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(Acts whose publication is obligatory)

DIRECTIVE 2001/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 May 2001

amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 40, 47(1), the first and third sentences of Article 47(2), and Article 55 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the Opinion of the Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]), in the light of the joint text approved by the Conciliation Committee on 15 January 2001,

Whereas:

(1) On 16 February 1996 the Commission gave the European Parliament and the Council its Report on the state of application of the general system for the recognition of higher-education diplomas made in accordance with Article 13 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration ([4]). In this Report the Commission undertook to examine the possibility of incorporating into that Directive the obligation to take into consideration, when examining applications for recognition, experience gained following the award of the qualification in question, the possibility of introducing the concept of 'regulated education and training'. The Commission also undertook to examine the arrangements whereby the role of the Coordinating Group set up by Article 9(2) of Directive 89/48/EEC could be developed in order to ensure more uniform application and interpretation of the Directive.

(2) The concept of regulated education and training, introduced by Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC ([5]) (both Directives being hereinafter referred to as the 'general system Directives'), should be extended to the initial general system and should be based on the same principles by applying to it the same rules; it should be left to the individual Member States to choose the means of defining professions covered by regulated education and training.

(3) The general system Directives permit the host Member State to require, subject to certain conditions, the applicant to take compensation steps, notably where substantial differences exist between the theoretical and/or practical education and training undergone and that covered by the qualification required in the host Member State; under Articles 39 and 43 of the Treaty, as interpreted by the Court of Justice of the European Communities ([6]), the host Member State must assess whether professional experience is sufficient in order to prove possession of the knowledge which is lacking; in

([1]) OJ C 28, 26.1.1998, p. 1.
([2]) OJ C 235, 27.7.1998, p. 53
([3]) Opinion of the European Parliament of 2 July 1998 (OJ C 226, 20.7.1998, p. 26), confirmed on 27 October 1999, Council Common Position of 20 March 2000 (OJ C 119, 27.4.2000, p. 1) and Decision of the European Parliament of 5 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 26 February 2001.
([4]) OJ L 19, 24.1.1989, p. 16.
([5]) OJ L 209, 24.7.1992, p. 25. Directive as last amended by Commission Directive 2000/5/EC (OJ L 54, 26.2.2000, p. 42).
([6]) C-340/89 (Vlassopoulou) 1991 ECR-I-2357.

the interests of clarity and legal certainty for individuals wishing to practise their profession in another Member State, it is desirable to incorporate into the general system Directives the requirement that the host Member State has to examine whether the professional experience gained by the applicant since obtaining his qualification(s) covers the subjects referred to above.

(4) The coordination procedure provided for by the general system Directives should be improved and simplified by enabling the Coordinating Group to adopt and publish opinions on questions referred to it by the Commission that relate to the practical application of the general system.

(5) In its Communication to the European Parliament and the Council on the SLIM initiative, the Commission undertook to present proposals aimed at simplifying the updating of the lists of qualifications eligible for automatic recognition. Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications ([1]) provides for a simple procedure in the case of general practitioners' qualifications; experience has shown that the procedure affords sufficient legal certainty; it is desirable to extend it to qualifications held by nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and doctors as referred to in Council Directives 77/452/EEC ([2]), 77/453/EEC ([3]), 78/686/EEC ([4]), 78/687/EEC ([5]), 78/1026/EEC ([6]), 78/1027/EEC ([7]), 80/154/EEC ([8]), 80/155/EEC ([9]), 85/432/EEC ([10]), 85/433/EEC ([11]) and 93/16/EEC (hereinafter referred to as the 'sectoral Directives') respectively.

([1]) OJ L 165, 7.7.1993, p. 1. Directive as last amended by Directive 1999/46/EC (OJ L 139, 2.6.1999, p. 25).
([2]) OJ L 176, 15.7.1977, p. 1. Directive as last amended by the 1994 Act of Accession.
([3]) OJ L 176, 15.7.1977, p. 8. Directive as amended by Directive 89/595/EEC (OJ L 341, 23.11.1989, p. 30).
([4]) OJ L 233, 24.8.1978, p. 1. Directive as last amended by the 1994 Act of Accession.
([5]) OJ L 233, 24.8.1978, p. 10. Directive as last amended by the 1994 Act of Accession.
([6]) OJ L 362, 23.12.1978, p. 1. Directive as last amended by the 1994 Act of Accession.
([7]) OJ L 362, 23.12.1978, p. 7. Directive as amended by Directive 89/594/EEC (OJ L 341, 23.11.1989, p. 19).
([8]) OJ L 33, 11.2.1980, p. 1. Directive as last amended by the 1994 Act of Accession.
([9]) OJ L 33, 11.2.1980, p. 8. Directive as amended by Directive 89/594/EEC.
([10]) OJ L 253, 24.9.1985, p. 34.
([11]) OJ L 253, 24.9.1985, p. 37. Directive as last amended by the 1994 Act of Accession.

