



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the recognition of professional qualifications

(presented by the Commission pursuant
to Article 250 (2) of the EC Treaty)

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1. BACKGROUND

Transmission to the Council and European Parliament of proposal COM(2002)119 final – 2002/0061/(COD) in accordance with Article 40, Article 47(1) and (2) and Article 55 of the EC Treaty: 7 March 2002.

Opinion of the Economic and Social Committee: 18 September 2002
SOC/113 – ESC 724/2002 final. OJEC C 61, 14.3.2003, page 67.

Opinion of the European Parliament - first reading: 11 February 2004
- C5-0113/2002

2. AIM OF THE COMMISSION PROPOSAL

Consolidation of the existing Directives on the mutual recognition of professional qualifications. Fifteen Directives concerning the recognition of professional qualifications have been consolidated: three general system Directives (89/48/EEC, 92/51/EEC and 1999/42/EC, the latter of which concerns certain craft, industrial and commercial activities) and twelve “sectoral” Directives regarding doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects.

Contribution to the flexibility of labour markets, particularly by facilitating the provision of services. As part of the Lisbon strategy for making the European economy more dynamic and competitive, it has been proposed that the provision of services be facilitated. Giving legally established professionals direct access to the professions in question under the professional title of the Member State of origin would be a great step forward. This is to be counterbalanced by an increase in the mandatory sharing of information between the authorities of the Member States and with citizens.

Simplification of the existing rules regarding the recognition of professional qualifications and the administration of the recognition system. Both the drafting and the substance of certain rules on recognition have been simplified in order to adapt the provisions, particularly with an eye to enlargement. This concerns, among other things, the rules on the levels of qualification on which the general system is based, limiting recognition to medical specialisations common to all the Member States, and subsidiary application of the general system to certain residual situations not currently covered either by the “general system” for recognition, nor by the rules on automatic recognition set out in the “sectoral” Directives. Moreover, the proposal introduces common platforms, which are intended to facilitate more automatic recognition within the general system. Lastly, common rules on the recognition procedure will simplify administration of the system at national level.

Better administration and improved information and advice for citizens. More mechanisms for administrative cooperation together with structures designed to inform and assist citizens will improve system administration. What is more, a “comitology” committee will be set up to update certain technical provisions laid down in the Directive. The Commission should also set up an expert group, using an instrument other than the Directive, to assist it and take over the roles of the two current committees. A flexible method for consulting European professional associations and the teaching establishments concerned will provide the technical input needed for administering the system. The system described here will make it possible to discontinue eleven current committees and groups.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS ADOPTED BY PARLIAMENT

3.1. Amendments accepted by the Commission in their entirety, redrafted for purely formal reasons, or redrafted in part or in substance (Amendments 31, 34, 39, 139, 55, 5, 141, 189, 87, 143, 52, 146, 136, 53, 8, 62, 63, 9, 58, 192, 193, 216, 217, 151, 12, 185, 70, 68, 207, 152, 80, 88, 90, 93, 95, 97, 161, 154, 96, 162, 102, 94, 81, 86, 159, 160, 101, 32, 89, 110, 114, 116, 26, 181, 29)

The Commission has accepted 55 of the 125 amendments adopted by the European Parliament in their entirety, redrafted for purely formal reasons, or in part, in spirit or with adaptation.

3.1.1. General provisions

Amendment 31 excludes from the scope of the Directive professions whose activities are connected, even occasionally, with the exercise of official authority. A derogation from the principle of freedom of establishment and the freedom to provide services for professions which involve direct and specific participation in the exercise of official authority is provided for under Article 45 of the EC Treaty to which Recital 31 refers. The wording must in any event take into account the precise limits set by the Treaty. Recital: “(31) *This Directive is without prejudice to the application of Article 39(4) and Article 45 of the Treaty, nor of the measures necessary to ensure a high level of health and consumer protection. In particular, the Member States are not required to apply the provisions of this Directive to activities which, on their territory, are connected in and of themselves, even occasionally, with direct and specific participation in the exercise of official authority.*”

Amendment 34 specifies in Article 2(2) that recognition by a Member State under national regulations of educational qualifications acquired in a third country does not entitle the holder of those qualifications to perform the professional activity in question in another Member State.

