en.pdf

¹⁰ See the Internal Market Scoreboard n° 21/2010, p. 30, http://ec.europa.eu/internal_market/score/docs/score21_en.pdf

expectations will be unrealistic, the figures seem to suggest that the potential of simplification is not fully exploited¹¹.

In the context of the ongoing evaluation, in the spring of 2010, DG Internal Market and Services contacted administrative bodies at national¹² and European level which on a daily basis assist professionals with the recognition procedures. The Commission services sought feedback on how citizens assess the functioning of the system. The outcomes of these enquiries point to the same conclusions: professionals encounter difficulties in identifying the competent authorities, the procedures to follow, and the documents to submit. They also report problems with providing translations, presenting original documents and incurring significant costs. The setting up of the Points of Single Contact foreseen under the Services Directive should improve the situation but there may be cases where effective assistance and better information is still necessary, such as for health professionals and job seekers who are not covered by the Services Directive.

Question 1: Do you have any suggestions for further improving citizen's access to information on the recognition processes for their professional qualification in another Member State?

Question 2: Do you have any suggestions for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence.

2.2 Making best practice enforceable

On the ground, the Directive is implemented by nearly thousand competent authorities. The reasons for such a high number are two fold: lots of regional authorities are involved and the wide diversity of regulated professions affects nearly all our economic sectors. Centralising recognition procedures in a Member State is therefore impossible. This situation is not conducive to consistent implementation and clarity for the citizens concerned. In order to promote a coherent implementation of the Directive in line with its objectives, the Commission services drew up a Code of Conduct¹³ for the competent authorities featuring guidelines on how different provisions under the Directive must be interpreted. The Code draws on the case law of the European Court of Justice in respect of the Directive and the relevant provisions of the Treaty on the Functioning of the EU. It provides comprehensive guidance on different aspects of the recognition procedure, for example on the documents that a migrant may be asked to supply, the translation requirements for documents, the language requirements for professionals, the time limits and the compensation measures. The Code of Conduct was approved by the group of

¹¹ See Your Europe Advice Report of 25.10.2010: 'It is a widespread belief that automatic recognition is the one single rule, and in any case 'automatic' is understood literally as meaning that there is no procedure strictly speaking. http://ec.europa.eu/citizensrights/front_end/docs/css_report_on_prq_220310.pdf; as well as Study on recognition of professional qualifications (PE: 277/15142 (2010), [IP/A/ALL/FWC/2006-105], European Parliament, <http://www.europarl.europa.eu/document/activities/cont/201010/20101025ATT89911/20101025ATT89911EN.pdf>

¹² The Commission services consulted national contact points and experts from Your Europe Advice on the basis of a questionnaire to see what they hear from the citizens. National contact points are administrative bodies at national level which are entrusted with the mission to assist citizens with the recognition procedure and provide them all relevant information, see http://ec.europa.eu/internal_market/qualifications/contactpoints/index.htm

¹³ The Commission and Member States coordinators for recognition of professional qualifications issues agreed on a set of guidelines for interpreting the Directive, the so-called Code of Conduct., see http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf.

coordinators for the Directive (composed of representatives from each Member State) in June 2009.

However, the Code is not a legally binding instrument. It only provides an overview of best, acceptable and unacceptable practices. Feedback received from citizens (through complaints) and from the competent authorities themselves seems to indicate that the Code of Conduct is not yet well known amongst competent authorities.

Question 3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

2.3 Mitigating unintended consequences of compensation measures

In most cases professionals cannot benefit from automatic recognition of their professional qualifications. Under the so-called “general system”, access to a profession should be granted to a professional who is fully qualified for the same profession in another Member State. Member States can impose compensation measures (a choice for the applicant between an aptitude test and a period of supervised practice), if the duration or the content of the migrant’s training differs substantially from that which are required in that Member State.

This regime seeks to ensure that a qualified migrant can no longer be forced to undergo a full course of training. However, if the compensation measures are very burdensome (for instance an adaptation period of three years), a professional could be compelled to return to a lower paid activity despite a good qualification. In a period where qualified staff will be in short supply, this is not necessarily a desirable outcome. Therefore, the public is invited to report any experiences with such compensation measures, in particular whether they risk acting as a deterrent to the movement of workers.

