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GREEN PAPER

Modernising the Professional Qualifications Directive

(Text with EEA relevance)

1. INTRODUCTION

EU citizens¹ providing a wide range of professional services to consumers and business are essential stakeholders in our economy. Gaining employment or providing services in another Member State is a concrete example of how they can benefit from the Single Market. It has long been recognised that restrictive regulation of professional qualifications has the same stifling effect on mobility as discrimination on the grounds of nationality. Recognition of qualifications obtained in another Member State has thus become a fundamental building block of the Single Market. As highlighted in the Europe 2020 Strategy² and the Single Market Act³, professional mobility is a key element of Europe's competitiveness. Burdensome and unclear procedures for the recognition of professional qualifications were identified in the EU Citizenship Report 2010⁴ as one of the main obstacles EU citizens still encounter in their daily lives when exercising their rights under EU law across national borders. A modernisation would also strengthen the position of the European Union in international trade negotiations making regulatory convergence easier, and allowing the EU to obtain better market access in third countries for EU citizens.

Mobility of professionals is still low in the EU. The number of complaints, SOLVIT cases and questions raised with Your Europe Advice and analysis of these cases provide clear evidence of a need to modernise the rules. In addition, intra-EU trade in services (including professional services) represents only about 25% of overall trade within the EU. This share is far too low when considered against the background of the overall importance of the services sector to the EU economy (70% of GDP). More can be achieved.

Increased mobility would also respond to the challenge of filling high-skill jobs, as the active population declines. According to the projections of the European Centre for the Development of Vocational Training (Cedefop), 16 million more people will be needed to fill high-skill jobs by 2020⁵, which under current trends will lead to severe shortages of qualified professionals. Some of these skills shortages could be filled by people with professional qualifications obtained outside the EU, who currently face major problems in having their qualifications recognised.

A projected shortage of one million health professionals is of particular concern. How countries can better manage mobility of health professionals by further strengthening their general workforce policies, and further elaborating workforce planning mechanisms will be

¹ This also concerns third country nationals who enjoy rights under European legislation: family members of EU citizens, long term residents, refugees, and "blue card" holders are treated in the same way as EU citizens with respect to recognition of professional qualifications.

² Communication from the Commission Europe 2020, A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final, 3/3/2010

³ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of regions, Single Market Act, Twelve levers to boost growth and strengthen confidence, "Working together to create new growth", COM(2011) 206/4, SEC (2011) 467

⁴ EU Citizenship report 2010 "Dismantling the obstacles to EU citizens' rights", of 27 October 2010, COM (2010) 603 final

⁵ Skill supply and demand in Europe: medium-term forecast up to 2020 (2010), available at: http://www.cedefop.europa.eu/en/Files/3052_en.pdf

subject of separate action by the Commission and the Member States⁶.

Enabling citizens to realise their individual right to work anywhere in the EU must be seen in this wider context. To take full advantage of the freedom of movement, professionals must have their qualifications easily recognised in other Member States⁷. It is therefore essential that the Professional Qualifications Directive⁸ sets out clear and simple rules for the recognition of professional qualifications. At the same time, the rules must ensure high quality of services without themselves becoming an obstacle to mobility. The European Union has already achieved a lot in this area: some professional qualifications, notably in the areas of health, architecture, crafts, trade and industry are subject to automatic recognition; for all the other professions, the principle of mutual recognition on the basis of a “general system” has been introduced successfully. In 2005, these rules were complemented by a new lighter regime to facilitate temporary mobility. These rules benefit millions of professionals in Europe. It is estimated, that the system of automatic recognition on the basis of harmonised minimum training requirements alone applies to 6.4 million citizens⁹.

In March 2010, the Commission launched an evaluation of the Directive which mobilised many stakeholders: around two hundred competent authorities drew up experience reports in 2010 and around four hundred participants gave their views in a public consultation in early 2011. The Green Paper builds on this evaluation. It presents new ideas for facilitating mobility in the Single Market, such as the European Professional Card (see part 2); it explores ways to build on achievements (see part 3); and it sets out the options for the modernisation of automatic recognition (see part 4). A broad consultation on these ideas will help the Commission to assess the various options for the modernisation of the Professional Qualifications Directive.

A legislative proposal to modernise the Directive is planned for the end of 2011.

2. NEW APPROACHES TO MOBILITY

2.1. The European professional card

Modernisation should draw on the latest technologies to offer new tools for mobility. These technologies have the potential both to enable professionals to become more mobile and improve information to consumers and employers about professionals' qualifications for the services they offer. A European professional card could be built around fast communication technologies of the 21st century to create a mechanism which will give it concrete and well-tailored effects under a modernised Professional Qualifications Directive. The Internal Market Information system (IMI) could facilitate much faster cooperation between the issuing Member State (the professional's country of departure) and the receiving Member State (the country where the professional seeks establishment). Faster cooperation between the two

⁶ A further issue concerns sea-related regulated professions where the Commission intends to publish in 2012 a Communication on Blue Growth, sustainable growth from the oceans, seas and coasts. The Commission is, in that perspective, interested to understand whether in this area any specific obstacles to mutual recognition can be identified.

⁷ Difficulties linked with the recognition of professional qualifications are one of the obstacles to professionals' mobility within the EU, along others such as portability of pension rights, language barriers etc.

⁸ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 225, 30.9.2005, p. 22)

⁹ Internal Market Scoreboard, July 2010.

countries would enable a fast-track recognition process for the card holder. Cooperation via the IMI should also be subject to deadlines which Member States should be bound to respect in the future. In the same vein, temporary mobility could become much simpler for the card-holding professional: any information obligations that the receiving country can currently impose would become redundant with all the necessary information either featured on the card itself or available from the country of departure which issued the card by means of the fast electronic infrastructure.

Mobilising the Member State of departure

Under the current system, the receiving Member State is responsible for the verification of the migrating professional's qualifications. This can create difficulties for the professional, who may need to submit translations of various documents. It can also be a resource-intensive task for the competent authority in the receiving Member State, which may not be familiar with the way qualifications are acquired in other Member States. A European professional card, issued by the competent authority in the Member State where the qualification is acquired, and under the condition that the professional is entitled to practice, could facilitate the process by increasing the role of the Member State of departure at an early stage.