This amendment is consistent with Article 3(3) of the proposal, which states that the Directive applies to holders of evidence of formal qualifications obtained in non-member countries and recognised by a Member State only after they have practised the profession in the Member State in question for three years. The Commission therefore accepts it.

“Article 2
Scope

1. *Unchanged.*

2. *Each Member State may permit persons in possession of evidence of formal qualifications not obtained in a Member State to perform regulated professional activities on its territory, in accordance with its rules. Such permission shall not entitle these persons to perform a regulated professional activity in another Member State. In the case of professions covered by Title III, Chapter III, this initial recognition must respect the minimum training conditions laid down in that Chapter.”*

Amendment 39 to Article 4(1), and part of **amendments 141 and 189** to Articles 5a and 6 respectively, are intended to make migrant professionals subject to the same obligations as the nationals of the host Member State. Recital 3 already goes in this direction, although it does specify that the obligations can only be imposed on a migrant if they satisfy the conditions set out by the Court of Justice (justification for reasons of public interest, suitability for achieving the objective pursued, and proportionality). The drafting of the amendment could include disproportionate restrictions, particularly with regard to the provision of services. In order to avoid conflict with the Treaty as interpreted by the Court of Justice, it would be more appropriate to use the existing terminology from Directives 89/48/EEC and 92/51/EEC.

Amendment 139 specifies that, in cases of partial access to a profession in a host Member State, suitable explanations concerning professional qualifications must be provided so as to avoid possible confusion for consumers. The Commission agrees with this approach. However, such a provision is already set out in the second subparagraph of Article 48(1) of the proposal (cf. the Commission’s position on amendment 112, below), so there is no need to amend Article 4(3).

The Commission takes account, therefore, of amendments 39 and 139, together with the corresponding parts of amendments 141 and 189, and redrafts Article 4(1) of the proposal as follows:

“Article 4
Effects of recognition

1. *The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the profession for which he is qualified in the home Member State and to practise it in the host Member State under the same conditions as its nationals.*

2. *and 3. Unchanged.”*

3.1.2. Freedom to provide services

Amendment 5 refers to the system which applies where service-providers move to the host Member State: exchange of information between Member States, *pro forma* registration with

the competent professional association, and temporary registration with the social security body of the host Member State. The proposed system does not meet the objective of making it easier to provide services on a temporary and occasional basis. Only the references to exchanging information between Member States and to *pro forma* registration with the competent professional association, provided that the latter requirement is restricted to healthcare professionals, can be accepted: Recital: “(5a) For the free provision of services, where the service-provider moves to the territory of another Member State, provision should be made for a system for exchanging information between Member States and, with regard to healthcare professions, a declaration to the competent body of the host Member State and *pro forma* registration with the competent professional association or similar body of the host Member State.”

Amendment 55 introduces an Article 9a which excludes auditors from Title II on the freedom to provide services. Persons responsible for carrying out the statutory audits of accounting documents are covered by Directive 84/253/EC, which makes approval by the authorities of the host Member State mandatory. This effectively prevents the provision of services without prior checking of qualifications. The Commission therefore accepts this amendment, subject to more general wording in Article 5 to ensure that all professions governed by specific legislation and future legislative developments are covered.

Amendment 141 introduces a new Article 5a intended to reinforce the conditions which must be met by service-providers. Firstly, service-providers must be able to guarantee safety in their professional environment. This is unacceptable as it clears the way for the checking of qualifications, which is not compatible with the desired facilitation of the provision of services under original qualifications. This amendment also introduces a requirement for *pro forma* registration to ensure compliance with the rules of conduct applying in the host Member State to professions subject to coordination of minimum training conditions. Such a requirement can be accepted with regard to healthcare professionals, given the sensitive nature of that sector.

