

Shortage of Skilled Medical Staff

Guidance on the Professional Qualifications Recognition Directive

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The EU Commission has issued guidance for the Member States on the application of the Professional Qualifications Recognition Directive in order to combat the increased shortage of doctors and nurses resulting from the COVID-19 crisis.

- ▶ The interpretation of the Directive by the guidelines does not run counter to the wording or purpose of the Directive and is therefore unproblematic from a legal perspective.
- ▶ The scope for discretion permitted under the Professional Qualifications Recognition Directive, in relation to the authorisation procedure for professions which do not have EU-wide minimum requirements, should not be used to its full extent because the safety of citizens or patients requires a particularly high level of protection.
- ▶ Where, due to COVID-19, EU-wide minimum training requirements cannot be met, the Commission's declared willingness to approve the award diplomas early may help to combat the staff shortage.
- ▶ This also applies to the indication that health professionals from outside the EU may still be allowed to work even if they do not meet the EU-wide minimum requirements, for example in jobs with lower or no such minimum requirements.

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1 Introduction

Many Member States are experiencing staff shortages, particularly in the health sector where there is surplus demand, i.e. more job vacancies than available medical staff. In the first quarter of 2020 alone, there were 185,658 job vacancies in the health and social services sector.¹ This situation was further exacerbated by the COVID-19 outbreak as more staff were required in hospitals and the care sector.² The EU Commission's guidance document, published on 7 May 2020, regarding the recognition of professional qualifications³ will provide Member States with clear guidelines⁴ for implementing the Professional Qualifications Recognition Directive⁵ in order to address the increased staff shortages caused by the COVID 19 crisis. The Commission recommends that Member States keep the procedures for allowing access to professions, and for exercising a profession, as simple and swift as possible. In this regard, the guidelines indicate the regulatory scope for discretion offered to Member States by the Professional Qualifications Recognition Directive, regarding both permanent and temporary exercise of a profession as well as regarding the recognition of professional qualifications from third countries. This cepInput sets out the relevant procedures under the Professional Qualifications Recognition Directive and the corresponding guidelines, and assesses the extent to which the guidelines may help to combat the staff shortages. Article numbers refer to the Directive; other numbers or paragraphs refer to the guidelines.

2 Scope and objective of the Professional Qualifications Recognition Directive

The Professional Qualifications Recognition Directive has been in force since October 2005 and was revised in November 2013. It applies

- (1) only to regulated professions which are defined as “a professional activity, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications” [Art. 1 (1) in conjunction with Art. 3 (1) (a)],
- (2) to all nationals of a Member State of the European Union, the European Economic Area and Switzerland who obtained their professional qualifications in one of these countries [Art. 2]⁶.

The Directive guarantees these nationals that they can exercise their professions under the same conditions as nationals of the Member States. The Professional Qualifications Recognition Directive aims to set up common and transparent conditions under which a Member State must recognise

¹ Eurostat (2020) Job vacancy statistics by NACE Rev. 2 activity, occupation and NUTS 2 regions - quarterly data [jvs_q_isco_r2], <https://ec.europa.eu/eurostat/de/web/products-datasets/product?code=jvs_q_isco_r2> (last accessed 10 July 2020).

² Standing Committee of European Doctors, “COVID-19 in Europe: Status report from the National Medical Associations”, <https://www.cpme.eu/index.php?downloadunprotected=/uploads/adopted/2020/5/Covid-19.Report.08052020.final_.pdf> (last accessed: 10 July 2020).

³ EU Commission C(2020) 3072 Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures – recommendations regarding Directive 2005/36/EC.

⁴ C(2020) 3072, para. 6.

⁵ EU Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications amended by EU Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 (see [cepPolicyBrief](#)).

⁶ Reference to relevance to the EEA in the title and the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, OJEC L 114 of 30 April 2002, p. 6.

professional qualifications that have been acquired in another Member State in order to ensure access to or the exercise of a profession in the host Member State. In this regard, the Directive contains rules on training and on the recognition of foreign qualifications for health professionals. At the same time, there are minimum training requirements for certain professions. In addition, requirements vary according to whether the profession to be pursued in another country is designed to be permanent [Art. 10–52] or whether it is intended to be temporary and occasional [Art. 5–9].