When issuing such a card, the competent authority in the Member State of departure would have to check that applicants hold the correct qualifications and satisfy any other conditions as may be required under a modernised Directive, for example that they are legally established or that their diplomas are authentic. This authority would also store the documents which justified the issuance of the card and make them available to its counterpart in the receiving Member State, as necessary. To ensure mutual trust, the card would not be issued by any commercial entities. When a profession is not regulated in the Member State of departure it would be up to that Member State to designate a competent public authority to issue the card (e.g. contact points¹⁰ or NARIC centres¹¹).

Under this system, authorities in the receiving Member State would not have to engage administrative resources to verify all the information that has already been examined by the Member State of departure. Verifying the validity of the card itself might be sufficient to confirm that the holder can exercise the profession in the host Member State.

The Internal Market Information System (IMI) could be relied upon in this context as a "back office" for cooperation between competent authorities. This would require that all competent authorities that issue and verify the card are registered with the IMI, allowing them to communicate with each other if they have any questions. A significant proportion of competent authorities across the EU are already registered; others are expected to register by the end of 2012.

Mobilising the receiving Member State

For the professional wishing to provide services on a temporary basis, a professional card could substitute the administrative documents supporting prior declaration, which most

¹⁰ Article 57 of the Directive obliges Member States to designate a contact point in order to provide the citizens and contact points of other Member States with information and to assist citizens in realising their rights.

¹¹ National Academic Recognition Information Centres (NARIC) assist citizens with issues related to academic qualifications. For more information see <http://www.enic-naric.net/index.aspx?s=n&r=g&d=about#NARIC>.

Member States require on the basis of Article 7 of the Directive. An e-mail indicating the professional's card number could be sufficient. The card holder could even be exempted from the prior declaration regime altogether, because the card containing the necessary information could be sufficient. It could be shown to the authorities and the recipients of services in the host Member State instead of sending a declaration. Temporary mobility would become much simpler, while any necessary controls would still be possible.

Similar benefits could be achieved for professionals seeking automatic recognition of their qualifications on the basis of harmonised minimum training requirements. A card could attest that the professional's qualifications comply with the harmonised minimum requirements under a modernised Directive. This could be verified by the issuing competent authority at the time of application for a card in the Member State where the requisite evidence of formal qualifications was awarded. The authority in the receiving Member State would no longer have to verify the qualifications and would thus be in the position to issue a recognition decision within a significantly shorter period of time (e.g. within two weeks instead of the three months currently allowed under the Directive)¹².

Even under the general system, where qualifications are checked on a case-by-case basis, a card could simplify and speed up the recognition procedure, as initial verification would be completed by the authority issuing the card. As a result, the procedures could be shortened to a maximum of one month instead of the current maximum of four months¹³.

A professional card would also offer benefits to service recipients, notably in terms of transparency. By presenting the card, professionals would offer a guarantee that they are competent to exercise the profession. In addition, a system could be set up to allow consumers and employers to verify the validity of the card (e.g. through direct contacts with the competent authority).

The work of the steering group and pilot case studies

A European professional card would not be mandatory. Interested mobile professionals should have the possibility, but no obligation, to apply for such a card. The Commission has already set up a Steering Group on the professional card for selected parties who have expressed an interest. It is composed of representatives of different professions, competent authorities and trade unions. The Group began its work in early January 2011 and is expected to put forward concrete conclusions by October of this year. The Group has been considering the added value and possible legal effects of such a card. It also studied existing professional card projects, as well as similar instruments that can be useful in the daily lives of citizens (such as the European driving licence, the European health insurance card or the future European Skills Passport). The Group devoted major attention to the challenges of implementation, including the questions of the contents and format of such a card, as well as the best way of ensuring its reliability. The results will be presented at the Single Market Forum, which will take place on 3-4 October in Cracow, Poland.

¹² While the reinforced role of the sending country may require the engagement of administrative resources, such approach is likely to reduce the overall burden, as it should be easier for the sending country to verify qualifications in its own country and languages and this should reduce costs incurred through the repetition of verification.

¹³ Here again, the sending authority will spend more time verifying the information. However, the overall procedure should be shorter, as the sending authority is best placed to do such checks (language reasons, check of validity of administrative documents etc.).

In view of the differing conditions for access to and exercise of each profession, the Steering Group has considered it useful to set up case studies involving a number of selected professions: engineers, doctors, nurses, physiotherapists, and tourist guides.

Question 1: Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

Question 2: Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

2.2. Focus on economic activities: the principle of partial access

Professionals can have difficulties with the recognition of their qualifications if the scope of economic activities performed as part of the profession differs between their home Member State and the Member State in which they seek establishment. This is the case, for instance, for the profession of "snowboard instructor" which exists as a separate profession in certain Member States but not in others where snowboarding is taught by ski instructors instead.

Sometimes the differences in the scope of economic activity covered by a profession in two Member States are so large that professionals would have to undergo the full programme of education and training in the host Member State, in order to make up for the differences in the corresponding qualifications requirements, as in the example above. In considering this issue, the Court of Justice developed the principle of partial access¹⁴. The Court held that Member States must, under certain conditions, allow the partial taking-up of the profession on request of the professional. However, according to case law of the Court, the protection of the recipients of services and consumers in general may justify proportionate restrictions on the freedom of establishment and the freedom to provide services if such measures are necessary and proportionate in order to obtain the objective .

An insertion of this principle into the Directive would extend the safeguards offered to professionals, such as deadlines by which Member States must issue recognition decisions, also to professionals who meet the conditions for partial access.

¹⁴ Colegio de Ingenieros de Caminos, Canales y Puertos, Case C- 330/03 of 19 January 2006, European Court reports 2006, p. I-801.

A modernised Directive could also confirm the criteria according to which the principle would apply ("criteria-based approach"), in line with the jurisprudence. According to the Court, the partial access principle applies where it is possible to objectively separate the economic activity which the professional wishes to pursue in the host Member State from the rest of the activities covered by a profession in that Member State. One of the decisive criteria is whether that economic activity may be pursued, independently or autonomously, in the Member State where the professional qualification was obtained. For example, an engineer specialised in hydraulics in one Member State who wishes to work in a Member State where his activities are performed by more broadly qualified engineers who also deal with roads, channels and ports, might be able to gain partial access to the profession in the host Member State. He would only be authorised to perform activities relating to hydraulics.

There can be exceptions from the principle, if justified by overriding reasons of general interest, suitable for securing the attainment of the general interest objective and not going beyond what is necessary in order to attain it.

Question 3: Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle.)

