

**EU Directive 2005/36/EC  
on the recognition of professional qualifications**

**SUMMARY ABOUT  
PROPOSAL OF CHANGES**

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**ECCE Standing Committee on  
Professional Recognition and Mobility**  
Chairman, Prof. Fernando Branco

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## **EXECUTIVE SUMMARY**

A EU proposal for amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation was submitted on 19.12.2011. The main changes presented in this proposal, and related to Civil Engineers, are here explained.

**Mobility with the European professional card** - will become an alternative tool to increase the mobility and better cooperation between competent authorities through the Internal Market Information System (IMI). It creates the conditions for the reduction of the deadlines for the treatment of an application on the basis of the European professional card compared to the current procedure. On request from a professional, the home Member State will assess the professional's file through IMI. The use of the Internal Market System becomes compulsory as it will serve as the back office for the European professional card.

**Free provision of services on a temporary basis** - Member States will provide a list of all professions they consider with health and **safety** implications, but also to justify their reasons. The proposal clarifies the list of documents a Member State may require prior to the first provision of services in these professions. The European Professional Card also offers potential for those professions interested mainly in temporary mobility.

**General system of mobility** - The proposal also reinforces the obligation on Member States to better justify the compensation measures. Moreover, the proposal foresees the obligation for Member States to organize aptitude tests on a regular basis.

**Partial Access** - It is introduced the concept of partial **access** into the Directive. This will bring more legal certainty for professionals and will allow professionals fulfilling the conditions for partial access to establish them or to provide services where they were previously excluded.

**Common platform** - The "common platforms" concept of the 2005 Directive is replaced by common training principles: a common training framework or common training tests. The common training principles allow the professionals to be exempted from compensation measures.

## **CONTENTS**

1. Introduction
2. European professional card and Internal Market Information System
3. Free provision of services
4. General system
5. Partial access
6. Automatic recognition based on professional experience
7. Automatic recognition based on minimum training requirements
8. Common training principles – a new regime for automatic recognition

## 1. Introduction

A proposal for amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation [...] on administrative cooperation through the Internal Market Information System (IMI) was submitted on 19.12.2011.

The main changes presented in this proposal, and related to Civil Engineers, are here explained.

## 2. European professional card and Internal Market Information System

### 2.1. *European professional card*

The European professional card will be an alternative tool which can be implemented for those professions which meet several objectives: bottom-up demand by members of the profession, **significant mobility and better cooperation between competent authorities through IMI.**

The European Professional Card also offers potential for those professions interested mainly in temporary mobility. All in all, the introduction of the European Professional Card will depend on whether professions request its introduction. Its attractiveness should however lead to more and more professions adopting it.

The European professional card **aims to facilitate and accelerate the recognition procedure** while at the same time making it more transparent. Therefore, the card requires more involvement by the home Member State, which implies the shift of certain costs and administrative burdens from the host Member State to the home Member State. However, the use of IMI should reduce these costs and the new procedure can be carried out by competent authorities in place which are already frequently involved in the preparation of the recognition file of national professionals.

To the extent that a European Professional Card has been introduced for a specific profession, on request from a professional, **the home Member State will assess the completeness of the professional's file** and, in case of a request for establishment, create a European profession card. **The role of the home Member State is even more important in case of temporary mobility**, as it will both create and validate the professional card. **The use of the Internal Market System becomes compulsory as it will serve as the back office for the European professional card.** Both the involvement of the home Member State and the use of IMI will contribute to a reduction in cost and time necessary for the treatment of a recognition request.

This creates the conditions for the reduction of the deadlines for the treatment of an application on the basis of the European professional card compared to the current procedure which will continue to exist for professionals preferring not to use the European Professional Card.

## ***2.2. Making IMI mandatory under the Directive***

Since the successive extensions of IMI to cover all recognition mechanisms under the Directive, a significant number of competent authorities use IMI regularly with good results.