(6) According to the case-law of the Court of Justice of the European Communities, Member States are not required to recognise diplomas, certificates and other evidence of formal qualifications which do not testify to training acquired in one of the Member States of the Community ([12]). However, Member States should take into account professional experience gained by the person concerned in another Member State ([13]). That being so, it should be stipulated in the sectoral Directives that recognition by a Member State of a diploma, certificate or other evidence of formal qualification awarded to a nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist or doctor on completion of education and training in a third country and professional experience gained by the person concerned in a Member State constitute Community elements which the other Member States should examine.

(7) The period within which Member States are to reach a decision on applications for recognition of diplomas, certificates and other evidence of formal qualifications obtained by nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, architects, pharmacists or doctors in a third country should be stipulated.

(8) Lifelong learning has been made especially important in the area of medicine by the rapid advances in technical and scientific progress. It is up to the Member States to decide how to ensure, by suitable continuing training after completion of studies, that doctors maintain their knowledge of progress in medicine. The present system of mutual recognition of professional qualifications remains unchanged.

(9) The applicant must have right of appeal under national law if his application is rejected or if a decision is not reached within the stipulated period. Member States are to state their reasons for such decisions taken regarding the recognition of diplomas, certificates and other evidence of formal qualifications held by nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, architects, pharmacists or doctors; where a Member State decides to recognise a diploma, certificate or other evidence of formal qualifications, it should be free to choose whether or not to state the reasons.

(10) For reasons of fairness, transitional measures should be taken in respect of certain dental practitioners in Italy

([12]) C-154/93 (Tawil Albertini) 1994 ECR I — 451.
([13]) C-319/92 (Haim) 1994 ECR I — 425.

who hold diplomas, certificates or other evidence of formal qualifications in medicine awarded in Italy but on completion of medical training begun after the deadline stipulated in Article 19 of Directive 78/686/EEC.

(11) Article 15 of Directive 85/384/EEC [1] provides for a derogation during a transitional period that has now expired, that provision should be deleted.

(12) There should be a clear distinction in Article 24 of Directive 85/384/EEC between the formalities to be completed in the case of establishment and those to be completed in the case of provision of services, thereby rendering more effective the exercise of the freedom to provide services as an architect.

(13) For reasons of equality of treatment, transitional measures should be provided for in respect of certain holders of diplomas, certificates and other evidence of formal qualifications in pharmacy awarded in Italy on completion of training that does not fully comply with Directive 85/432/EEC.

(14) It is desirable to extend the scope of mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy in order to facilitate effective exercise of the right of establishment between Greece and the other Member States. Therefore, the derogation provided for in Article 3 of Directive 85/433/EEC should be deleted.

(15) In its Report on specific training in general medical practice provided for by Title IV of Directive 93/16/EEC, the Commission recommended that the requirements applying to part-time training in general medical practice should be brought into line with those applying to other medical specialists.

(16) The general system Directives and the sectoral Directives, should be amended,

HAVE ADOPTED THIS DIRECTIVE:

SECTION 1

AMENDMENTS TO THE GENERAL SYSTEM DIRECTIVES

Article 1

Directive 89/48/EEC is hereby amended as follows:

1) Article 1 shall be amended as follows:

(a) the second indent of point (a) shall be replaced by the following:

'— which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and'

(b) the following point shall be inserted:

'(d) a regulated education and training: any education and training which:

— is directly geared to the practice of a defined profession, and

— comprises a post-secondary course of at least three years' duration, or an equivalent duration part-time, at a university or higher education establishment or in another establishment of equivalent level and, where appropriate, the professional training, professional traineeship or professional practice required in addition to the post-secondary course; the structure and level of the professional training, professional traineeship or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose.';

2) in Article 3(b), the following subparagraph shall be inserted after the first subparagraph:

'However, the two years' of professional experience referred to in the first subparagraph may not be required where the qualification or qualifications held by the applicant and referred to in this point were awarded on completion of regulated education and training.';

3) in Article 4(1)(b), the following subparagraph shall be inserted after the first subparagraph:

'If the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first examine whether the knowledge acquired by the applicant in the course of his professional experience is such that it fully or partly covers the substantial difference referred to in the first subparagraph.';

4) the following paragraphs shall be added to Article 6:

'5. Where proof of financial standing is required in order to take up or pursue a regulated profession in the host Member State, that Member State shall regard certificates issued by banks in the Member State of origin or in the Member State from where the foreign national comes as equivalent to those issued in its own territory.

[1] OJ L 223, 21.8.1985, p. 15. Directive as last amended by the 1994 Act of Accession.

6. Where the competent authority of the host Member State requires of its own nationals wishing to take up or pursue a regulated profession proof that they are insured against the financial risks arising from their professional liability, that Member State shall accept certificates issued by insurance undertakings of other Member States as equivalent to those issued in its own territory. Such certificates shall state that the insurer has complied with the laws and regulations in force in the host Member State regarding the terms and extent of cover. They may not be presented more than three months after their date of issue.';

5. in Article 9(2), the first indent of the second subparagraph shall be replaced by:

'— to facilitate the implementation of this Directive, in particular by adopting and publishing opinions on the questions referred to it by the Commission,'.