2.3. Reshaping common platforms

Today only a limited number of professions enjoy the benefits of automatic recognition. Many professions under the "general system" aspire to a similar mechanism which would facilitate their mobility. Article 15 of the Directive offers the possibility to adopt common platforms. The objective of these platforms would be to make compensatory measures (a test or an adaptation period) redundant. It is not a tool for automatic recognition of qualifications. Therefore, no common platform on compensation measures has been developed to date and there is broad consensus that there is no foundation on which to base further progress. The current concept of common platforms represents a failure. In the future, it should become broader to open an avenue towards automatic recognition.

The Commission wishes to respond to the demand for easier mobility by allowing for smoother recognition. A new approach to common platforms could address this objective. They could operate in much the same way as the system of automatic recognition for doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects, but without the need for participation by all Member States, or even as many Member States as are currently foreseen under Article 15. The threshold could be lowered to one-third of all Member States (i.e. nine out of twenty seven) instead of two-thirds to improve the chances for the creation of common platforms. It would also be made clear that any non-participating Member States would be free to join a common platform at a later stage.

Any new platform would be subject to an internal market test. This would ensure that the agreed conditions are proportionate and that the common platform does not contain excessive detail so as to become an obstacle to the mobility of professionals from non-participating Member States who wish to exercise their right to free movement in the Single Market. The internal market test could be provided by the interested professional associations and may help, in particular, to clarify whether professional experience would enable a professional coming from a non-participating Member State to enter the profession in one of the participating countries.

Finally, common platforms would have to be backed not only by professional organisations, but in a second step, also by at least nine Member States. On the basis of a proposal of a professional association and with the necessary support of a sufficient number of Member States, the Commission could finally be in the position to endorse a common platform through a delegated act, the framework for which could be laid down in the modernised Directive. One example of ongoing work on a common platform is a common platform for ski instructors.

Question 4: Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.)

2.4. Professional qualifications in regulated professions

The Single Market Act provides for a further assessment of reserves of activities linked to professional qualifications. It also calls for a review of the scope of regulated professions. Today, the twenty seven Member States regulate around four thousand seven hundred professions on the basis of a professional qualification. These professions can be grouped into about eight hundred different categories. The Professional Qualifications Directive currently offers a mutual recognition mechanism working overall for most of them. While Member States are free to define qualifications requirements for access to certain professions as an appropriate tool to achieve public policy objectives in relation to a given economic activity, e.g. the need to ensure its security or its safety, in certain cases the qualifications requirements may be disproportionate or unnecessary for the achievement of public policy objectives and could lead to barriers to the freedom of movement of EU citizens. Indeed, there might be cases where an EU citizen who already carries out an economic activity in his or her Member State of origin is facing an unjustified and disproportionate qualification requirement in a host Member State at such a level or of such a nature that the individual would not be in the position to overcome the difficulties through a test or a stage (so-called compensation measures) as foreseen in the Professional Qualification Directive nor be in the position to claim partial access according to the Court jurisprudence (see section 2.2 on more information on partial access). The citizen would, therefore, have no other choice than to undergo the entire necessary training to acquire the domestic qualification in that host Member State.

Question 5: Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.

3. BUILDING ON ACHIEVEMENTS

3.1. Access to information and e-government

Professionals wishing to work in another Member State need to know and understand the rules applicable to them. The evaluation of the Directive, notably the public consultation in early 2011, has revealed this is a major problem for many stakeholders. In particular, respondents have signalled insufficient clarity on which authority is in charge of recognising their professional qualifications and which documents should be submitted. Insufficient information on what to submit, and to which authority, often defeats the objective of getting a

quick decision by the host Member State.

A related challenge concerns the ability of professionals to enjoy a more efficient and more convenient way to complete the application for the recognition of their professional qualifications and receive the recognition decision through e-government sites.

A modernised Directive could foresee that each Member State make available a central on line access point with complete information on competent authorities and document requirements for the recognition of professional qualifications for all professionals, regardless of their profession or the region in which they intend to exercise it. This would address the first challenge. Knowing in advance exactly which documents need to be submitted would bring more transparency for professionals and would avoid situations in which competent authorities abstain from a formal decision on the grounds that the migrating professional's file is not complete (see Article 51 (2) of the Directive).

A further step, building on the central access points, could consist in offering to professionals the possibility of completing all the procedures related to the recognition of qualifications online to meet the second challenge.

How could this solutions work address the two challenges in practice? The first option would be to build on the National Contact Points foreseen under Article 57 of the Directive which already inform and assist professionals seeking the recognition of their qualifications. At present, their tasks primarily consist of offering advice by letter or telephone rather than proactively ensuring access to information for EU citizens interested in professional mobility on the required documents and the competent authority. In the future, the National Contact Points could also organise the central access point to information and coordinate with the competent authorities the e-government facilities enabling the completion of all formalities online.

Another option would be to build on the points of single contact under the Services Directive¹⁵. These are meant become fully fledged e-government portals allowing service providers to easily obtain online any relevant information relating to their activities (regulations, procedures, deadlines). In addition, the points of single contact allow service providers to complete electronically all the administrative procedures necessary for the access to and exercise of a service activity, including the procedures for the recognition of qualifications, which is key to shorten procedures and reduce the burden linked with administrative formalities. At present, the points of single contact are open to service providers (including their seconded staff and self-employed professionals) covered by the Services Directive¹⁶ but their scope could be extended should the Member State consider this to be appropriate to cover all professional activities and not only those to which the Services Directive applies. In the same vein, Member States could build on experience with the points of single contact by further developing online facilities which would simplify and accelerate procedures for the recognition of qualifications for all professionals, while respecting EU data

¹⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376 of 27.12.2006, p. 36.

¹⁶ See the Commission staff working paper on the transposition and implementation of the Directive, 22.10.2010, SEC(2010) 1292, http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf.

protection law, namely Directive 95/46/EC¹⁷.

Finally, in order to create synergies, it would be important to ensure close cooperation between Member States' e-government facilities and the Your Europe portal which sets out to become a single entry point for all useful information on EU rights¹⁸ and the challenges of their implementation.

Question 6: Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

3.2. Temporary mobility

In 2005 a new regime was introduced to facilitate temporary provision of services. Under this new regime, there is no obligation for the professional who wishes to provide services on a temporary basis whilst maintaining establishment in the home Member State to undergo any formal recognition procedures in the host Member State. Member States may only require a prior declaration supported by a number of documents to be sent to the competent authority, if necessary. A significant number of Member States make extensive use of this option.