However, the potential of the system is undermined when a competent authority is not of the IMI. Moreover, the functioning of the European Professional Card is contingent upon the systematic use of IMI. Therefore, **the proposal obliges Member States to use IMI for the exchange of information relating to recognition of professional qualifications.**

## **3. Free provision of services**

A special regime for the **free provision of services on a temporary basis** was introduced through Directive 2005/36/EC. It foresees lighter rules for temporary service providers: they can provide services without the prior check of professional qualifications (except for professions with health and safety implications) which is the rule under the recognition mechanisms for establishment.

Several amendments are proposed to clarify the rules on the free provision of services. By removing the professional experience requirement imposed on service providers from nonregulating Member States when the service provider accompanies the service recipient, the proposal seeks to better cater to the needs of consumers crossing borders. Where the requirement of professional experience still applies, the proposal foresees that it can be acquired in one or several Member States which creates more opportunities for the services providers compared to the current situation.

**For professions with health and safety implications**, Member States implemented the prior check of qualifications in diverse ways which has led to legal uncertainty for service providers. The proposal addresses this issue by requiring **Member States** not only to **provide a list of all professions they consider as belonging to this category** but also to justify their reasons for the inclusion of each profession. This will allow **service providers to know in advance the exact requirements they have to fulfil** for the free provision of services and, through an increased transparency, reduce the risk of disproportionate or unnecessary obligations.

Finally, the proposal clarifies the **list of documents a Member State may require prior to the first provision of services**. It also explicitly states that the declaration service providers may be required to make prior to provision of service must be effective for the whole territory of a Member State.

#### **4. General system**

The first element of the proposal concerns the existing possibility to exclude on the basis of Article 11 certain qualifications from the scope of the Directive when there are two or more levels of difference between the professionals' training and the requirements in the host Member State. The qualification levels should, in principle, be used only as a benchmarking tool and not as a basis for excluding professionals from the scope of the Directive. The only exception relates to persons whose qualifications are based on professional experience who are seeking access to a profession requiring a university degree. **The proposal also reinforces the obligation on Member States to better justify the compensation measures**. Moreover, the proposal foresees the **obligation for the Member States to organise aptitude tests on a regular basis**.

#### **5. Partial access**

Following the case law<sup>15</sup> of the Court of Justice, **it is proposed to introduce the concept of partial access** into the Directive. This will bring more legal certainty for professionals and will allow professionals fulfilling the conditions for partial access to establish themselves or to provide services where they were previously excluded from the benefits of the Directive.

However, Member States may not apply this principle where there are overriding reasons such as in the case of health professions.

#### **6. Automatic recognition based on professional experience**

The amendment proposed in this field aims at introducing more flexibility for the Commission to adapt the list of activities contained in Annex IV. This list no longer reflects the current structure of economic activities. This may create difficulties in identifying the professions falling under this system of automatic recognition and result in uncertainties for the professionals.

A modernisation of the classification seems therefore necessary. However, any modification to the current classification should be carefully assessed since it can affect the scope of the regime.

Therefore, the amendment proposed gives the Commission the possibility of a review but without reducing the scope of the activities benefiting from automatic recognition. The Commission also intends to launch a study involving stakeholders in 2012.

## **7. Automatic recognition based on minimum training requirements**

Not relevant for engineers

## **8. Common training principles – a new regime for automatic recognition**

The "**common platforms**" concept of the 2005 Directive **is replaced by common training principles**: a common training framework or common training tests. These aim at introducing more automaticity in the recognition of qualifications currently covered by the general system and should better respond to the needs of the professions. While the common platforms offered only the possibility of harmonising compensation measures, **the common training principles allow the professionals to be exempted from compensation measures** altogether.

The qualifications obtained under this regime should be automatically recognised in the Member States which might however benefit from derogations in applying them. In addition, the conditions for setting up common training principles are less difficult to fulfil than the conditions for setting up common platforms.

While the common training principles would not replace national training programmes, professionals with a qualification under this regime would benefit from the same advantages as the professions for which the minimum training requirements are specified in the Directive.