There are two other issues: how could the task of devising and organising such tests and adaptation periods be facilitated for the Member States? How could we deal with cases where a Member State considers that major deficiencies in the training of a migrating professional cannot be compensated and that intensive additional training remains strictly necessary? As to the first question, forging closer networking and cooperation between competent authorities might be a way forward. On the second question, the European Court of Justice paved the way with the so-called doctrine of “partial access” to a profession.

The first issue: devising an aptitude test or planning an adaptation period is not always easy. Competent authorities report difficulties in this respect, notably in the case of health professionals who do not benefit from automatic recognition. In this respect, competent authorities could be invited to develop Europe-wide codes of conduct, whilst Member States and their governments should be required to actively encourage the respect of such codes of conduct. These codes of conduct could for example define conditions for the organisation of tests and adaptation periods (objectives, duration, frequency, methodology, etc) and develop a common approach to devise and implementation tests or stages. A code of conduct for aptitude tests could be developed, for instance, for health professionals, professional ski instructors or craftsmen.

The second issue: there are cases where a Member State has set training requirements at such a high level that substantial differences in the training accomplished by a professional cannot be compensated by a test or a stage. In the case *Collegios de ingenieros*¹⁴, the European Court of Justice laid down the principle of partial access to a profession. The Court has decided that partial access must be granted if two conditions are met:

- Differences between the fields of activity of the professions concerned are so large that they cannot be compensated by compensatory measures and that in reality a full training and educational programme is required;
- There are no valid public interest reasons to prohibit such partial access.

This case law is not reflected in the Directive. Its implications merit a wider discussion. For example, it is unclear what happens to a professional to whom partial access has been granted. Can full access to the profession, still be denied after a certain number of years of professional experience? This might lead to situations where professionals are actually blocked in their professional career in the host Member State.

Question 4: Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?

Question 5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

Question 6: Do you see a need to include the case-law on “partial access” into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

2.4 Facilitating movement of new graduates

The Professional Qualifications Directive seeks to facilitate the free movement of fully qualified professionals. Its scope does not cover professionals who hold a diploma but have yet to complete a remunerated traineeship or supervised practice which might be required under the law of the Member State where they graduated. At the same time, in the context of the Europe 2020 strategy, the Commission stresses the need to further promote students' mobility¹⁵. However, this does not cover the recognition of the new graduates. Consequently, there appears to be a gap for those who are no longer students but not yet fully qualified professionals either. Meanwhile, these graduates could benefit from learning abroad and developing professional networks for their future careers as fully qualified professionals.

The European Court of Justice has opened a door for them: the *Morgenbesser*

¹⁴ Case C- 330/03 of 19 January 2006, *European Court reports 2006 Page I-801*

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Youth on the Move, An initiative to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the European Union, COM(2010) 477 final, SEC(2010) 1047, 15.9.2010, http://ec.europa.eu/education/yom/com_en.pdf

judgement¹⁶ - confirmed by the *Pesla* judgement¹⁷ - clarifies that the Treaty rules on free movement apply to graduates wishing to pursue a remunerated traineeship in another Member State. However, this case law still leaves graduates in an uncertain position. A host Member State is obliged to examine their qualifications but it has full discretion regarding the application of potential compensatory measures (including requesting an aptitude test or adaptation periods even beyond three years). These measures could be heavier than those foreseen under the "general system" of the Directive, though the applicant is not seeking full access to a profession. Instead it appears that it might be more proportionate to accept the person to a traineeship or supervised practice without any further conditions given that he will subsequently be subject to all necessary exams before becoming a fully qualified professional.

It is also unclear what happens if these professionals wish to return to their home Member States after the completion of the remunerated traineeship or supervised practice. There is a risk that the home Member State might not recognise this professional experience.

Question 7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

Question 8: How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons.

2.5 Facilitating movement between non-regulating and regulating Member States

If a professional wishes to move from a country where neither the profession nor the training are regulated to a country where the profession is regulated, the Directive provides that the Member State may require that the professional proves experience of two years in the last ten years (both for temporary mobility and permanent establishment). There are certain professions which by nature include frequent movement across Europe. The transport, sport and tourism sectors are good examples. The question is whether the requirement of two years' professional experience can constitute a barrier to accessing a profession which is cross-border by nature. In their experience reports, Member States themselves state that they examine requests for recognition even if the two year requirement is not fulfilled by a professional. This indicates a demand by professionals, but they have no certainty in this regard.