There is a major issue in dealing with situations where a professional from a non-regulating Member State moves temporarily to a Member State where the profession is regulated. In such cases, the new regime is open only to those who can prove two years of professional experience or provide evidence that they have followed "regulated education and training". Some stakeholders are calling for more consumer choice which could be achieved by widening the scope of the lighter regime. Others are afraid of abuse, such as "forum shopping". The modernisation should strike the right balance between these legitimate positions.

3.2.1. Consumers crossing borders

The two-years rule (Article 5(1) of the Directive) is generally accepted, because it protects consumers in Member States where the profession is regulated. However, this rule can be disproportionate in the case of consumers travelling from their country of origin to another Member State and where such consumers have not chosen a professional in the Member State they have travelled to but a professional from Member State they are coming from, for example a group of tourists has chosen a tourist guide in the country where they depart from. In this case, the professional concerned does not have any contact with local consumers in the host Member State. Consequently, requiring a prior declaration and two years of prior professional experience may not be justified on the grounds of consumer protection. The respect for consumer choice should prevail over fears about "forum shopping", which do not

¹⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

¹⁸ The Your Europe portal (europa.eu/youreurope) is developed by the Commission, in partnership with the Member States. The Editorial Board of Your Europe, which is composed of representatives of Member States, must ensure that relevant national-level information is available through Your Europe, and that proper links exist between Your Europe and national information portals.

appear to be relevant in these situations¹⁹. A prior declaration requirement would thus appear to be unnecessary. Consumer choice would only be limited where public health or consumer safety risks already justify a prior check of qualifications (as per Article 7 (4) of the current Directive).

Question 7: Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

3.2.2. *The question of "regulated education and training"*

Professionals who completed "regulated education" are also exempt from the requirement of two years' professional experience. The Directive defines "regulated education" rather restrictively, as education which involves training specifically geared towards the pursuit of a given profession, with reference to specific cases mentioned in Annex III of the Directive.

However, the world of education is moving and the Directive needs to keep pace with these changes. In order to enhance employability in a lifelong learning perspective, education and training policies increasingly aim at developing general "transferable" skills (e.g. communication, management), in addition to specific job-related skills (technical skills). In this context, it may not seem justified to limit the notion of regulated education and training to those specifically geared to a certain profession (see Article 3(i) (e) of the Directive). The notion of regulated education could be extended to encompass any education and training recognised by a Member State and relevant to the profession. The Europass Diploma Supplement²⁰ or the Europass Certificate Supplement²¹ could be used by training institutions to give information on the contents and objectives of the relevant programmes. With a revised definition of regulated education and training, suitably educated professionals could benefit from the lighter temporary mobility regime in larger numbers. At the same time, Member States would be entitled to continue requiring an annual prior declaration under a modernised Directive (except in cases where the professional card makes this redundant).

Question 8: Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)

¹⁹ Ideally these professionals would be equipped with a European professional card.

²⁰ The Europass Diploma Supplement is issued to graduates of higher education institutions along with their degree or diploma. It helps to ensure that higher education qualifications are more easily understood, especially outside the country where they were awarded. see <http://europass.cedefop.europa.eu/europass/home/vernav/InformationOn/EuropassDiplomaSupplement.csp;jsessionid=43770C133C7D2B78EA4522BF5ABFF581.wpc1>

²¹ The Europass Certificate Supplement is delivered to people who hold a vocational education and training certificate; it adds information to that which is already included in the official certificate, making it more easily understood, especially by employers or institutions outside the issuing country. For more information see <http://europass.cedefop.europa.eu/europass/home/vernav/InformationOn/EuropassCertificateSupplement.csp;jsessionid=43770C133C7D2B78EA4522BF5ABFF581.wpc1>

3.3. Opening up the general system

3.3.1. Levels of qualification

Article 11 of the Directive stipulates five levels of qualification which are based on the type and duration of training. When a professional applies for the recognition of his or her qualifications for a profession under the general system, the competent authority must use these levels in order to determine if the applicant can benefit from the Directive. If there is a difference of two or more levels between the qualification of the professional and the qualification required in the host Member State, the Directive does not currently apply.

The levels defined in Article 11 might overlap with the eight levels of the European Qualifications Framework (EQF) which is based on "learning outcomes", once the latter is implemented in 2012²². The coexistence of two classification systems creates a risk of confusion for competent authorities and other stakeholders. A study commissioned by DG Internal Market and Services is also currently assessing the benefits and limits of these different systems of classification for the purpose of recognition. The results of this study will be available in the autumn.

A possible way forward could be to avoid any classification of qualifications that excludes certain professionals from the scope of the Directive. A possible solution could be to delete the levels of qualifications in Article 11 (as well as Annex II which is linked to Article 11). This would mean that competent authorities would no longer determine the eligibility of an applicant according to pre-defined levels of qualifications but would focus on the identification of substantial differences in training to decide whether compensation measures are necessary. As a consequence, competent authorities could no longer refuse applications for recognition on the grounds of a difference in the level of qualifications, such as between a university diploma and secondary education. Neither could they exclude professionals from recognition of qualifications on the basis of professional experience attested by a Member State (as currently provided for in Article 11 (a) of the Directive). Deletion of such classifications would also give more discretion to Member States.

Question 9: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

3.3.2. Compensation measures

Deleting Article 11 carries the risk of more compensation measures. Should Article 11 be deleted, a possible option could be to recalibrate the system of compensation measures in four steps:

- 1) Article 14 (1) of the Directive defines the conditions according to which the host Member State can impose compensation measures. One of these conditions relates to the duration of training. A difference in the duration of training of at least one year in itself is currently a justification for compensation measures. It is questionable whether Article 14 (1) a of the Directive is still justified.
- 2) Article 13(2) of the Directive requires professionals to have at least two years of professional experience if their profession is not regulated in their home Member State. If

²² The "experience reports" and the reactions to the public consultation suggest that the application of the system on the basis of these predefined levels is seen as overly complex.

they do not fulfil this requirement, they cannot currently benefit from the "general system". There is no reason why professionals with less professional experience should be excluded. The host Member State would need in any event to assess their existing qualifications, including their professional experience. If the qualifications are substantially different from the nationally applicable requirements, the host Member State could impose appropriate compensation measures. Article 13 (2) of the Directive would be deleted accordingly.

