

Directive 2005/36/EC of the EP and the Council of 7 September 2005 on the recognition of professional qualifications

(OJEU L 255 of 30 September 2005)

Deadline for implementation 20 October 2007

Unit D/3 – Regulated professions

Overall Context

- **Articles 39, 43 and 49 of the EC Treaty**
prohibit restrictions to the free movement of workers, freedom of establishment and the freedom to provide services in another Member State
 - **Articles 149 and 150 of the EC Treaty:**
Content and organisation of the education system and vocational training are matters exclusively for the Member States
 - **Article 47 of the EC Treaty:**
Directives shall be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
- But: If the implementation of a directive involves in at least one Member State amendments of the existing principles with respect to training and conditions of access to the profession the Council acts unanimously (competence of Member States for the regulation of professions on their territory).**

Overall Context

- **Academic recognition:**

Recognition of a diploma awarded in one Member State which allows its holder to pursue his studies in another Member State

→ **Competence of each Member State provided that there is no discrimination**

- **Professional recognition:**

Recognition of a diploma awarded in another Member State to allow its holder to practise the profession which the diploma entitles him to: FULLY QUALIFIED

→ **Application of the Directive(s) on the recognition of professional qualifications, if the profession is regulated in the host Member State**

OBJECTIVES

- **Consolidation and simplification of 15 existing Directives with the maintenance of 3 regimes of recognition**
 - **Automatic recognition of diplomas** (“sectoral directives” for doctors, nurses, dentists, veterinary surgeons, midwives, pharmacists, architects – recent Accession Treaties incorporated)
 - **Automatic recognition of professional experience** (Directive 1999/42 for activities in the fields of industry, crafts and trade)
 - **General System** (directives 89/48, 92/51, 1999/42 for all regulated professions not covered by a specific Directive and activities in the fields of industry, crafts and trade)
- **Modernisation of the system**
 - **Regime for the temporary provision of services**
 - **Professional platforms**
 - **Increased administrative co-operation**

Provision of services

- **Applicable provisions**
 - Title II (Articles 5 - 9)
 - Title IV (Articles 53 – 55)
- **Specific regime for temporary provision of services**
 - Distinction between provision of services and establishment
 - Assessed case by case (duration, frequency, regularity, continuity)

(re. Judgment of the EC Court of Justice of 30.11.1995 in Case C-55/94)
- **Different provisions for access to and exercise of a professional activity**

Provision of services - Access

Substantial conditions

- **As a general rule: no restrictions for reasons related to professional qualifications if**
 - Legal establishment in a Member State (of establishment)
 - Professional experience of two years during the ten preceding years if profession nor training are regulated in MS of establishment
- **As a derogation:**

Professions having public health or safety implications : prior check of professional qualifications within the limit of the principle of proportionality

Provision of services - Access

- **Check of qualifications**
 - For professions (not harmonised) having health / safety implications
 - With a view to avoid serious damage to health / safety of service recipient due to lack of qualifications
 - Within the proportionality principle
- **Simplified procedure**
 - Shortened deadlines
 - No reaction = acceptance

Provision of services - Access

- **Formal conditions (“may” provisions) in order to inform the host MS**
 - Prior declaration to the competent authorities of the host Member State to be renewed once a year
 - First declaration to be accompanied by a limited set of documents
 - *Pro forma* registration ensured by competent authorities of the host MS on the basis of the declaration
 - Simple information of a public social security body
 - Information of the service recipient

Provision of services - Exercise

- **Application of professional and disciplinary rules –linked to professional qualifications- of the host MS**
- **Definition of the profession, serious professional malpractice which has direct bearing on consumer protection and safety**
- **Use of titles**
 - **Principle: professional title of the Member State of establishment in the language of that MS (to avoid any confusion)**
 - **Derogation: professional title of the host Member State if the qualifications have been verified**

Provision of services Administrative co-operation

- **Information concerning the legality of the service provider's establishment, his good conduct and the absence of disciplinary or administrative sanctions of a professional nature**
- **All information necessary for the pursuit of a complaint by the service recipient against the service provider**

For more information

- Internal Market Website – Professional qualifications

http://europa.eu.int/comm/internal_market/qualifications/index_en.htm

- Information for citizens and business – Your Europe

<http://europa.eu.int/youreurope/>

- EU Legislation

<http://europa.eu.int/eur-lex/lex/en/index.htm>

- Case-Law of the Court of Justice of the European Communities

<http://curia.eu.int/>