3 Guidelines on the recognition of professional qualifications in the health sector

The EU Commission guidelines identify existing scope for discretion offered to Member States by the Professional Qualifications Recognition Directive in order to facilitate the recruitment of healthcare staff in times of COVID 19. The focus is on work⁷ in another Member State (Section 3.1), temporary work (Section 3.2), the early award of diplomas (Section 3.3.) and recognition of the qualifications of professionals from third countries (Section 3.4). The following will first set out the content of the Professional Qualifications Recognition Directive and then the COVID 19 emergency measures contained in the guidelines that relate to the Directive.

3.1 Occupation (“establishment”) in another Member State

As regards the permanent exercise of the envisaged profession in another Member State, the Directive provides for procedures for the recognition of professional qualifications. Firstly, in this regard, general rules [Art. 10–14] apply to all professions falling within the scope of the Directive, which are not subject to any EU-wide minimum training requirements, and secondly specific EU-wide minimum requirements and recognition conditions apply to certain professions [Art. 21–49].⁸ The qualifications for certain health professions, such as doctors and general care nurses, are subject to minimum requirements on training and thus fall under the second category. Qualifications for other healthcare workers, such as specialised nurses and healthcare assistants, have not been harmonised at EU level and are subject to general rules on recognition. Apart from recognition, both categories are subject to requirements regarding documentation, certificates, procedural guarantees and deadlines when applying for approval [Art. 50–51].

3.1.1 General rules on recognition of professional qualifications

(1) Professional Qualifications Recognition Directive

If no EU minimum requirements apply to the training for a certain healthcare profession, such as in the case of specialised nurses and healthcare assistants, recognition of training certificates takes place under the general rules [Art. 13]. Host countries may apply an equivalence assessment to attestations of competence and evidence of formal qualifications [Art. 14]. Where significant differences are found to exist between the content of training in the Member States, the host country may require compensation measures [Art. 14]. It may require completion either of an adaptation period or an

⁷ The Directive uses the term “establishment” which also includes employed work [Art. 2 (1) Professional Qualifications Recognition Directive]. It is not therefore identical in meaning to freedom of establishment [Art. 49 TFEU].

⁸ The procedure for recognition based on professional experience [Art. 16–20] is not addressed by the guidelines.

aptitude test [Art. 14]. The professional qualifications necessary for access to or pursuit of a profession under national law, also apply to nationals of the said states [Art. 13].

The Professional Qualifications Recognition Directive also regulates which documents [Annex VII] may be required for recognition of professional qualifications, the time limits for assessing the application for approval and which procedural guarantees apply [Art. 51].

(2) Guidelines

The guidelines [No. 1 a] indicate that “a more liberal approach” is permitted in which “fewer documents than usual” and “no certified translations” are required. At the same time, the Commission construes the documents and certificates required under the Professional Qualifications Recognition Directive for the approval procedure [Art. 50 in conjunction with Annex VII] as maximum requirements for healthcare professions. These procedures must be non-discriminatory. In addition, it is made clear that the Member States are free to dispense with the requirement for compensation measures if there is no significant risk to patient safety.

3.1.2 Procedure for professions with minimum training requirements

(1) Professional Qualifications Recognition Directive

Under the Directive, certain professions are subject to specific requirements regarding knowledge and practical experience which must be covered by the training in all Member States. In the health sector, these include doctor (also specialised doctor), general care nurse, dentist (including dental specialist), midwife and pharmacist. Member States issue training certificates which confirm that the requirements for training set out in the Directive have been met [Annex V]. By contrast with the general recognition procedure (3.1.1), professions whose training requirements have undergone minimum harmonisation, are subject to the principle of automatic recognition: When assessing applications for admission to a profession, recognition offices must automatically recognise the training certificates listed in the Directive [Annex V] and must not re-examine their contents [Art. 21].

The Commission examines compliance with the minimum training requirements and must be notified by the Member States if they make changes to the national provisions on duration and content of the training courses [Art. 21a]. If a Member State cannot implement provisions of the Directive, the Commission will examine whether it should be granted a temporary derogation [Art. 61]. The same applies to minimum training requirements.

(2) Guidelines

Here too, the guidelines [No. 1 a.] refer to the possibility of simplifying the procedure. Fewer documents are required and there is no need for certified translations.

