

Updated Directive on the Recognition of Professional Qualifications¹

Directive 2013/55/EU of 20 November 2013 presents the agreed amendments to Directive 2005/36/EC on the recognition of professional qualifications. It covers EU28 and the three EEA countries. It was published in the Official Journal on December 28 and came into effect on 18 January. Member States [MS] will have a two-year transposition period in which to make the necessary adjustments to their national legislations².

Background

Directive 2005/36/EC on the recognition of professional qualifications fell due for review five years after coming into force in 2007. In 2011 the Commission set in train a far-reaching consultation and evaluation process. Politically, it was driven by President Barroso's determination to 're-launch the Single Market' in response to the crisis in the Eurozone and beyond. Specifically, this aimed at:

- raising the level of cross-border service delivery
- increasing cross-border professional mobility, particularly where patterns of demand had been significantly changed by demographic factors, notably in healthcare
- reducing the level of professional protectionism
- bringing the Directive into closer alignment with Directive 2006/123/EC on Services in the Internal Market

In an attempt to rationalise the EU's labyrinthine regulatory landscape, the Commission has asked each MS to spell out which professions it regulates and why. Their statements will then be subjected to peer review at MS level. The hope is that mutual evaluation will eliminate anomalies and cut 'unnecessary' regulation, thereby boosting transparency, professional mobility and cross-border service delivery.

The drive to simplify also targets qualifications. Currently, automatic recognition operates in only seven 'sectoral' professions: medical doctor, general care nurse, dentist, midwife, veterinary surgeon, pharmacist and architect. Professionals qualified to a specified agreed minimum level are permitted to practise in MS other than the one in which they trained. All other professional qualifications fall into the 'General System', which works by comparing the level of a mobile professional's attainment with the level required by the host MS and by imposing appropriate compensation measures, such as adaptation periods and aptitude tests.

What is new in the amended Directive?

A route to wider automatic recognition for professional qualifications has been opened up by the introduction of **common training frameworks** (CTF) [Recital 25 and new Article 49a]. These will allow groups of MS – at least one third of the total number (i.e. 10 of EU28) – to agree curricula based on 'common sets of knowledge, skills and competences'. Other MS may then opt in. The curricula may be proposed by representative professional bodies operating at EU or national level, or by Competent Authorities (CA – normally ministries or statutory regulatory bodies). The reference to 'knowledge, skills and competences' is significant, and marks a shift towards competence-based curricula which is visible throughout the amended Directive.

¹The full text of the European University Association (EUA) briefing note can be found here: <http://www.eua.be/eua-work-and-policy-area/building-the-european-higher-education-area/bologna-and-professional-qualifications.aspx>

² For the full text of Directive 2013/55/EU, see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0132:0170:en:PDF>

A consolidated text is in preparation and will be posted on the Commission website

Who might take advantage of this facility? Medical and dental specialties – that is to say, training programmes pitched at the level beyond basic medical and dental training – which exist in two fifths of MS (i.e. currently 12) are already subject to automatic recognition. CTFs might be used by those that do not currently reach this threshold, as well as by specialties attached to other sectoral professions (hospital pharmacists, for example). In the next years there are likely to be proposals for CTFs, encouraged in principle by the Commission in pursuit of increased automatic recognition. Higher education institutions will have an important opportunity to contribute to the design of competence-based curricula.

Article 49a.2.d specifies that CTFs will be designed in line with the **European Qualifications Framework (EQF)**. Recital 11 describes the EQF as a ‘tool designed to promote the transparency and comparability of professional qualifications’³. The legislators, however, have opted not to import the EQF into the mechanics of the General System. The gap between the attainment level of a would-be incoming professional and the level required by the host MS was measured in the previous Directive – and still is, in the amended Directive – by means of a five-level (‘a’ to ‘e’) qualifications grid. The grid was designed some thirty years ago. The decision to retain it misses the opportunity to benefit from the greater transparency, intelligibility and scope of the EQF.

The amended Directive, while retaining the five-level grid, nevertheless goes further than its predecessor by allowing levels (d) and (e) to be expressed as credit points within the **European Credit Transfer and Accumulation System (ECTS)**. Even so, ECTS remains only an option: (d) and (e) ‘may be expressed as credit points...’.

Of the seven sectoral professions, **architecture** is the only one in which it is not mandatory for training programmes to comply with the Directive. This means, effectively, that HE institutions need to comply only if they wish their graduates to be able to work elsewhere in the EU. As a consequence, the Commission has always experienced difficulty in knowing which courses are compliant and which are not. To a lesser degree, the same is true of all sectoral qualifications, in the sense that the Bologna Process has encouraged curricular diversity. To address this problem, the previous Directive relied on **notification** by MS; notification was essential, since a course became compliant only when listed in its Annex V. New Recital 16 reaffirms the obligation imposed on MS, as does new Article 21a. The previous qualification route for architects (a four-year training programme or equivalent) has been replaced by two possibilities: five full-time years of study OR four years plus a two-year traineeship which cannot be undertaken before the end of year three (Article 46.1).

Both pharmacy and architecture feature **traineeships**. Here the amended Directive has taken on board the European Court of Justice’s *Morgenbesser* ruling (case C-313/01). *Morgenbesser* allows traineeships to be undertaken in any MS, irrespective of where the professional qualification is delivered, and to enjoy full recognition.

That **lifelong learning** has become an important policy strand is evidenced by its appearance in amended Article 14.5 on compensation measures. Hitherto, MS have been able, in the General System, to require adaptation periods or aptitude tests when a ‘substantial difference’ of course content or duration signals a level of knowledge which is too low to allow professional practice in the host MS. Henceforward, the substantial difference must be calibrated in terms of content, but not duration, and in terms of knowledge, skills and competences, rather than knowledge alone. Moreover, before demanding an aptitude test, MS must now ascertain that the applicant has not already compensated for the substantial difference by virtue of formally validated lifelong learning.

³ In fact, the scope of the EQF is much broader, embracing all qualifications in the post-secondary education sectors, whether in vocational education and training (VET) or in higher education (HE), whether professional or academic. The 49 Bologna HE systems are progressively referencing their national qualifications frameworks to the EQF.

Relevant experience can come before, as well as after, the award of a qualification. The amended Directive contains a modest acknowledgement of the importance of the **recognition of prior learning**. Previous Article 30.3 allowed exemptions to be made in favour of general care nursing students who already had prior formal learning which could be recognised. This facility remains. It is now extended to medical specialties in circumstances outlined in Recital 19 and specified in Article 25.3a.