3) The Commission has received a lot of complaints from citizens against competent authorities imposing disproportionate compensation measures. If a modernised Directive does no longer contain a classification, a new safeguard could be introduced in the modernised Directive to protect EU citizens against arbitrary compensation measures. When imposing a compensation measure on an applicant, the competent authority in the host Member State could explicitly justify its decision with regards to:

a) the substantial differences between the training of the applicant and the training required in the host Member State (specifically, which elements of the training required in the host Member State are insufficiently covered by the training of the applicant and why they are considered as "substantial differences")

b) why these substantial differences prevent the professional to exercise his profession in the host Member State.

4) Finally, in order to facilitate the implementation of compensation measures, essential provisions of the Code of Conduct for national administrative practices falling under the Directive²³ (such as the requirement for competent authorities to offer aptitude tests at least twice a year) could be made mandatory. However, for the remaining parts, the Code of Conduct should not become mandatory.

Question 10: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

3.3.3. *Partially qualified professionals*

The Directive facilitates mobility of fully qualified professionals. It currently does not apply to people who have finished their studies, but are not yet fully qualified for the independent pursuit of their profession. However, more and more people wish and should be able to benefit from the internal market by completing a remunerated supervised practice abroad. The Court of Justice clarified in the *Morgenbesser* case²⁴ that the Treaty rules on free movement apply to such cases and that Member States cannot, as a matter of principle, prevent people from doing a remunerated supervised practice if they offer the possibility to their own nationals. Member States must compare the qualifications of the applicant to those required nationally with the view to assessing whether they are, if not identical, at least equivalent.

In line with the *Morgenbesser* jurisprudence, two principles could be confirmed in a modernised Directive: The procedural safeguards of the Directive could be extended to graduates from academic training who wishes to complete a period of remunerated supervised practical experience in the profession abroad, provided that supervised practice is offered to

²³ See: http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf.

²⁴ Court of Justice 13 November 2003, Case C-313/01, *Morgenbesser*, ECR I-13467. (This judgement was confirmed by the Court's judgement in Case C-345/08, *Pešla v. Justizministerium Mecklenburg-Vorpommern*.)

nationals of the host Member State. This concerns, in particular, the deadlines applicable to competent authorities for taking a decision, but also the obligation to acknowledge receipt of the application within a certain timeframe and inform the applicant of any document missing from their file. At the same time, the Directive could make clear that the country of origin cannot refuse, as a matter of principle, to recognise a traineeship on the sole grounds that it was conducted abroad. The procedural safeguards of the Directive could apply in this context too.

Question 11: Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

3.4. Exploiting the potential of IMI

3.4.1. *Mandatory use of IMI for all professions*

Cooperation between Member States via IMI is already daily practice. However, it is not mandatory for the competent authorities for professionals whose activities are excluded from the Services Directive. Feedback received from the competent authorities in the experience reports in 2010 and the public consultation showed broad support for a mandatory use of the system, beyond the professions covered by the Services Directive. A possible way forward in the context of the modernisation of the Directive could be to ensure all competent authorities respond via IMI to queries from their counterparts in other Member States²⁵.

3.4.2. *Alert mechanism for health professions*

More importantly, a more proactive form of cooperation could be introduced: An alert mechanism already exists for the professions covered by the Services Directive allowing competent authorities to inform each other, under certain conditions, of any service activities that might cause serious damage to the health or safety of persons or the environment. As a consequence, the activities of a craftsman currently fall under this alert mechanism but not those of health professionals who are outside the scope of the Services Directive.

Which solution is best suited for health professionals? The **first option** would be to apply the same alert mechanism which applies to professions covered by the Services Directive to health professionals: an alert would thus be limited to circumstances where there is clear evidence that a health professional is migrating to another Member State though he has been subject to sanctions barring him from exercising his profession in the Member State of origin. The alert would be limited to the specific Member States where there is sufficient likelihood of risks or damage occurring, which means considering any factors that might indicate that the professional is likely to be active in other Member States. **Another option** which would protect patients in a much more effective way would be to introduce an obligation to launch an alert to all Member States once a migrating health professional loses his right to practise due to sanctions in a Member State. Any measure taken in this respect should be in line with

²⁵ To the extent this cooperation entails the processing of personal data, it is necessary to comply with relevant EU law, as outlined by article 56.2 of the Professional Qualifications Directive, with reference in particular to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

the Charter of Fundamental Rights in particular with the protection of personal data and the right to an effective remedy.

Question 12: Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?

Option 1: Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)

Option 2: Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)

3.5. Language requirements

Under Article 53 of the Directive, professionals must have the language knowledge necessary to perform their activities in the host Member State. In this context, Member States must take due account of the principle of proportionality which excludes systematic language tests. Testing the language knowledge of EU citizens interested in professional mobility on a case-by-case basis may be a legitimate way of safeguarding the interests of consumers and patients. However, systematic language testing can become a means of unfairly preventing foreign professionals from accessing the right to perform a professional activity, if applied disproportionately. The main responsibility to ensure that all necessary professional language skills are acquired lies with the employers.

A public debate on language requirements for health professionals is ongoing in a few Member States. The issue of language skills of health professionals is gaining more importance as migration of health professionals increases, and it is particularly acute in the case of health professionals benefiting from automatic recognition who come into direct contact with patients. Should they be subject to language tests? If so, at which point?

- One option would be to clarify the Code of Conduct²⁶, which would be more conducive to future adaptations.

- Another option would be to introduce into the Directive a rule specifically applicable to health professionals with direct contact with patients. This provision would allow a one-off control of the necessary language skills before the health professional first comes into direct contact with patients.

Question 13: Which of the two options outlines above do you prefer?

Option 1: Clarifying the existing rules in the Code of Conduct;

²⁶ Currently, Member States can control that professionals have the language knowledge necessary for performing their activities, but they must do it in a proportionate way. This means that they cannot subject systematically foreign professionals to language tests. Professionals should be able to prove their language knowledge by other means (e.g. diploma acquired in the relevant language, professional experience in the country, language certificate etc.). This means also that the level of language knowledge required varies according to the type of activity and the framework in which it will be conducted. Also the language control can only take place after the end of the recognition procedure and cannot be a reason for refusing recognition of professional qualifications as such.

Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.

