

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 1108589

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### SUBCOMMITTEE III ON FREE MOVEMENT OF PERSONS

#### **EEA EFTA Comment on the Commission Green Paper: Modernising the Professional Qualifications Directive COM(2011) 367**

#### **1. PREFACE**

1. The EEA EFTA States, Iceland, Liechtenstein and Norway, would like to thank the European Commission for the opportunity to comment on the Green Paper on the Modernisation of the Professional Qualifications Directive published on 22 June 2011. The EEA EFTA States have studied the Green Paper with interest and have received feedback from relevant ministries and other stakeholders within the respective administrations. Some of the EEA EFTA States have also previously commented on the Commission's Consultation Paper on the Professional Qualifications Directive (PQD) of 7 January 2011.
2. The EEA EFTA States welcome the efforts of the European Union to modernise and simplify the Directive and recognise the importance of this process in encouraging the mobility of professionals within the EU and throughout the entire European Economic Area (EEA). It is essential that the PQD sets out clear and simple rules which at the same time ensure high quality services and safety for consumers. Recent developments in education and training policies should also be taken into account. The following comments represent the views of the EEA EFTA States in relation to the questions raised by the Commission in its Green Paper.

#### **2. THE EUROPEAN PROFESSIONAL CARD**

##### **Question 1**

3. The EEA EFTA States are generally positive towards the introduction of a European Professional Card. In connection with the possible introduction of such a card, the EEA EFTA States welcome greater involvement by the state of departure in the verification of the migrating professional's qualifications. When issuing a professional card, the competent authority in the state of departure should be required to check whether the applicant holds the correct qualifications and satisfies any other requirements laid down in the modernised Directive.

4. The EEA EFTA States believe that a professional card could be especially useful for the harmonised professions. However, we are sceptical of introducing a card for professions that are not regulated in the home state or in the state of departure, as in such situations there is no competent authority to issue the card. Therefore, in the view of the EEA EFTA States, there should be no obligation on states to issue a professional card for professions that are not regulated in the home state.
5. When introducing a card it is important that the information on it is of such quality and availability that the receiving state can see if the education in the home state is sufficient to recognise the applicant's qualifications. If there is any doubt as to whether the information on the card is sufficient to consider the qualifications, the receiving state must have the possibility to use the Internal Market Information (IMI) System to verify the information.
6. From an industrial point of view, it is important that proper measures are taken to ensure that any new quality requirements or procedures do not in fact hamper mobility.
7. It is also necessary to clarify how a professional card will provide information about professional profiles (activity) when it comes to the recognition of consecutive periods of professional experience.
8. In general the EEA EFTA States are positive towards anything that can increase the flow of recognition, but the card should not be obligatory. Furthermore, certain questions remain, particularly with respect to non-regulated professions. Finally, there must be a clear description of the relevant activity.

## **Question 2**

9. The EEA EFTA States support the maintenance of the declaration system under Article 7 (option 2) and do not believe that a professional card will make the declaration system redundant. This is particularly true for the health and veterinary professions. Depending on the functionality of the professional card, however, the declaration system could be simplified by using electronic communication technologies (declaration of the professional card number by email; verification of that number by using the IMI System).
10. Depending on the content of the card, the EEA EFTA States are also generally positive towards accelerating the recognition procedure, but at this point are unable to specify an appropriate timeframe for automatic recognition or the general system.

### **3. THE PRINCIPLE OF PARTIAL ACCESS**

#### **Question 3**

11. The Court of Justice of the European Union has made it clear that Member States must, under certain conditions, allow the partial taking-up of the profession upon the request of the professional. Partial access calls for a clear description of what the successful applicant is allowed to do and what is needed for him or her to become fully recognised. This also calls for considerable monitoring of the applicants, which can be cumbersome for the respective competent authority. Therefore, the EEA EFTA States would welcome the insertion of clear and specific criteria into the Directive for the application of the principle of partial access. With regard to the possible health risks for patients, partial access without clear and specific criteria is a particularly critical issue when it comes to the professions of physiotherapists, osteopaths, practitioners of natural medicines and chiropractors.

### **4. RESHAPING COMMON PLATFORMS**

#### **Question 4**

12. The EEA EFTA States support lowering the current threshold of two-thirds of the Member States to one-third as a condition for the creation of a common platform. We agree that Article 15 of the Directive and the current concept of common platforms represent a failure. A new approach to common platforms could make the recognition process easier and faster. It is important that not all states need to participate and that non-participating states could join a common platform at a later stage.