Amendment 189 adds to Article 6 a requirement applicable to all professions subject to a special professional liability regime in the host Member State, for automatic temporary registration with, or *pro forma* membership of, a professional organisation or body in the host Member State in order to ensure compliance with the professional or administrative rules applying in that Member State. The Commission can accept such a requirement only for healthcare professionals, and only in cases where the service-provider travels to provide services. This amendment also introduces a requirement for full registration with the “appropriate authorities” where the profession in question is regulated in the host Member State but not in the Member State of establishment. This part of the amendment goes beyond what is needed to ensure that the professional or administrative rules in the host Member State are complied with, and is not geared towards the intended goal of simplifying the conditions for providing services.

Amendment 87 adds, in Article 28a of the Directive’s Title on establishment, specific provisions concerning the provision of services by doctors. The Commission recognises the specific nature of the healthcare field and can therefore accept the spirit of amendment 87. However, the same provisions are therefore justified for all healthcare professions. The Commission therefore agrees to add specific rules on the provision of services for all the healthcare professions under the Title on services.

Furthermore, **amendment 143** specifies in Article 6(1)(a) that providing the information required for the provision of services should be straightforward and not bureaucratic. This is acceptable to the Commission.

The Commission therefore accepts amendments 55 and 143, partially accepts amendments 141 and 189, and accepts the spirit of amendment 87, redrafting Articles 5 and 6 of the proposal as follows:

*“Article 5
Principle of the freedom to provide services*

1. *Without prejudice to specific provisions of Community law or to Articles 6 and 7 of this Directive, Member States shall not restrict, for any reason relating to professional qualifications, the freedom to provide services in another Member State:*
 - a) *if the service-provider is legally established in a Member State for the purpose of practising the same professional activity there, and*
 - b) *if the service-provider travels, provided that he has practised that activity for at least two years in the Member State of establishment, if the profession is not regulated in that Member State.*
2. and 3. *Unchanged.*
4. *If the service-provider travels to provide services and is a healthcare professional, he shall be subject to those professional or administrative rules of conduct connected with the professional qualifications, applicable in the host Member State.”*

*“Article 6
Exemptions*

Pursuant to Article 5(1), the host Member State shall exempt service-providers established in another Member State from the requirements that it places on professionals established on its territory relating to:

- a) *authorisation by, registration with, or membership of a professional organisation or body. In order to permit the application of the rules of conduct in force on their territory in accordance with Article 5(4) of this Directive, Member States may provide for automatic temporary registration or pro forma membership of a professional association or body, provided that the measure does not delay or in any way complicate the provision of services and does not entail any additional expense for the service-provider;*
- b) *registration with a public social security body for the purpose of settling with an insurer accounts relating to activities pursued for the benefit of insured persons.*

The service-provider shall, however, inform – in advance or, in urgent cases, subsequently – the body referred to in point b) of the first paragraph of the services to be provided or that have been provided. This information is to be transmitted in a simple and non-bureaucratic way.”

The Commission had also said that it was prepared to introduce a provision which would replace the obligation for healthcare professionals to inform the contact point in the Member State of establishment with an obligation to inform the competent authority in the host Member State. To this end, Article 7 of the proposal is redrafted as follows:

“Article 7

Information to be provided in advance if the service-provider travels

If the service provider travels in order to provide services, he shall, in advance, inform the contact point in the Member State of establishment referred to in Article 53. However, if the service provider is a healthcare professional, the host Member State may require that he inform, in advance, the body competent for the profession in question in the host Member State. In urgent cases, this information may be supplied as soon as possible after the services have been provided.”

Amendment 52 replaces the term “competent authorities” in Article 8(2) with the term “competent bodies” with regard to the exchange of relevant information on the provision of services. This amendment leaves open the possibility that bodies other than national authorities proper (for example, professional associations to whom power has been delegated) may play this role, which the Commission accepts in line with its position on amendment 116 (see below).

Amendment 146 specifies that the provision of the proof required under Article 8 must not have effect of postponing performance of the services. This addition contributes to the intended aim of simplifying the conditions for the provision of services; the Commission therefore accepts it.