4. MODERNISING AUTOMATIC RECOGNITION

4.1. A three-phase approach to modernisation

The Professional Qualifications Directive provides for a set of harmonised minimum conditions for the training of doctors, dentists, general care nurses, midwives, pharmacists, veterinary surgeons and architects. These minimum training requirements have been the basis for automatic recognition for many years. The system of automatic recognition for these professions is widely seen as a success. However, some of the training conditions themselves date as far back as thirty years and many stakeholders call for the Directive to be modernised. A modernised Directive should retain the basic principles of automatic recognition as a starting point, with a flexible mechanism for updating the specific training requirements. This mechanism could then be used to gradually build the ongoing educational reforms into the automatic recognition regime. At the same time, the modernisation needs to take into account continuing scientific and technical progress. Therefore, modernisation could be achieved in three phases:

In the first phase, the Directive itself could be amended to clarify and adapt the foundations of the training requirements, such as clarifying minimum training periods and strengthening the measures which underpin the quality of the services offered by professionals. Furthermore, it is necessary to change the institutional framework to replace the current comitology system by either implementing acts or delegated acts²⁷, in line with the Treaty on the Functioning of the European Union. The Council of Ministers and the European Parliament would – ideally - decide on these changes, upon a proposal of the Commission to be presented before the end of 2011. The Single Market Act of 13 April suggests that political agreement on this phase be achieved by the end of 2012.

In the second phase, the framework of newly introduced implementing or delegated acts would be used to update the existing training subjects for all professions concerned but also to develop sets of competences, where necessary. (In this regard, it should be noted that the Commission is already empowered to act under the existing comitology procedure.) Changes in these areas would require upstream involvement from competent authorities which have already started networking to build expertise and successfully assisted the Commission in evaluating the current Directive in 2010. This second phase would commence in 2013 and could be completed in 2014.

Finally, **in the third phase**, the harmonisation of minimum training requirements could be further optimised, if necessary, for example by moving from a system of training hours to the use of the European Credit Transfer and Accumulation System (ECTS)²⁸ across Member States in order to facilitate automatic recognition in the future. An ongoing external study on the impact of educational reforms²⁹ will assess the potential merits of using ECTS points in this area. Depending on the outcome of the study, a mechanism could be envisaged to clarify the minimum number of years specified in a modernised Directive in terms of equivalent

²⁷ See Articles 290 and 291 of the Treaty.

²⁸ For more information see http://ec.europa.eu/education/lifelong-learning-policy/doc48_en.htm.

²⁹ The study carried out by GBP will be published in October.

number of ECTS points. However, this would require further efforts and engagement on the part of the universities and the professionals. The first assessments could start in 2014.

Question 14: Would you support a three-phase approach to modernisation of the minimum training requirements under the Directive consisting of the following phases:

- the first phase to review the foundations, notably the minimum training periods, and preparing the institutional framework for further adaptations, as part of the modernisation of the Directive in 2011-2012;
- the second phase (2013-2014) to build on the reviewed foundations, including, where necessary, the revision of training subjects and initial work on adding competences using the new institutional framework; and
- the third phase (post-2014) to address the issue of ECTS credits using the new institutional framework?

4.2. Increasing confidence in automatic recognition

In their experience reports, many competent authorities called for a strengthening of the system of automatic recognition. Some of them argue that more harmonisation of the minimum training periods in the Directive, for example by introducing a number of training hours or clarifying whether both years and training hours should apply, is necessary. Another way forward would be to consider which body or authority at national level could take more responsibility in ensuring that the contents of the training leading to a given professional title fulfil the requirements of the Directive at all times.

4.2.1. Clarifying the status of professionals

The Professional Qualifications Directive provides for a set of harmonised minimum conditions for the training of doctors, dentists, general care nurses, midwives, pharmacists, veterinary surgeons and architects. These minimum training requirements are currently the sole basis for automatic recognition of the qualifications of these professionals. Diplomas attesting to the fulfilment of the minimum training requirements are sufficient for their holders to become established in a Member State other than that in which their qualifications were obtained. However, situations may arise in which diploma holders lose their right to exercise the profession for which they were qualified in their home Member State (for instance because they failed to comply with national requirements on continuous professional development).

There is currently a gap in the Directive. In the case of temporary provision of services, professionals are obliged to demonstrate that they have the right to exercise in their home Member State and are not prohibited from exercising the profession, for instance because they did not fulfil domestic requirements related to continuing professional development. There is no explicit provision for a similar requirement in the case of establishment. It could be logical to extend this requirement to cases where a professional wishes to establish himself on a permanent basis in another Member State. This should for instance prevent doctors who are no longer authorised to practice in one Member State from migrating to another.

Question 15: Once professionals seek establishment in a Member State other than that in which they acquired their qualifications, they should demonstrate to the host Member State

that they have the right to exercise their profession in the home Member State. This principle applies in the case of temporary mobility. Should it be extended to cases where a professional wishes to establish himself? (Please give specific arguments for or against this approach.) Is there a need for the Directive to address the question of continuing professional development more extensively?

4.2.2. *Clarifying minimum training periods for doctors, nurses and midwives*

At present, for some sectoral professions, the minimum duration of training is expressed in terms of years or training hours. This can give rise to misunderstanding whether the two criteria constitute two options or if they should be applied together. Many stakeholders suggest combining the two criteria. A modernised Directive could clarify this for doctors, nurses and midwives for which the two conditions are already established but presented as options.

Question 16: Would you support clarifying the minimum training requirements for doctors, nurses and midwives to state that the conditions relating to the minimum years of training and the minimum hours of training apply cumulatively? (Please give specific arguments for or against this approach.)

4.2.3. *Ensuring better compliance at national level*

Automatic recognition for the professions for whom minimum training requirements have been harmonised, is granted on the basis of professional titles awarded to members of the professions, following the fulfilment of the minimum training contents prescribed by the Directive. However, training contents evolve over time. In addition, many universities have been implementing reforms under the Bologna process³⁰, which is leading to many changes, such as moving towards student-centred learning. This raises the question of how Member States can, in the future, ensure that universities and other educational establishments follow the framework set by the Directive in the light of continuing reforms.

Another challenge relates to Member States notifying the Commission of new developments, notably new professional titles awarded in the Member State. In practice, such information often arrives only once the graduates concerned leave the universities with their diplomas, which limits the ability for some of the graduates to benefit from automatic recognition or at least creates great uncertainty about free movement.

In order to address these two issues, a modernised Directive could contain the requirement for Member States to notify new changes to diplomas as soon as they are accredited by an accreditation institution or approved by other public bodies, thus well before students graduate with the notified diplomas. The designated bodies (which would not necessarily need to be newly created) would assume a national compliance function ensuring that the harmonised minimum training requirements under the Directive are respected; a relevant report from the body performing the national compliance function could accompany any notifications. These changes would not only enable young graduates to have more confidence that they can benefit from automatic recognition but also enhance trust between Member States.