Furthermore, the Directive stipulates that the requirement of two years of professional experience does not apply if the professional has followed "regulated education". Currently this concept is defined as "geared towards the pursuit of a given profession". In practice, the concept has been construed restrictively as training whose content is narrowly linked to the exercise of the profession. With a view to facilitating mobility, the concept of "regulated education" could be clarified to allow for its broader interpretation including any relevant educational programme officially recognised and attested as such by the home Member State of the migrating professional. Relevance could be determined

¹⁶ ECJ 13 November 2003, *Morgenbesser*, Case C-313/01, [2003] ECR I-13467.

¹⁷ ECJ 10 December 2009, *Pešla*, Case C-345/08 [2009], not yet published in the ECR.

by a list of minimum competences defined by the home Member State.

These considerations are also valid in cases where a professional not only wishes to provide services for a limited time but to establish himself (see Article 13 (2) of the Directive).

Question 9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

Question 10: How could the concept of "regulated education" be better used in the interest of consumers? If such education is not specifically geared to a given profession could a minimum list of relevant competences attested by a home Member State be a way forward?

3 INTEGRATING PROFESSIONALS INTO THE SINGLE MARKET

3.1 A European Professional Card

In order to facilitate mobility, the rules on recognition of professional qualifications should provide simple answers. For the professional the question is: "How can I prove my credentials in another Member State?" Professionals might move on a temporary basis for a few days, several months or even for a few years but wish to return to their home Member State. Both the home Member State and the host Member State will face the same question: "The professional is welcome but how do we keep track of his activities?" Clients or employers of such professionals might wonder: "How can I be sure that this is a well qualified professional"?

A professional card could potentially become an attractive tool supporting information flows in the context of temporary mobility and faster recognition of qualifications. In its Communication "Towards a Single Market Act", the Commission suggests discussing the pros and cons of a professional card during the evaluation of the Professional Qualifications Directive. The Professional Qualifications Directive¹⁸ already suggested to professional associations and organisations the introduction of professional cards in order to speed up the exchange of information between Member States. There have been efforts to develop such cards within different professions. However, such projects either did not succeed or gave rise to cards issued by professional associations which authorities are not ready to accept.

This situation calls for a fresh start. The Commission services have therefore set up an inter-professional Steering Group bringing together professionals and authorities interested in this idea¹⁹ and will issue a report summarising the Groups's initial reflections in July 2011. A European professional card certifying that a professional is lawfully established in a Member State and has certain professional qualification or experience could have considerable simplification effects for all stakeholders: the

¹⁸ See Recital 32 of the Directive.

¹⁹ European associations representing, among others, architects, doctors, engineers, lawyers, mountain guides, midwives, pharmacists, real estate agents, tourist sector professionals, are represented in the group, alongside experts from Belgium, Denmark, France, Germany, Hungary, Italy, the Netherlands, Poland and Slovakia and the United Kingdom.

migrating professional, the competent authorities in the home and in the host Member State, as well as clients or employers of such professionals.

In order to achieve these objectives, a card could have the following features:

- It could be an instrument focusing on interested migrating professionals. A professional could receive such a card only if he wishes so. However, once issued, the card should be binding on competent authorities;
- It could be open to all interested professionals, even if they come from a Member State where the profession is not regulated and wish to move to a Member State where it is.
- It could be issued by the competent authority in the home Member State of the professional, i.e. the Member State of establishment or the Member State awarding the qualifications. This authority is best placed to assess and certify the qualifications of the professional. This could even be applied in situations where the home Member State does not regulate a profession but the host Member State does.
- It could primarily facilitate the temporary mobility of professionals (freedom to provide services) replacing the current cumbersome declaration regime.
- It could also further simplify the recognition procedure in the context of establishment. It could speed up the automatic recognition process for certain professions, bringing the current three month period for assessing qualifications down to one month or two weeks. It could also speed up the case by case recognition process (under the so-called "general system"), notably by facilitating the transmission and translation of documents.
- It could be supported by the electronic exchange of information between Member States. It should be a mechanism which already works and in which Member States' competent authorities have already put their trust, such as the Internal Market Information System (IMI) ²⁰. A competent authority could hence only issue such a card if it is registered with IMI and could fully engage in a continuous information exchange with a competent authority in another Member State.

Question 11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase transparency for consumers and employers? Should it enhance confidence and forge closer cooperation between a home and a host Member State?

Question 12: Do you agree with the proposed features of the card?

Question 13: What information would be essential on the card? How could a timely update of such information be organised?