### **5. PROFESSIONAL QUALIFICATIONS IN REGULATED PROFESSIONS**

#### **Question 5**

13. In general the EEA EFTA States are aware that there may be certain cases where EEA nationals face unjustified or disproportionate qualification requirements in a host state, such that they have no other choice but to undergo the entire necessary training to acquire the qualification in that host state. Examples of such professions could be aqua medicine biologists or veterinary nurses. These are non-harmonised professions that are regulated in one or more state, and for which the required education and training vary between states. With this in mind, the EEA EFTA States are willing to review the number of regulated professions, taking into account public health and safety. For example, Iceland is reviewing the regulatory regime for crafts and trades professions and will be exploring whether the qualification requirements for different professions are justified from the point of view of public policy objectives.

## 6. ACCESS TO INFORMATION AND E-GOVERNMENT

### Question 6

14. Enabling people to work and provide services in other EEA States is important for improving the functioning of the Single Market. Hence the obligation to ensure that information on the competent authorities and the required documentation for the recognition of professional qualifications is available through a central online access point in each EEA State can be supported. This will be an important tool in making it easier for qualified professionals to provide their skills in another Member State.
15. The EEA EFTA States also generally support the online completion of recognition procedures. For states with very small administrations and comparably few requests for recognition of professional qualifications, however, the establishment of an IT system for the online completion of recognition procedures for all professionals seems to be disproportionate.
16. We would also like to point out that the online access point under the Services Directive has been facing challenges in relation to finalising all functionalities for the online completion procedure. This process has been time consuming, and these challenges should be considered when determining timelines for the implementation of this procedure.
17. Developing the functionality of the point of single contact is still in progress. Accordingly, it could potentially complicate and delay the process to include other functions in the point of single contact. At the moment these challenges will make it difficult to include another contact point into this portal. From a Norwegian perspective the best solution for a future contact point and for the functioning of the Single Market would be to implement the online access point in the existing contact point for professional qualifications. This existing contact point already provides a lot of information and it seems natural that these sites should continue to exist. This contact point should be managed by the relevant authority responsible for the PQD.
18. We believe that the development of the Internal Market is better served by letting Member States choose if they want to implement the online access point in their national contact points for service providers, or the existing contact points under the PQD.

## 7. TEMPORARY MOBILITY

### Question 7

19. In the opinion of the EEA EFTA States, there is not yet sufficient information to justify lifting the requirement of two years of professional experience. There can be situations in which the requirement could appear unnecessary. However, the safety of the users should be considered more important than the mobility of professionals. For example, there are differences in the use of electrical installations and how this is regulated between states. In some cases it can be difficult to acquire all the knowledge and competence needed in order to practice a profession in a safe manner

with just two years of experience. If the requirement of two years' professional experience in the case of professionals coming from non-regulating states is lifted, the host state should still be entitled to a prior declaration, especially in cases with public health or safety implications.

#### **Question 8**

20. No comment.

### **8. OPENING UP THE GENERAL SYSTEM**

#### **Question 9**

21. For public health reasons, the EEA EFTA States are not in favour of deleting the classification system outlined in Article 11, at least not for the time being. Article 11 of the Directive is relatively complex and can be difficult to use, so a system that is simpler than that laid down in Article 11 could lead to faster recognition procedures. Nonetheless, the question arises as to what should replace Article 11. If this Article is to be replaced then it is necessary to ensure that it is replaced by a good system. One possible solution could be to replace Article 11 with the levels of learning outcome in the European Qualification Framework (EQF). However, this should not be considered before the EQF has been implemented and before we gain practical experience with the system. In our opinion the EQF could perhaps be made part of the PQD if it works well in the different EEA States.

#### **Question 10**

22. 1) In the opinion of the EEA EFTA States, Article 14(1) of the Directive is still relevant. We agree that the time difference is not important in itself, but rather the learning outcome. However, when the professional education and training are shorter in duration in the country where the qualifications are obtained than in the host country, certain elements will be lacking from the education. Therefore Article 14(1) b and c should be kept. Depending on the profession in question, a difference in the duration of training of at least one year may be a justification for compensation measures. One possibility might be to define the relevant professions.
23. 2) The EEA EFTA States are not in favour of deleting Article 13(2) from the Directive, especially with regard to the health care professions.
24. 3) The EEA EFTA States agree that the competent authority in the host state should explicitly justify its decision with respect to substantial differences and to why these differences prevent the migrant from exercising his or her profession in the host state. For the sake of legal certainty, the proposed amendments/additions to the Directive could be supported.
25. 4) In the opinion of the EEA EFTA States, the Code of Conduct should not be mandatory. Mandatory regulations should be included in the Directive itself.

**Question 11**

26. The EEA EFTA States welcome the proposed extension as it encourages free movement. It must be ensured, however, that such practical experience has similar objectives and that the learning process in the other state is documented.

**9. EXPLOITING THE POTENTIAL OF IMI****Question 12**

27. The EEA EFTA States strongly support the need for a well-functioning alert mechanism. We would also like to underline that introducing an alert mechanism has some challenges that need to be discussed. In some states an act can lead to a loss of the right to exercise a profession, whereas in other states the same act can have different or no consequences for the person. In our experience, there are also differences between the Member States in the organisation of the supervisory and authorisation authorities, as well as with respect to the types of information that a competent authority is allowed to provide to other states' competent authorities. The implementation of an alert mechanism will consequently entail substantial harmonisation between states.