³⁰ The Bologna Process was launched in 1999 in order to ensure more comparable, compatible and coherent systems of higher education in Europe. For more information see <http://www.ehea.info/>.

Question 17: Do you agree that Member States should make notifications as soon as a new program of education and training is approved? Would you support an obligation for Member States to submit a report to the Commission on the compliance of each programme of education and training leading to the acquisition of a title notified to the Commission with the Directive? Should Member States designate a national compliance function for this purpose? (Please give specific arguments for or against this approach.)

4.3. Doctors: Medical Specialists

The Commission received numerous comments on specialist training, primarily centring on two issues. First, automatic recognition can currently only be extended to new specialities, if the speciality exists in at least two fifths of the Member States. This threshold could create a disincentive for innovation and limit the opportunities for inserting new medical specialities into the Directive. It could be appropriate to lower the threshold of the number of Member States required from two fifths to one third. In this way, the threshold for the insertion of new specialities into the Directive would correspond to the threshold proposed for common platforms (see section 2.3).

Question 18: Do you agree that the threshold of the minimum number of Member States where the medical speciality exists should be lowered from two-fifths to one-third? (Please give specific arguments for or against this approach.)

The second issue concerns the general framework for organising specialist training. The Directive leaves little room for recognition of prior learning as part of training on courses which are of at least an equivalent level to the training for a given speciality. This is of particular relevance to specialities which have grown out of internal medicine or general surgery³¹. If a doctor has followed a specialist training and afterwards follows another specialist training, he or she would, in principle, have to follow the full training programme for the second speciality, from the very start. The modernisation of the Directive could be an opportunity to give Member States the possibility of granting partial exemptions from parts of specialist training, if that part of the training has been followed already in the context of another specialist training programme.

Question 19: Do you agree that the modernisation of the Directive could be an opportunity for Member States for granting partial exemptions if part of the training has been already completed in the context of another specialist training programme? If yes, are there any conditions that should be fulfilled in order to benefit from a partial exemption? (Please give specific arguments for or against this approach.)

4.4. Nurses and midwives

The admission requirement for nurse training is currently minimum ten years of general education (the same requirement applies to midwifery training under the so-called route I training (Article 40 (2) a). However, the nursing profession has significantly evolved in the

³¹ As regards internal medicine, this concerns the following 11 specialties: immunology, rheumatology, respiratory medicine, gastroenterology, cardiology, endocrinology, geriatrics, renal diseases, general haematology, communicable diseases and clinical oncology. Closely linked to general surgery could be seen the following 11 specialties: Plastic surgery, thoracic surgery, paediatric surgery, vascular surgery, gastroenterological surgery, neurological surgery, orthopaedics, maxillo-facial surgery, stomatology, dental, oral and maxillo-facial surgery and urology.

last three decades: community-based healthcare, the use of complex therapies and constantly developing technology presuppose the capacity for more independent work by nurses. In several Member States, as a result of the shortage of doctors, nurses and midwives are expected to perform tasks which were previously undertaken only by doctors. There is a concern that students who enter nursing school after only ten years of general school education do not have the necessary basic skills and knowledge to start a training which should prepare them to meet complex healthcare needs. One option would therefore be to require that Member States only allow admission to nursing training course for candidates who have completed minimum twelve years of general education (as the same should apply to 'route 1' midwifery training). This requirement exists already in many Member States. The other option would be to maintain the status quo.

Question 20: Which of the options outlined above do you prefer?

Option 1: Maintaining the requirement of ten years of general school education

Option 2: Increasing the requirement of ten years to twelve years of general school education

4.5. Pharmacists

The traditional role of pharmacists is changing from mere supply of medicine to a more direct involvement with the patient, including counselling, providing information and even reviewing, monitoring and adapting the treatment when needed. The community pharmacy is becoming more important. Several interested parties suggest expanding the list of professional activities a pharmacist is authorised to perform in the Member States, provided in Article 45(2) of the Directive, to reflect these changes. Interested parties most often request the inclusion of "pharmaceutical care", "community pharmacy" and "pharmacovigilance" as new professional activities. In addition, many stakeholders propose that that the Directive (current Article 44(2)(b)) provide for a mandatory period of practical training of six months, directly after completing academic training, to prepare future pharmacists for their role.

Another question is whether Member States should be entitled to ban fully qualified pharmacists, who obtained their qualifications in another Member State, from opening new pharmacies. Article 21 (4) of the Directive currently allows Member States not to give effect to automatic recognition of a pharmacist's qualifications for the setting up or management of new pharmacies, including those which have been open for less than three years. This result is at odds with the general principle of automatic recognition and represents a discrimination against EU pharmacists. Discrimination against EU citizens from other Member States is incompatible with the Single Market. Ireland has already given up the application of this derogation and the UK intends to abandon it by this summer. With the view to promoting free movement of pharmacists and giving full effect to the principle of automatic recognition it is proposed that this provision could be deleted. In any event, Article 61 of the Directive already allows for derogations if there is a genuine need.

Question 21: Do you agree that the list of pharmacists' activities should be expanded? Do you support the suggestion to add the requirement of six months training, as outlined above? Do you support the deletion of Article 21(4) of the Directive? (Please give specific arguments for or against this approach.)

4.6. Architects

In many Member States, universities offer at least five-year curricula in architectural studies. The Directive does not present any obstacles to this trend: the training requirements of four years academic training for architects, defined in Article 46 of the Directive, are only the minimum, allowing Member States and universities to apply higher standards in educating future architects. Nonetheless, the professional organisations representing architects, suggest that the minimum duration of training under the Directive could be increased from four to five years to reflect the evolution of the profession.

The proposal to harmonise the five-year requirement at EU level raises challenging questions. Firstly, the Commission is not in the position to confirm which of the diplomas already published in the Directive on the basis of their compliance with its current provisions attest to training of five years. As a result, harmonising the minimum duration of training at five years would necessitate an acquired rights regime for architects whose training started (or will have started) before the entry into force of a modernised Directive in 2012 or 2013, in addition to the already existing acquired rights regime for architects trained before the entry into force of the first Directive on architects in 1985 (see Article 49 of Directive 2005/36/EC in conjunction with Annex VI).