Question 14: Do you think that the title professional card is appropriate? Would the title

²⁰ The Internal Market Information system (IMI) is an electronic tool that allows competent authorities to easily communicate with each other. Thanks to IMI national administrations can identify the relevant competent authorities in other Member States more easily communicate with them in their own language by using a set of standard pretranslated questions and answers. http://ec.europa.eu/internal_market/imi-net/index_en.html

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| professional passport, with its connotation | of mobility, be more appropriate? |
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3.2 Abandon common platforms, move towards European curricula

Member States have wide discretion in granting access to professionals under the “general system”. Differences in approach from one Member State to the next can constitute an obstacle to free movement. Article 15 of the Directive allows professional associations and individual Member States to propose a simplified system of compensation measures via so-called common platforms.

In its transposition and implementation report of 22 October 2010²¹, the Commission services conclude that this opportunity to simplify mobility has failed. There are two main reasons:

- A common platform requires, as a starting point, a compilation of a comprehensive, detailed and reliable inventory of the legal situations in all the relevant Member States (the scope of the activities for the profession in question, regulatory details, the level and content of training required). Under Article 15 of the Directive, this inventory would need to have covered at least 2/3 of all Member States – which is very demanding (and which was never reached in any of the requests received by the Commission).
- Considerable differences in professional qualifications requirements (from no regulation at all to the requirement of university diplomas) make harmonisation or approximation between countries nearly impossible. It appears to be difficult to find a common denominator for compensation measures satisfying at the same time Member States that do not see any need for regulation and those with the most demanding requirements.

In the light of the many legal and practical difficulties, it is obvious that the concept of common platforms needs to be completely overhauled. Instead of aiming for harmonisation of compensation measures, another route could be explored:

European curricula for various professions could be developed, for example on the basis of common sets of competences. They could become a “28th regime”, a European training program which exists in addition to national training programs for a given profession. Under European law, 28th regimes offer a value added in areas like company law or intellectual property law. In the area of professional qualifications, a European curriculum could exist in parallel to national training programmes rather than replace them. It should in principle be agreed and applied by all, or by a large number of Member States. If a minimum number of Member States need to be fixed, the quorum mentioned in Article 20 of the Treaty of the European Union (9 Member States) could be a useful benchmark to build on.

Such European curricula could be put forward by a minimum number of Member States for endorsement by the Commission as an implementing measure.

²¹ http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf

Question 15: What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to national requirements? What conditions could be foreseen for its development?

3.3 Offering consumers the high quality service they demand

Today, 27 Member States regulate around 4700 professions which can be grouped into about 800 different categories. Cross-border competition and mobility are however more hampered than facilitated:

- Around 220 categories of profession are only regulated in a single Member State which means the added value of regulating a profession is not shared with any other Member State.
- There has been no reported mobility of professionals from one Member State to another within half of the 800 categories in the last thirteen years.

Accordingly, the regulation of professions could in itself hinder the mobility of professionals across Europe. Under conditions of low mobility and rising demand, the tension between regulation and freedom of movement seems, therefore, to represent a real challenge. Regulation can actually lead to fragmentation of the Single Market instead of promoting its integration. One might even argue that there is a risk of national protectionism.

Instead, there should be more focus on offering a wide choice of high quality services to consumers. Not only professionals should be able to participate in the Single Market. The same should be the case for the clients using their services. A consumer or client no longer just stays in her country. As they move, they seek services from professionals during their travels, ideally speaking their mother tongues. The consumer could be a tourist accompanied by a tourist guide, a sportsman going with his physiotherapist, a landlord who wishes to see a second residence renovated in another country but with the assistance of his architect and/or his real estate agent from home.

Question 16: To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

Question 17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?

3.4 Making it easier for professionals to move temporarily

The Directive relies on the case law of the European Court of Justice to considerably facilitate temporary mobility. The underlying assumption is that a professional who lawfully exercises his profession in a Member State is deemed sufficiently qualified to pursue this profession on a temporary or occasional basis in any other Member State. The Directive only allows Member States to require that, once a year, the professional informs the competent authorities of his intention to provide services.