3.2 Pursuing a profession temporarily in another Member State

Where a person lawfully pursues a profession in a Member State, their right to exercise that profession temporarily in another Member State must not be restricted on the basis of professional qualifications [Art. 5 (1) (a)]. If the profession is unregulated in the Member State of establishment, the person must have pursued the profession for at least one year during the last ten years [Art. 5 (1) (b)]. Prior to providing a service for the first time, Member States may require the person to submit a written declaration [Art. 7 (1)] and, on the first occasion, to provide additional information [Art. 7 (2)].

3.2.1 Checks for healthcare professions without minimum training requirements

(1) Professional Qualifications Recognition Directive

In the case of professions relating to public health that are not subject to the provisions on automatic recognition, Member States may check professional qualifications prior to the first provision of services [Art. 7 Abs. 4]. This includes specialised doctors whose specialisation is regulated only in the host Member State but not in the country of origin, specialised nursing staff (as opposed to general nursing staff) and paramedical staff such as physiotherapists. The check must take place within a reasonable period and the applicant is entitled to procedural guarantees [Art. 7 Abs. 4]. The host Member State may only carry out a check in the form of an aptitude test where there are substantial differences in the training that would have an impact on public health and the examination does not go beyond what is necessary for the purpose [Art. 7 (4)]. The service can be provided [Art. 7 (4)] only after the decision of the competent authority.

(2) Guidelines

The guidelines [No. 1 a.] indicate that under the Professional Qualifications Recognition Directive checks are not mandatory and therefore Member States remain free to speed up, reduce or dispense with such checks.

3.2.2 Simple procedure for healthcare professions with minimum training requirements

(1) Professional Qualifications Recognition Directive

In the case of healthcare professions with automatic recognition, no check is permitted [Art. 7 (4)], only the written declaration prior to first provision of services [Art. 7 Abs. 1] may be required.

(1) Guidelines

The guidelines indicate that Member States remain free to dispense with the declaration, either generally or for particular periods, activities or sectors [No. 1 a.].

3.3 Early award of diplomas for healthcare professions

(1) Professional Qualifications Recognition Directive

The Professional Qualifications Recognition Directive does not expressly provide for the early award of diplomas.

(2) Guidelines

The guidelines [No. 2] refer to the possibility for Member States to award diplomas early if training cannot currently be completed due to the closure of training facilities. In the case of professions without minimum training requirements, the early award of diplomas can take place under national law. The guidelines specify two situations for recognition in another Member State and the scope for action which these offer the Member States:

Situation 1 [No. 2 a.]: The minimum requirements of the Professional Qualifications Recognition Directive are met. Thus, early award of a diploma is in line with the requirements for automatic recognition under the Professional Qualifications Recognition Directive. The diplomas that are awarded early will be treated in the same way as those awarded normally and must be recognised

automatically in other Member States. This situation arises where training requirements in the country of origin are normally stricter than the EU minimum requirements.

Situation 2 [No. 2 b.]: The minimum requirements of the Professional Qualifications Recognition Directive are not met. Thus, early award of a diploma is not in line with the requirements for automatic recognition under the Professional Qualifications Recognition Directive. In this case, the Commission may issue by way of implementing act a temporary derogation from the minimum training requirements [Art. 61 Professional Qualifications Recognition Directive]. Specifically, such a derogation is possible if, as a result of the COVID-19 situation, a Member State cannot meet the minimum requirements and the missing requirements will be met subsequently. Automatic recognition is only possible, however, once the missing requirements have been met. The requirements can also be met by way of professional experience or special training and development programmes. The requirements will be set out in the corresponding implementing act.

3.4 Recognition of the qualifications of professionals from third countries

(1) Professional Qualifications Recognition Directive

Recognition of the qualifications of professionals from third countries⁹ takes place according to national procedures.¹⁰ However, qualifications for healthcare professions that are subject to the minimum requirements of the Directive in the EU, can only be recognised if they at least meet the EU minimum requirements [Art. 2 (2)].

(2) Guidelines

The guidelines [No. 3] refer to the fact that it is possible to employ people from third countries even if they do not meet the minimum requirements. Thus, the host country may order further training which enables the minimum requirements to be met, or members of a healthcare profession can pursue an occupation for which they do meet the minimum requirements or for which there are no minimum requirements. For example, a nurse from a third country whose qualifications do not meet the minimum requirements, can work as a healthcare assistant.

⁹ In this case, third countries are countries which do not belong to EU/EFTA.