Secondly, this solution would significantly limit flexibility without addressing another genuine problem related to mobility: how to take account of supervised professional practice, an aspect of architectural education which is already recognised in many Member States as an important feature of training architects?

Against this background, there appear to be two options:

The **first option** would be to retain the existing requirement of four years;

The **second option** would be to bring the Directive's provisions closer to the existing situation in most Member States, whilst allowing for a degree of flexibility for each of them: in order to benefit from automatic recognition, architects would have to attest to either at least five years of academic training followed by a minimum of one year of supervised practical experience or a minimum of four years of academic training with a minimum two years of supervised practical experience. As a consequence, it would take a minimum of six years to become a fully qualified architect in the European Union and this would always include supervised practice.

Question 22: Which of the two options outlined above do you prefer?

Option 1: Maintaining the current requirement of at least four years academic training?

Option 2: Complementing the current requirement of a minimum four-year academic training by a requirement of two years of professional practice. As an alternative option, architects would also qualify for automatic recognition after completing a five-year academic programme, complemented by at least one year of professional practice.

4.7. Automatic recognition in the areas of craft, trade and industry

In the areas of craft, trade and industry, automatic recognition is contingent on two conditions: (1) a certain number of years of experience, which varies according to the activity; and (2) a clear identification of the professional activity, based on Annex IV of the Directive. Concerning the first condition, the evaluation has shown that there are no reasons for

changing the minimum number of years of experience required. Concerning the second condition, there is a strong body of opinion that Annex IV in its current form does not always allow for clear identification of a profession based on the activities listed therein. At present, Annex IV refers to International Standard Industrial Classification of All Economic Activities (ISIC)³² though not in its most recent version, sometimes dating back to the 1950s and 1960s.

One option would be to take as a basis the same ISIC classification but in its most recently revised form of 2008 which now includes a more precisely defined list of activities. With rapid technological advances, defining and updating qualifications and corresponding professions is important. Various stakeholders have also proposed as alternative solutions the EU common procurement vocabulary³³, which is updated on a regular basis, and the International Standard Classification of Occupations (ISCO) nomenclature³⁴, as revised in 2008.

Whilst a modernised Directive should retain the principle of automatic recognition for the professions in the areas of craft, trade and industry, the classification of the activities themselves could be carried out at a later stage, drawing on the results of the study.

Question 23: Which of the following options do you prefer?

Option 1: Immediate modernisation through replacing the ISIC classification of 1958 by the ISIC classification of 2008?

Option 2: Immediate modernisation through replacing Annex IV by the common vocabulary used in the area of public procurement?

Option 3: Immediate modernisation through replacing Annex IV by the ISCO nomenclature as last revised by 2008?

Option 4: Modernisation in two phases: confirming in a modernised Directive that automatic recognition continues to apply for activities related to crafts, trade and industry activities. The related activities continue to be as set out in Annex IV until 2014, date by which a new list of activities should be established by a delegated act. The list of activities should be based on one of the classifications presented under options 1, 2 or 3.

4.8. Third country qualifications

The Professional Qualifications Directive, in essence, applies to EU citizens holding qualifications acquired in an EU Member State. However, it also helps EU citizens holding qualifications acquired outside the European Union (for instance a diploma from Canada or China):

³² Nomenclature adopted by the United Nations in 1948 and revised in 1958, 1968, 1989 and 2006 (the latest revision was published in 2008)

³³ See REGULATION (EC) No 2195/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 November 2002 on the Common Procurement Vocabulary (CPV), published in OJ nr L 340/1 of 16.12.2002, as most recently modified in 2009. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:340:0001:0001:EN:PDF>

³⁴ Adopted by the International labour Organisation (ILO) and available at: <http://www.ilo.org/public/english/bureau/stat/isco/index.htm>

The Directive applies to EU citizens who initially acquired qualifications in a third country, if such qualification has already been recognised in a Member State and the EU citizen concerned has also acquired three years of professional experience in the above Member State. Article 3 (3)) facilitates free movement: of such an EU citizen once he or she moves to another Member State. The EU citizen can therefore benefit from all the procedural safeguards under the so-called general system (such as a rapid and substantiated decision whether the qualification can be recognised). In brief, three years' lawful and effective professional experience in a Member State allows for a treatment of the initial third-country qualification as if it had been acquired in a Member State.

However, the Directive also contains safeguards to guarantee the minimum training requirements which are already harmonised at European level (for certain health professions and architects). According to Article 2 (2) of the Directive, Member States should not accept third country qualifications from EU citizens if the level of the qualification does not meet the minimum requirements specified for qualifications acquired in the EU. Member States should also avoid triggering a brain drain of skilled workforce from non-EU countries³⁵.

The main question is whether the overall shortage of skilled workforce calls for an adjustment of the above provisions. Such adjustment would in the first instance benefit EU citizens. However, it could also have an impact on certain third country nationals who enjoy rights under European legislation: family members of EU citizens³⁶, long term residents³⁷, refugees³⁸, and "blue card" holders³⁹ are treated in the same way as EU citizens with respect to recognition of professional qualifications (although the relevant legislative instruments do not bind all Member States of the European Union). This adjustment would underpin the policy of the European Union to also enhance mobility in the context of the revised European Neighbourhood policy.

Question 24:

Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)

5. HOW TO RESPOND TO THE GREEN PAPER

The Commission invites all interested parties to submit their contributions by 20 September 2011, preferably by e-mail to the following address:

DG Internal Market and Services, Unit E-4 "Free movement of professionals"

E-mail: MARKT-PQ-EVALUATION@ec.europa.eu

Postal address: European Commission

³⁵ In this context the WHO Global Code of Practice on the International Recruitment of Health Personnel is to be taken into consideration.

³⁶ Directive 2004/38/EC

³⁷ Directive 2003/109/EC

³⁸ Directive 2004/83/EC

³⁹ Directive 2009/50/EC

Internal Market Directorate General, Unit E-4
Rue de Spa 2
Office 06/014
1049 Brussels
Belgium

Contributions do not need to cover all of the questions raised in this Green Paper. They can be limited to questions of particular interest to you. Please indicate clearly the questions to which your contribution relates. If possible, please give specific arguments for or against the options and approaches presented in the paper.

All contributions will be published on the DG Internal Market and Services website unless a contributor requests otherwise. It is important to read the specific privacy statement attached to this Green Paper or information on how your personal data and contribution will be dealt with.