However, the application of this regime raises different problems:

Feedback received from the competent authorities, in the context of the experience reports, refers to their difficulties in defining what a temporary and occasional service is. Competent authorities sometimes even appear to prefer 'one size fits all' definitions based on a specific number of days, weeks or months. In contrast, national laws and regulations transposing this part of the Directive avoid such definitions. Indeed, such specific criteria cannot be established because the jurisprudence of the European Court of Justice requires a case by case analysis, in particular in relation to the duration, frequency, regularity and continuity of the provision of services

As a result there is actually a risk that individual competent authorities unduly refuse the benefit of this regime, in order to maintain a prior check of qualifications or to check whether their domestic conditions for professionals to establish themselves on a permanent basis are not being "circumvented". Setting (probably) arbitrary time limits would go against the Single Market in which integration of markets should prevail against fragmentation. In addition, the logic of the Treaties dictates that the freedom to provide services applies whenever the rules concerning establishment do not. Accordingly, the way forward is to determine whether a professional fulfils the criteria for establishment, as defined by the European Court of Justice²². A professional not meeting these criteria should be considered as providing services on a temporary basis.

There is another issue. Most Member States make use of the possibility to require an annual declaration for most professions they regulate. This can result in a burdensome procedure, counterintuitive in the context of a single market, where goods circulate freely and services are provided online and offline. Moreover, there is evidence that certain Member States require declarations to be made to different competent authorities, if the professional wishes to provide services in different regions of the same Member State.. The IMI has enabled efficient cooperation between different Member States; regions in the same Member State should be able to cooperate more efficiently with each other. Indeed, a number of Member States (e.g. France and Italy) have already developed the good practice of developing a country-wide declaration. This practice is also consistent with the rationale of Art. 10 (4) of the Services Directive concerning authorisations.

Finally, a declaration can be required in nearly all cases even if most of the services are provided online, without declaration, and only a minor part of the activity requires physical movement of a professional. Whilst the E-Commerce Directive allows for provision of online services without any declaration, any related physical movement could require a declaration. The result is that a professional who provides online services without moving physically can not be required to make an annual declaration. In contrast, for mere business trips to the country where he is providing services, he may be required to make such annual declaration.

In addition to the annual prior declaration, professionals can be subjected to, at most, a pro-forma registration (with a professional association). This registration cannot be a prerequisite for the provision of a service. Registration could be arranged by the competent authority on the basis of the annual declaration sent by the provider and

²² In its judgement of 30 November 1995 in the Gebhard case (C-55/94), the European Court of Justice stated that where a professional "pursues a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State.", the professional "comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services." (see paragraph 28)

should be offered without cost or delay. Member States generally require such pro-forma registration to ensure compliance with professional rules linked to professional qualifications in the host Member State. However, this could perhaps already be ensured on the basis of the prior declaration alone.

Only in the case of regulated professions with public health and safety implications are competent authorities allowed to exceptionally check qualifications in advance. The legal basis for this is Article 7 (4) of the Directive. It seems that Member States make extensive use of the possibility given under the Directive to carry out prior checks. A significant number of Member States also leave it to the competent authorities to decide whether or not a service could have public health and safety implications justifying a prior check of the service provider's qualifications. This results in lack of clarity and creates an additional obstacle for the professionals.

Question 18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms “temporary or occasional” or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?

Question 19: Is there a need for retaining a pro-forma registration system?

Question 20: Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?

4 INJECTING MORE CONFIDENCE INTO THE SYSTEM

4.1 Retaining automatic recognition in the 21st century

4.1.1 *Automatic recognition based on education and training*

Most professional qualifications are recognised on the basis of a case by case comparison of the migrant professional's qualification with the host Member State's training requirements. However, in the case of seven professions (namely doctors, general care nurses, dentists, midwives, veterinary surgeons, pharmacists and architects), European legislators decided to harmonize the training requirements, and obliged Member States to recognize automatically qualifications fulfilling these requirements. A significant proportion of migrant professionals belong to these professions. In their reports about their experience with the Directive, national competent authorities in charge of these professions expressed support for maintaining automatic recognition of the qualifications in question. However, some signalled concerns related to the scope of automatic recognition, the need to update training requirements, the lack of transparency regarding the contents of the training programmes and the means of dealing with new diplomas.

4.1.1.1 Scope of automatic recognition

Several competent authorities indicated that despite the harmonisation of minimum training requirements, significant substantive differences exist between Member States in the duration and content of nurse and midwife training. The tasks exercised by the professionals in these professions differ accordingly between Member States. An insufficiently high level of training harmonisation could sometimes make it difficult for

the migrant professional to integrate smoothly into the host Member State's health system.

