

Position Paper

UEAPME¹ position on the Green Paper “Modernising the professional Qualifications Directive” – COM (2011) 367

UEAPME would recall the importance and role of professional qualifications and their recognition for the good functioning of the internal market and for facilitating mobility of professionals, in view of a better matching of supply and demand on the labour markets in Europe. UEAPME is fundamentally in favour of the simplification and also of the adaptation of the Directive, as long as it respects a number of key principles and notably the freedom for Member States to regulate certain professions. UEAPME is of the view that:

- There is room for improving the directive in terms of advanced administrative cooperation,
- A general overhaul of the directive is not necessary, change for change’s sake should be avoided,
- The concept of a European Professional Card could be a step in the right direction under certain conditions,
- No further fundamental changes should be introduced.

Introductory remarks

The current directive 2005/36/EC adopted in 2005 has been only recently fully transposed by the 27 Member States. Despite some specific and well identified shortcomings, the directive is well functioning. Therefore, foreseeing a complete revision of the directive does not seem appropriate. Instead, careful and limited adaptations would be the best way to ensure a full enforcement in each of the Member States, a real improvement in competent authorities’ cooperation, more transparency of qualifications and in recognition procedures, which is still a key issue at stake. The UEAPME reply to the Green Paper should be read in conjunction with its reply to the public consultation from March 2011².

On the questions of the Green Paper

2. – New approaches to mobility

2.1 – The European professional card

Q 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?

Q 2: Do you agree that a professional card could have the following advantages depending on the card holder’s objectives?

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

- Option 1: the card would replace the declaration which Member States can currently require under Article 7 of the Directive

¹ UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](http://www.ueapme.com/IMG/pdf/UEAPME_reply_public_consultation_Recog_Prof_Qual_Directive_final_140311.pdf).

² http://www.ueapme.com/IMG/pdf/UEAPME_reply_public_consultation_Recog_Prof_Qual_Directive_final_140311.pdf

- 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).

The professional card might be a step in the right direction to facilitate the recognition of qualifications. It could be a useful tool for simplification and enhancing mutual trust. However the card should only be issued by the competent authorities of the Member State of departure.

Competent authorities have a key role to play for the check of qualifications hold by a citizen and of the legality of the given information, with or without a professional card.

The European professional card should only be issued by public authorities registered with IMI. These are well familiar with the European recognition of professional qualifications framework and would guarantee a high level of confidence and trustworthiness in the information contained on the card. Furthermore, IMI could be used to contact the issuing public authority in cases of doubt on the authenticity of a professional card or the information contained on it, or if additional information on the applicant's qualifications were required in individual cases.

UEAPME disagrees with option 1. The card should not replace the declaration as foreseen in Article 7.

Concerning option 2 b) with regard to free provision of services (Title II), a European professional card might be used in order to speed up the declaration process (Article 7). However 2 weeks as a delay is too short for competent authorities. A longer delay is clearly necessary.

Concerning option 2c) with regard to freedom of establishment under the "general system" (Title III), a European professional card could also provide useful and relevant information on the prerequisites for recognition under this chapter (e.g. duration of professional activity as self-employed or as manager of a business). However, on the delay for the recognition procedure, the professional card could help to speed up the procedure but once again 1 month is not sufficient.

On the card itself:

The European Professional card could be a useful tool giving an indication as to formal qualification(s), documented on the platform, the card-holder possesses. Furthermore:

- The card should have a limited validity (e.g. five years) in order to facilitate updates and controls and avoid possible frauds. Under no circumstances the introduction of such a card should lead to the detriment of educational quality.
- The card should be a smart card allowing for electronic communication of the card-holder with the national authority, competent for recognition of professional qualifications.
- The use of advanced electronic signatures based on a qualified certificate and which are created by a secure-signature-creation device (see Article 5 of Directive 1999/93/EC on a Community framework for electronic signatures), should be foreseen.

In this way the advanced declaration for provision of services (Article 7 of Directive 2005/36/EC) could take place by electronic means.

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

Q 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)

As UEAPME we do not see any need to modify the directive in order to include partial access to a profession. This would be very difficult to effectively assess and implement. The case of the European Court of Justice does not require the Member States to grant partial access to a profession. It simply clarifies that the partial access to a profession is not prohibited.

In any case, if the result of the comparative analysis proves that there are substantial differences between shown qualifications and required qualifications, an adaptation period or an aptitude test may be necessary to fill the gap. Finally, a partly completed training should never lead to access to a profession under the present directive. This kind of case would be better dealt with in the process of validation of “non-formal and informal learning”.

2.3 – Reshaping common platforms

Q. 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 MS) 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)

UEAPME does not support the lowering of the threshold for common platforms as a way to increase chances to approve common platform. As assessed in the Commission’s report, it is largely recognised that the common platform system has failed. In fact, the harmonisation of compensation measures has proven to be extremely difficult. The lowering of the threshold would mainly lead to an indirect harmonisation and further to automatic recognition and the abandon of compensation measures. We see it from part of the EC as an attempt to lower the level of qualifications requested for certain professions and we cannot support it.

