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NOTE

from : General Secretariat/Presidency
to : Council (Competitiveness)

Subject : Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System
- Orientation debate

I. INTRODUCTION

On 19 December 2011, the Commission submitted to the Council and the European Parliament a proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System.

The Commission has not proposed a new Directive but a targeted modernisation of the existing provisions driven notably by the following objectives:

- Reducing the complexity of procedures through a European Professional Card which would further exploit the benefits of the already successful Internal Market Information System (IMI);
- Launching a systematic screening and mutual evaluation exercise for all regulated professions in the Member States.
- Reforming the general rules for establishing in another Member State or moving on a temporary basis;
- Modernising system of automatic recognition, notably for nurses, midwives, pharmacists and architects;
- Offering a legal framework in the Directive for partially qualified professionals and for notaries;
- Clarifying safeguards for patients whose concerns over language skills and risks of malpractice should be better reflected in the legal framework;
- Creating the legal requirement for provision of user-friendly and content-driven information on the rules governing the recognition of qualifications underpinned by comprehensive e-government facilities for the whole recognition process;

II. STATE OF PLAY

The Working Party on Establishment and Services held until now meetings on 25 January, 12 and 28 March and 19 April 2012, focusing mainly on the horizontal issues contained in the proposal for a Directive. The meetings of the Working Party have been supplemented by four intermediate written consultations as well as an informal exchange of views in the Permanent Representatives Committee.

On that basis, the Presidency considers that the issue of the European Professional Card, which is a new system proposed by the Commission to accelerate the recognition of qualifications, as well as the issue of ensuring greater transparency by justifying the professions regulated through specific qualification requirements in the Member States, should be referred to the Council with a view to providing guidance for future work on this proposal.

At its meeting on 16 May, the Permanent Representatives Committee took note of the discussion paper (doc.9673/12) containing the questions on the two above issues.

III. CONCLUSION

The Council (Competitiveness) is invited, at its forthcoming meeting on 30-31 May 2012, to hold an orientation debate on the basis of the questions set out in Annex to the present note.

Questions for the meeting of the Competitiveness Council of 30-31 May 2012

1. European Professional Card

Mobility of professionals is still low in the EU. As highlighted in the Europe 2020 Strategy and the Single Market Act, professional mobility is a key element of Europe's competitiveness. Burdensome and unclear procedures for the recognition of professional qualifications are among the obstacles EU citizens encounter when they are looking for job opportunities in other Member States. The idea of a European Professional Card has been welcomed in the conclusions of the informal European Council of 30 January 2012 calling for the enhancement of cross-border labour mobility.

The Commission proposes a European Professional Card (EPC), building on the Internal Market Information System (IMI), in order to promote the free movement of professionals. According to the Commission, the card would facilitate temporary mobility and recognition under the automatic recognition system, as well as promote a simplified recognition process under the general system.

The card should be issued upon request from a professional and after the submission of the necessary documents and completion of related review and verification procedures by the competent authorities of the home Member State.

Compared to the situation today, issuing an EPC would require more involvement by the home Member State although the host Member State retains the last say on the recognition of a diploma in the case of permanent establishment.

On the one hand, competent authorities in the home Member States are better suited, due to their knowledge of the national education systems and work environments, to review the file submitted by the applicant. On the other hand, more involvement of the home Member State can imply the shift of certain costs from the host to the home Member State. And an additional challenge relates to home Member States where the profession is not regulated, as it needs to designate a body to take the necessary steps. The Commission proposed using the existing national contact points (called assistance centers in the future) in Member States.

Conversely, the impact of the EPC might be reduced, if it applies only in parts of the Single Market.

The Commission considers introducing the EPC for a particular profession if:

- There is a clear interest from stakeholders (the professionals, the competent authorities and the business community);
- The profession is regulated in a significant number of Member States;
- The mobility of the professionals concerned is significant/has a significant potential.

Questions for discussion:

Would the introduction of a professional card facilitate recognition of professional qualifications for professionals looking to work outside their home Member State? Should a home Member State that does not regulate a given profession be obliged to issue a professional card covering that profession, even if it would require additional work for these non-regulating Member States?

2. Number of regulated professions and the transparency exercise

In its conclusions of 2 March 2012, the European Council called for making progress on enhancing the mutual recognition of professional qualifications, reducing the number of regulated professions and removing unjustified regulatory barriers.

About 800 categories of regulated professions exist across the 27 Member States today. A regulated profession implies that access to a profession is subject to a person holding a specific qualification, such as a diploma from a university, and that activities are reserved to holders of such qualifications.

While Member States are free to define qualifications requirements for access to certain professions as an appropriate tool to achieve public policy objectives, e.g. the need to ensure its security or its safety or to protect consumers, in certain cases the qualifications requirements may be disproportionate or unnecessary and could lead to barriers to the freedom of movement of EU professionals.

There is a lack of transparency on the scope of and the justifications for the regulation, which may create obstacles to mobility. Therefore the Commission's proposal provides for the obligation for Member States to notify a list of professions they regulate and to assess at domestic level their legislation on the access to regulated professions against the principles of necessity (public interest), proportionality and non-discrimination.

Member States shall examine whether national requirements restricting the access to a profession or its pursuit, is compatible with the following principles:

- Requirements must be neither directly nor indirectly discriminatory according to the nationality nor the residence;
- Requirements must be justified by an overriding reason relating to a public interest;
- Requirements must be suitable for securing the attainment of the objectives pursued and must not go beyond what is necessary to attain the objective.

Each Member State would have to report to the Commission the outcome of this assessment by the end of transposition period and every two years thereafter. Subsequently, the Commission will forward the reports to the other Member States which shall submit their observations. This mutual evaluation exercise would allow Member States to compare their regulatory approaches and to simplify, where necessary, their national legal frameworks for the regulated professions. Thereafter, the Commission will submit its final findings to the Council and to the European Parliament, accompanied where appropriate by proposals for further initiatives.

Questions for discussion:

Do Member States agree with the overall objective of the Commission's proposal, to ensure greater transparency and justification of the professions regulated through specific qualification requirements in the Member States? Does the Commission's proposal go too far in trying to meet this objective or not far enough?