Another issue concerns the access to the pharmacist profession. On the one hand, the scope of practice for a pharmacist who fulfils the minimum training requirements under the Directive should include the *preparation testing storage and supply of medicinal products in pharmacies open to the public* (see Article 45 (2) letter f of the Directive). Most pharmacists work in this area. On the other hand, Article 21 (4) of the Directive allows Member States not to give effect to automatic recognition of a pharmacist's qualifications for the setting up of new pharmacies, including those which have been open for less than three years. This result is contrary to the general principle of automatic recognition. It needs to be assessed whether this can be upheld in the light of the recent case law on cross-border online selling of non-prescription medicinal products²³.

4.1.1.2 Need to update minimum training requirements

The comments made in the experience reports by competent authorities are certainly diverse. They do not necessarily reflect the views of governments or of the educational world concerned. They could be summarized in the following way:

- **Stronger focus on output based training:** Various competent authorities across the seven professions emphasised the need to consider the reform of the national higher education systems, generated primarily by the Bologna process. Most of these competent authorities advocated an additional focus on output-based training and requested that the Directive should also list the competences that graduates must acquire by the time of completion.
- **Increase the minimum duration of training:** Some competent authorities would like to see an increase in the minimum duration of the training for nurses (from three to four years), certain medical specialities (from three to four or even to five years), midwives, and architects (from four to five years). In the same vein, some suggest an increase also to the entry requirements to the training for certain professions: In the case of general care nurse training and midwife training the admission requirement is a minimum of ten years of general training (Articles 31(1) and 40(2)(a) of the Directive). Several competent authorities indicated the need for increasing the admission requirements to twelve years of general training or even to university entrance level.
- **Clarify the calculation of the minimum duration:** In the case of basic medical training and general care nurse training, the minimum duration is stipulated in the Directive both in years and in training hours (Articles 24(2) and 31(3)). However, the wording of these provisions allows for diverging interpretations (in both cases they provide for "*X years of study or Y training hours*"). Several competent authorities called on the Commission to clarify this. Some competent authorities for nurses suggested deleting the reference to the number of training hours and keeping only the number of years as a requirement. In contrast, for the other sectoral professions, the minimum duration is only stipulated in years. Other competent authorities would

²³ DocMorris NV and Jacques Waterval, *European Court reports 2003 Page I-1488*.

further specify the duration of the training of professions other than doctors and general care nurses by adding the minimum number of training hours²⁴.

- **Clarify and update training subjects:** several competent authorities in charge of doctors called for an amendment to Annex V. of the Directive, to include basic medical training subjects. Many competent authorities mentioned that several of their medical specialist training programmes have a "common trunk" (the first part of the specialist training is common for several specialities). For the other sectoral health professions, Annex V. of the Directive lists compulsory training subjects. Several competent authorities believe that these lists need to be reviewed, with the view to adapting them to scientific and technical progress.

4.1.1.3 More transparency about the training contents

Several competent authorities responsible for doctors and for midwives indicated in their experience reports that they would welcome more transparency between Member States in disclosing the content of the training on a regular basis. Some competent authorities responsible for veterinary surgeons even suggested a regular mandatory evaluation of the training programmes or the accreditation of training institutions.

4.1.1.4 Reinforcing automatic recognition for new diplomas at European level

Article 21(7) of the Directive obliges the Commission to publish newly notified diplomas and to regularly update the lists of new or modified diplomas. In carrying out this task, the Commission relies on the Member States to notify any new or amended diplomas which are then assessed for compatibility with the requirements of the Directive. There is a concern that Member States are slow in notifying new diplomas, rendering it more difficult for the graduates of their training programmes to have their professional qualifications automatically recognised in the other Member States. The other problem is that notifications are sometimes made only once the new training programmes for such diplomas are actually in place. It might be advisable to carry out notifications at a much earlier stage, for instance once a training programme is submitted for approval under domestic accreditation or any other equivalent schemes. In the absence of a notification, training programmes would not be allowed.

Question 21: Does the current minimum training harmonisation offer a real access to the profession, in particular for nurses, midwives and pharmacists?

Question 22: Do you see a need to modernise the minimum training requirements? Should these requirements also include a limited set of competences? If so what kind of competences should be considered?

Question 23: Should a Member State be obliged to be more transparent and to provide more information to the other Member States about future qualifications which benefit from automatic recognition?

Question 24: Should the current scheme for notifying new diplomas be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.