Article 2

Directive 92/51/EEC is hereby amended as follows:

1) in Article 4(1)(b), the following subparagraph shall be inserted after the first subparagraph:

'If the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must examine first whether the knowledge acquired by the applicant in the course of his professional experience is such that it fully or partly covers the substantial difference referred to in the first subparagraph.';

2) in Article 5, the following paragraph shall be inserted after the second paragraph:

'If the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first examine whether knowledge acquired by the applicant in the course of his professional experience is such that it fully or partly covers the substantial difference between the diploma and the certificate.';

3) in Article 7(a) the following subparagraph shall be inserted after the first subparagraph:

'If the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first examine whether knowledge acquired by the applicant in the course of his professional experience is such that it fully or partly covers the substantial difference referred to in the first subparagraph.';

4) the following paragraphs shall be added to Article 10:

'5. Where proof of financial standing is required in order to take up or pursue a regulated profession in the host Member State, that Member State shall regard certificates issued by banks in the Member State of origin or in the Member State from where the foreign national comes as equivalent to those issued in its own territory.

6. Where the competent authority of the host Member State requires of its own nationals wishing to take up or pursue a regulated profession proof that they are insured against the financial risks arising from their professional liability, that Member State shall accept certificates issued by insurance undertakings of other Member States as equivalent to those issued in its own territory. Such certificates shall state that the insurer has complied with the laws and regulations in force in the host Member State regarding the terms and extent of cover. They may not be presented more than three months after their date of issue.';

5) in Article 13(2), the first indent of the second subparagraph shall be replaced by:

'— facilitate the implementation of this Directive, in particular by adopting and publishing opinions on the questions referred to it by the Commission,';

6) the following paragraph shall be added to Article 15:

'8. Amendments made to the lists of education and training courses set out in Annexes C and D on the basis of the procedure laid down above shall apply immediately on the date set by the Commission.'.

SECTION 2

AMENDMENTS TO THE SECTORAL DIRECTIVES

Section 2.1

Nurses responsible for general care

Article 3

Directive 77/452/EEC is hereby amended as follows:

1) (concerns only the Greek version);

2) In Article 2, the words 'listed in Article 3' shall be replaced by 'listed in the Annex';

3) Article 3 shall be deleted;

4) references made to Article 3 shall be understood as made to the Annex;

5) (concerns only the Greek version).

6) the following Articles shall be inserted:

'*Article 18a*

Member States shall notify the Commission of the laws, regulations or administrative provisions they adopt as regards the award of diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive. The Commission shall publish an appropriate notice in the *Official Journal of the European Communities*, listing the names adopted by the Member States for the training qualification concerned and, where applicable, for the corresponding professional title.

Article 18b

Each Member State shall recognise as sufficient proof, in respect of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive do not correspond to the names listed for that Member State in this Directive, the diplomas, certificates and other evidence of formal qualifications awarded by those Member States and accompanied by a certificate issued by the competent authorities or bodies. The certificate shall state that the diplomas, certificates and other evidence of formal qualifications in question have been awarded on completion of education and training that complies with the provisions of this Directive and are treated by the awarding Member State as equivalent to those whose names are listed therein.

Article 18c

Member States shall examine diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive obtained by the holder outside the European Union in cases where those diplomas, certificates and other evidence of formal qualifications have been recognised in a Member State, as well as of training undergone and/or professional experience gained in a Member State. The Member State shall give its decision within three months of the date on which the applicant submits his application together with full supporting documentation.

Article 18d

Where the application is rejected, Member States shall duly give the reasons for decisions on applications for recognition of diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive.

Applicants shall have a right of appeal before the courts under national law. That right of appeal shall likewise apply in the event of failure to reach a decision within the stipulated period.';

7) the Annex as it appears in Annex I to this Directive shall be added.

Article 4

In Article 1(1) of Directive 77/453/EEC, the words 'as specified in Article 3 of Directive 77/452/EEC' shall be replaced by 'as specified in the Annex to Directive 77/452/EEC'.

Section 2.2

Dental practitioners

Article 5

Directive 78/686/EEC is hereby amended as follows:

1) in Article 2, the words 'listed in Article 3' shall be replaced by 'listed in Annex A';

2) Article 3 shall be deleted;

3) the title of Chapter III shall be replaced by:

'Diplomas, certificates and other evidence of formal qualifications in specialised dentistry.';

4) Article 4 shall be replaced by:

'*Article 4*

Each Member State with provisions in this field laid down by law, regulation or administrative action shall recognise the diplomas, certificates and other evidence of formal qualifications of dental practitioners specialising in orthodontics and oral surgery awarded to nationals of Member States by other Member States in accordance with Articles 2 and 3 of Directive 78/687/EEC and which are listed in Annex B, by granting such qualifications the