¹⁰ See also EU Commission (2020), "User Guide Directive 2005/36/EC" No. 4, <<https://ec.europa.eu/docsroom/documents/40185>> (last accessed: 10 July 2020).

4 Assessment

4.1 Economic Assessment

In most Member States, there is a shortage of skilled workers in the health sector.¹¹ The demand for labour is not being met by the supply. The Professional Qualifications Recognition Directive cannot solve this problem by means of simplified recognition conditions within the EU. 15,930 applications for recognition of professional qualifications were made in 2019, within the regulatory area of the Directive, and only 114 of these applications i.e. 0.72% were refused.¹² Basically therefore, recognition conditions are not the reason for the shortage of skilled workers in the health sector. Skilled workers are in fact a scarce resource for which there is EU-wide competition. This competition is supported by the Professional Qualifications Recognition Directive which lays down common and transparent rules for recognition procedures in the Member States. The real problem behind the shortage of skilled staff – further exacerbated by the COVID-19 crisis – can only be counteracted by investment in the training of skilled workers or by recruiting more of them from third countries, i.e. by increasing the supply of labour. The guidelines are therefore appropriate on two counts:

Firstly, the labour supply can be increased by way of early recognition of diplomas. The guidelines indicate that, where diplomas are awarded early, there are no obstacles to automatic recognition if the minimum requirements are met, and even if they are not met, diplomas may be awarded subject to conditions. This is effective and reasonable, provided the safety of patients is assured, and will rapidly counteract national staff shortages.

Secondly, the guidelines rightly indicate that in the case of professions with minimum training requirements, recognition of the qualifications of third-country professionals is possible, even if they do not meet the minimum requirements, for example by allowing them to pursue an occupation which requires lower qualifications. Further training for healthcare workers from third countries should be promoted, not only to ensure quality but also, in view of the increasing international competition for labour in the health sector, to provide a positive incentive to work in the EU.

The procedures for professions without minimum requirements, put forward in the guidelines, both for permanent and temporary occupations, do highlight the lawful scope for discretion available to Member States under the Professional Qualifications Recognition Directive. This scope for discretion should not, however, be used to its full extent. “Simplified procedures” with “fewer documents than usual” and “no certified translations” are sensible, in principle, to ensure that any bureaucratic restrictions on freedom of movement and the freedom to provide services are kept to a minimum. The same applies to simplified checks in the case of temporary occupations. However, the health sector occupies a special status in that the safety of citizens or patients requires a particularly high level of protection. Member States also have a duty of care towards their citizens.¹³ If Member States make unlimited use of the scope for simplifying the said procedures, as indicated in the guidelines, this may lead to healthcare workers from another Member State pursuing occupations for which they are not

¹¹ Eurostat (2020) Job vacancy statistics by NACE Rev. 2 activity, occupation and NUTS 2 regions - quarterly data [jvs_q_isco_r2], <https://ec.europa.eu/eurostat/de/web/products-datasets/product?code=jvs_q_isco_r2> (last accessed: 10 July 2020).

¹² EU Commission (2020) The EU Single Market, Regulated professions database, <<https://ec.europa.eu/growth/tools-databases/regprof/index.cfm>>, (last accessed: 10 July 2020).

¹³ Art. 168 (7) TFEU.

qualified. This could result in health and social costs which would outweigh the benefits of a swift procedure. In the case of professions without minimum requirements, it is for Member States to make this judgement as the requirements are not harmonised.

4.2 Legal Assessment

Simplified procedures to increase cross-border mobility for health workers are basically a legitimate objective. This may enable fundamental freedoms laid down in primary law to be realised: free movement of labour [Art. 46 TFEU], freedom of establishment [Art. 53 (1) TFEU] and the freedom to provide services [Art. 62 in conjunction with Art. 53 (1) TFEU]. The procedures for pursuing and exercising a regulated profession have been specified under secondary law in the Professional Qualifications Recognition Directive. The guidelines have interpreted the Directive. This interpretation is unproblematic from a legal perspective because it does not run counter to the wording or purpose of the Directive.

As regards the early award of diplomas where, due to COVID-19, training cannot be completed and EU-wide minimum training requirements cannot be met [No. 2 b.], the guidelines rightly indicate that the EU Commission must issue a derogation by way of an implementing act at the request of the Member State concerned. This is necessary due to the minimum requirements applicable to the training.

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