The aim of **amendment 136** is to reinforce the exchange of information between Member States on the legal establishment of the service-provider, firstly, by making it mandatory for the competent authority in the host Member State to ask for this information, and secondly, by stipulating that, in the absence of such a competent authority, this obligation must be fulfilled by the professional association or a similar professional body as soon as possible. The Commission accepts this part of the amendment, as it helps to strengthen guarantees for consumers without creating additional obstacles to the freedom to provide services. It should, however, be redrafted to ensure consistency with amendment 52, which replaces the term “competent authorities” with “competent bodies”. The amendment also introduces an obligation for the professional association or other competent body to provide proof of the service provider’s competence. This part of the amendment cannot be accepted as, by clearing the way for possible checks on qualifications, it is not in accordance with the goal of facilitating the provision of temporary and occasional services, which is based on the provision of services under the original title without checks on the professional qualifications. Consequently, the Commission accepts amendment 146 and parts of amendments 52 and 136, redrafting Article 8 of the proposal as follows:

“Article 8
Administrative cooperation”

The competent bodies in the host Member State shall ask the competent bodies in the Member State of establishment to provide proof of the service-provider’s nationality and proof that he is legally practising the activities in question in that Member State. The competent bodies in the Member State of establishment shall provide this information as soon as possible in accordance with the provisions of Article 52.

Furthermore, in the cases referred to in Article 5(1)(b), the competent bodies in the host Member State may ask the competent body in the Member State of establishment to provide proof that the service-provider has practised the activities in question in the Member State of establishment for at least two years. Such proof may take any form.

The provision of the information referred to in this Article shall not have the effect of postponing performance of the services.”

Amendment 53 reinforces the requirements regarding the information that service-providers must transmit to the recipients of the service. The Commission accepts these requirements insofar as they are both useful for consumers and proportionate. This relates to the stipulations that the information supplied to consumers must be easy for any consumer to read and understand, that consumers must be informed that the profession is not regulated in the country of establishment, that consumers must be given proof that the service-provider is insured for professional liability, and that this information must be transmitted to the host Member State on request. On the other hand, requiring the service-provider to supply consumers with references to the professional rules applicable in both the Member State of establishment and the host Member State is disproportionate, insofar as it increases obligations on the migrant professional and consumers can easily find this information themselves. The Commission therefore partially accepts Amendment 53, redrafting Article 9 of the proposal as follows:

“Article 9
Information to be given to the recipients of the service”

In addition to the other requirements relating to information contained in Community law, the Member States shall ensure that the service-provider supplies the recipient of the services with the following information, in a way that can be easily read and understood by any consumer:

- a) if the service-provider is registered in a commercial register or similar public register, the commercial register in which he is registered, his registration number, or equivalent means of identification contained in that register;*
- b) if the activity is subject to authorisation in the Member State of establishment, the name and address of the competent supervisory body;*
- c) any similar professional association or body with which the service provider is registered;*
- d) the professional qualification and the Member State in which it was awarded;*

- e) *a reference to the professional rules applicable in the Member State of establishment and to the means of gaining access to those rules;*
- f) *if the service-provider performs an activity subject to VAT, the VAT identification number referred to in Article 22(1) of Council Directive 77/388/EEC¹;*
- fa) *if applicable, the fact that the profession is not regulated in the Member State of establishment;*
- fb) *proof, if required in the Member State of establishment, that the service-provider is insured against the financial risks connected with any challenge to his professional liability.”*

3.1.3. Freedom of establishment **General system for the recognition of educational qualifications**

Amendment 8 introduces Recital 7a which refers to the need to take account of the development of educational systems that foster the increased mobility of students. This amendment is linked to amendment 63 regarding the recognition of qualifications acquired on the basis of franchised education. It also usefully highlights the consistency of the proposal with the policy on student mobility.

Amendment 62 adds to Article 13 a paragraph 2a which specifies that migrants cannot be required to provide any form of attestation other than their diploma as proof of their academic qualifications. This amendment is specifically intended to prohibit the host Member State from requiring any form of attestation showing that the training actually took place at the establishment that delivered the evidence of formal training. Although this amendment is acceptable in spirit, it is not needed, since Annex VII of the proposal contains an exhaustive list of the documents to be provided.