**10. LANGUAGE REQUIREMENTS****Question 13**

28. The EEA EFTA States support option 1, i.e. clarifying the existing rules in the Code of Conduct.
29. Health personnel in clinical positions must have sufficient language and communication skills in order to provide safe health services. In our view the employer is in the best position to assess whether health personnel fulfil the necessary requirements for the given position. Our interpretation of option 2 is that this is restricted to health personnel in the regulated professions with direct patient contact, and as such it excludes large groups of health personnel from the Directive's language requirements.
30. In the view of the EEA EFTA States, it is important for veterinary surgeons to be able to communicate with animal owners and local governments in their local language. An important part of diagnosing ill animals is to learn about changes in the behaviour of those animals under normal conditions or over a sufficient amount of time. Therefore we believe that language requirements should be the same for veterinary surgeons as for health professionals having direct contact with patients.

## 11. MODERNISING AUTOMATIC RECOGNITION

### Question 14

31. The EEA EFTA States support a three-phase approach to modernising the Directive. The third phase should also address the Directive's relation to the EQF and national qualifications frameworks. With respect to the health professions, we would like to emphasise the need to consider the changes and developments that have taken place over the last decades as regards the kinds and types of treatment in the health services.

### Question 15

32. The EEA EFTA States welcome the proposed amendments. In our opinion, the same principle should apply to professionals seeking establishment as to people who are just seeking temporary access. It is important that both demonstrate their right to exercise the profession in their home state. We do not believe that there is a need for the Directive to address the question of continuing professional development more extensively.

### Question 16

33. With regard to doctors, nurses and midwives, the EEA EFTA States are of the opinion that the minimum requirements should be expressed in years and not in hours, as this would facilitate the work in phase 3.

### Question 17

34. Bilateral comments from individual EEA EFTA States will be submitted in relation to this question.

### Question 18

35. The EEA EFTA States 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. The wide spectrum of medical specialities has evolved out of necessity, and flexibility must exist for the necessary development of new specialities in order to ensure an adequate level of variety of service options available to patients in each Member State. It also seems prudent that this threshold should correspond to the one proposed for common platforms.

### Question 19

36. The EEA EFTA States agree that the modernisation of the Directive could be an opportunity to grant partial exemptions if part of the training has been already completed in the context of another specialist training programme. In our opinion this could be done if the relevant parts of the training programme are comparable as

regards content and duration. The high standard of quality must remain the primary objective.

37. Time spent in prior postgraduate medical speciality training should also be acknowledged when relevant to the context of training in a second speciality. In order to ensure congruence in the professional requirements, however, all Member States should refer to a standardised set of criteria in granting partial exemptions to training requirements. Only then can mutual acceptance of accredited training between Member States be justified.

#### **Question 20**

38. The EEA EFTA States prefer option 2, increasing the requirement from ten years of general school education to 12. It is important to review the basic skill requirements for nurses and midwives in the Directive. The tasks that nurses have to deal with have become increasingly complex, and in order to meet these challenges, they need to have acquired a solid body of theoretical knowledge.
39. In the EU/EEA countries nursing programmes are currently offered at different educational levels: universities, post-secondary vocational colleges and secondary schools. In our opinion, nurses trained at different levels are not necessarily trained for the same profession. This is due to differences in task distribution between professions, level of responsibility and independent practice, and differences between the ways in which the states have organised their health services.

#### **Question 21**

40. The EEA EFTA States welcome the expansion of the list of professional activities that a pharmacist is authorised to perform to reflect the changing role of pharmacists.
41. The EEA EFTA States support the deletion of Article 21 (4) from the Directive, which seems to discriminate against pharmacists from other EEA States. The national requirements for the setting-up and management of new pharmacies should be sufficient to ensure the protection of public health.
42. In relation to the suggestion to add the requirement of six months' practical training, bilateral comments from individual EEA EFTA States will be submitted.

#### **Question 22**

43. This is not a regulated profession in Norway or in Iceland. Liechtenstein prefers option 2.

#### **Question 23**

44. The EEA EFTA States would support clarification as to the requirements here, as the Directive states in Article 17 (b) that individuals should prove that, in addition to three years of professional experience, they have previously received training of at least three years evidenced by a certificate. What constitutes "training" and what can



be accepted as a “certificate”? In general the EEA EFTA States would support option 1, although we question the use of the word “immediate” and consider further clarification of the timeframe to be necessary.

**Question 24**

45. The EEA EFTA States do not consider it necessary to make such adjustments. Attention should, however, be paid to language skills, as safety is of the highest priority.
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