4.1.2 Automatic recognition based on professional experience

Professional activities in the sectors of craft, commerce and industry – as listed in Annex IV – benefit from automatic recognition based primarily on the principle of professional experience (and in some instances also on the basis of prior training of two or three years – see e.g. Article 17 (1) c) and e)). The details of the required professional experience in terms of number of years are set out in Articles 16 to 19 of the Directive. The main advantage is that the professionals concerned do not need to undergo any aptitude tests or stages.

These rules actually date back to the 1960s when a “transitional regime” had been introduced through a series of directives. Conditions for such automatic recognition have not undergone serious review for many years. The list of professions under Annex IV was created at the time of the adoption of the initial directives for the various professions and no effort to update them has taken place. The classification of activities is to a large extent based on the International Standard Industrial Classification of All Economic Activities (ISIC) as of 1958.

Question 25: Do you see a need for modernising this regime on automatic recognition, notably the list of activities listed in Annex IV?

Question 26: Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?

4.2 Continuing professional development

Continuing Professional Development (CPD) is a means of constantly improving ones' knowledge and skills in a professional area. It is not a new concept. What is new is its perceived importance in the modern professional world, especially as it is becoming unusual for professionals to keep the same role throughout their working lives. New skills have to be acquired in order to allow for personal career development. Customers are also increasingly demanding and better informed than in the past. As the cost of indemnity policies increases, more and more insurance companies view CPD as a factor to be considered when calculating the premiums for professional indemnity insurance.

The importance of CPD is acknowledged by Member States' competent authorities, as evidenced by the comments made in the experience reports. CPD is not compulsory for all regulated professions at EU level, but there seems to be a trend at national level to move in this direction, in particular for professions for which the minimum training requirements are harmonised at European level. Some suggested making CPD obligatory in the Directive and defining a common working definition. Others indicated that a new provision should be added to the directive, stipulating that migrant professionals who have not satisfied the CPD requirements in the home Member State should not be recognised automatically in the host Member State.

Question 27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

4.3 More efficient cooperation between competent authorities

Administrative cooperation is the key to building the confidence between national administrations which underpins a smooth application of the internal market rules. The Professional Qualifications Directive requires competent authorities of the home and host Member States to work in close collaboration and to provide mutual assistance. The Internal Market Information system (IMI) has been developed for this purpose. It allows national administrations to identify the relevant competent authorities in other Member States and to communicate with them in their own language by using a set of pre-defined questions.

The IMI was initially developed in 2007 as a voluntary pilot project for the health professions. The implementation for these professions began in February 2008. The Services Directive has made its use mandatory for all professions and all requirements within its scope. Feedback received from the competent authorities in the experience reports suggests that they see the advantages of IMI in terms of quicker and easier information exchange and that they support the extension of IMI to professions that are excluded from the Services Directive (for which the use of IMI is currently optional).

The Services Directive has also introduced the use of an alert mechanism allowing competent authorities to inform each other of cases of professional malpractice. It can be used, under certain conditions, in cases including those of a professional who could cause serious damage to the health or safety of persons or to the environment. As a consequence, activities of a craftsman fall under this alert mechanism whilst this is not the case for a health professional outside the scope of the Services Directive.

A particular question is under what circumstances should such an alert be triggered by a Member State without waiting for a question from another Member State, in relation to health professionals. The following examples are conceivable and there may be others:

- A professional presents a fake diploma to a competent authority or gives false declarations/evidence;
- He is subject to sanctions and is no longer allowed to practice in his country of origin;
or
- He is subject to investigations possibly leading to a withdrawal of his licence.

Question 28: Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use of IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions?

Question 29: In which cases should an alert obligation be triggered?

4.4 Language skills

Professionals must have the language knowledge necessary for exercising a particular activity in a Member State. This principle is clearly set by Article 53 of the Professional Qualifications Directive. This provision has not given rise to any public debate, except for the question of the use of languages by foreign doctors in a few Member States.

Language requirements should be justified and proportionate, in view of the activity that the professional wishes to carry out. Thus, they may vary according to the activities to be

exercised, in line with the proportionality principle. Professionals should be able to demonstrate their linguistic skills by any means (attendance of language training, stay in a country where the language is used, etc.). On the other hand, the Directive should not be construed as imposing a blanket ban on language testing. It does allow for language testing in exceptional and justified cases. To address this issue Section VII of the Code of Conduct (see also section 2.2) provides for guidelines on language requirements and language testing.

Question 30: Have you encountered any major problems with the current language regime as foreseen in the Directive?