The tentative of setting minimum standards has already failed in the 80s. Moreover, reaching a quorum of 9 Member States seems to be highly questionable as a basis for a “minimum harmonisation” in the Internal Market. The creation of European curricula would result in reducing the richness of Europe’s educational systems. Requirements for given professions are different from country to country and vary along national cultures, specificities. The differences and variety of solutions have been a driving force of innovation and development along the years and this potential should not be undermined by a European curriculum. Furthermore, the idea highly conflicts with the restricted competencies of the EU in the area of education and training (Articles 165, 166 of the EU Treaty).

2.4 – Professional qualifications in regulated professions

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

We do not have any specific example. But the question of “if” and “how” a profession should be regulated is fully part of Member States prerogatives. The existing concept of “regulated education” as defined in Article 3 § 1 (e) is coherent and certainly in the potential interest of consumers.

The fact that certain specific professions such as tourism guides or ski instructors might have experienced some problems with the recognition of qualifications should not lead to put into question the all system of the current Directive, which generally works well.

3. Building on achievements

3.1 – Access to information and e-government

Q. 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 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).

Yes, UEAPME would support such a central access point in the Member States and sharing information among competent authorities. We also support the use of new technologies for the recognition procedures providing the data security and integrity. However, many information points and structures already exist at national and EU level (i.e. http://ec.europa.eu/internal_market/eu-go/). Various information portals have been developed in the last years. Therefore, instead of creating new superstructures, the current existing ones should be better used and exploited to this end.

Against this background UEAPME supports the option two which proposes to build on the points of single contacts under the Services Directive. In fact contrary to the contact points mentioned in Art 57 of the Directive, the Service Directive contact points have the advantage to provide information and at the same time to deal with electronic procedures for professionals and entrepreneurs providing service activities.

3.2 – Temporary mobility

Q.7: Do you agree that the requirement of the two years' professional experience in the case of a profession coming from a non-regulating Member State should be lifted if the professional is accompanying a client? 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).

UEAPME is in favour of maintaining the two years' professional experience also for a temporary mobility case. It is about avoiding unfair competition and creating the same level playing field. We also consider important to maintain the entitlement for the host Member State to require a prior declaration, taking into account that it is not an obligation but only a possibility for the host Member State to control the level of qualifications. In fact very specific problematic cases such as the tourism guides should not lead to a generalisation.

Q.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).

No, because the notion of training relevant to a profession is vague and extremely difficult to define and could lead to abuses. The existing concept of "regulated education" is coherent and certainly in the potential interest of consumers. It is obvious that a regulated education, the content of which is narrowly linked to the exercise of a given profession, has a significantly higher quality than one of any relevant educational programme officially recognised and attested as such by the home Member State of the mobile professional. Therefore, the definition in Article 3 § 1 (e) should be maintained unchanged.

3.3 – Opening up the general system

3.3.1 - Levels of qualification

Q.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).

As UEAPME we do not support the deletion of classification in 5 levels as established in Article 11. The deletion of the current existing classification would make it impossible to compare the various qualification levels. The core issue of Article 11 combined with Article 13 about the conditions of recognition is the setting-up of a sufficient minimum level of qualification this should be maintained.

3.3.2 – Compensation measures

Q.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? Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against all or each of the steps).

We do not support the deletion of Article 11 and the 5 levels classification. The problems which might arise from the combination of the EQF and the current Article 11 classification do not justify its replacement by the EQF, which is a voluntary tool, not fully implemented by all Member States so far. It would simply request a better adaptation of the current 5 levels classification.

3.3.3 – Partially qualified professionals

Q.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).

Facilitating mobility for students at all levels and not only academic training has always been supported by UEAPME. However we don't see the need to tackle this question in the context of the current Directive.

3.4 – Exploiting the potential of IMI

3.4.1 – Mandatory use of IMI for all professions

3.4.2 – Alert mechanism for health professions

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

Not relevant for UEAPME members.

3.5 – Language requirements

Q.13: Which of two options outlines above do you prefer?
Option 1: clarifying the existing rules in the Code of Conduct
Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition

We consider the requirements under Article 53 as sufficient.

4. Modernising Automatic recognition

4.1 – A three-phase approach to modernisation

4.2 – Increasing confidence in automatic recognition

4.2.1 – Clarifying the status of professionals

4.2.2 – Clarifying minimum training periods for doctors, nurses and midwives

4.2.3 – Ensuring better compliance at national level

4.3 – Doctors: Medical Specialists

4.4 – Nurses and midwives

4.5 – Pharmacists

4.6 – Architects

Questions 14 to 22 do not appear relevant for UEAPME members.

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

Q.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 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.

In the case of the modernisation of Annex IV UEAPME would favour option 1, i.e. the use of ISIC classification of 2008, which is the most realistic and better adapted choice in view to integrate some new professions. In this context, UEAPME particular warns about the use of ISCO.

Finally the modernisation, should it take place, will require an impact assessment. Furthermore, it should be foreseen in the next revision of the Directive and not at a later stage.

4.8 – Third country qualifications

Q.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 who benefits from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach).

We do not see any need for adjusting the Directive in this field. We consider the present regime satisfactory and fair.

Brussels, 16/09/2011