Amendment 63 adds to Article 13 a paragraph 2b which specifies that diplomas awarded following training provided on the territory of another Member State on the basis of a franchising agreement with a teaching institution located in the Member State of origin are also covered by the Directive. The Commission shares this approach and can therefore also accept the spirit of this amendment. It should be stressed that the Court of Justice recently handed down a judgment stating that refusal to recognise a diploma on the grounds that the training was provided outside the institution which delivered the diploma is contrary to Article 43 of the EC Treaty². However, it would be more suitable to specify this in a recital.

Consequently, the Commission accepts amendments 62 and 63 in spirit, and amendment 8, subject to additional clarification intended particularly to enable the Member State of origin to verify the value of qualifications obtained through training outside the institution that delivered them in order to limit the risk of fraud:

Recital: “(7a) *Account must be taken of the development of educational methods and programmes of study in several Member States, particularly with regard to franchise*

¹ OJ L 145, 13.06.1977, p. 1. Directive as last amended by Directive 1999/85/EC (OJ L 277, 28.10.1999, p. 34).

² Judgment of 13.11.2003 in Case C-153/02, not yet published.

agreements. If the evidence of formal training is issued by a Member State following training carried out wholly or in part on the territory of another Member State, the host Member State may check with the competent body in the Member State of origin to verify whether, in that country, such evidence confers the same rights as evidence of formal training issued following training carried out in the Member State of origin.”

Amendment 9, which introduces a Recital 7b, and **amendment 58**, which adds paragraphs 2a and 2b to Article 12, specify that migrants cannot obtain recognition of recognition granted by another Member State without having obtained professional qualifications from the latter so as to acquire greater rights in their country of origin. Prohibition of this practice, known as “zigzagging”, is consistent with the Commission’s interpretation of existing Directives; it would be helpful to clarify it. A recital redrafting amendment 9 should be sufficient to accomplish this: Recital: “(7b) *An individual holding professional qualifications which have been recognised under this Directive may not use such recognition to obtain in their Member State of origin rights which differ from those conferred by the professional qualification obtained in that Member State.*”

Amendment 192 clarifies in Article 11(2) the type of training which underpins the attestation of competence and which corresponds to the first level of professional qualification as defined for the purposes of the application of the general system for recognition. Since this clarification is useful and in line with the *acquis*, the Commission accepts it.

Amendment 193 clarifies the concept of certificates in Article 11(3), particularly by reintroducing the concept of regulated training at this level. This amendment is acceptable insofar as it makes the text clearer. What is more, reintroducing the concept of regulated training at this level is in line with the *acquis*. However, given that Annex III to the proposal will no longer be updated, and as it contains only level 3 regulated training, the reference to this Annex in Article 11(3) should be deleted. Moreover, the distinction between level 2 and level 3 regulated training should be more closely defined. The Commission therefore accepts amendment 193 in a redrafted version.

Amendments 216 and 217 clarify the concept of level 4 and level 5 diplomas mentioned in the first subparagraphs of Article 11(5) and (6) respectively, in particular by referring to part-time training. However, in order to remain faithful to the *acquis*, a technical adjustment regarding the length of the training to which they refer must be made to the first and second subparagraphs of Article 11(5) and the first and second subparagraphs of Article 11(6).

For reasons of consistency, the Commission considers that the definition of level 3 training that is in line with the *acquis* should also be clarified in Article 11(4).

“Article 11 Levels of qualification

1. *Unchanged.*

2. *Level 1 corresponds to an attestation of competence issued by a competent authority in the home Member State on the basis:*

- a) *either of a training course not leading to a certificate or diploma within the meaning of paragraphs 3, 4, 5 and 6 of this Article, or a specific examination without prior training or full-time practice of the profession in a Member State for three consecutive years or for an equivalent duration on a part-time basis during the previous ten years, or*
 - b) *of general primary or secondary education, attesting that the holder has acquired general knowledge.*
3. *Level 2 corresponds to a certificate certifying training at secondary level:*
- a) *either general in character, supplemented by a course of education or professional training other than those referred to in paragraph 4, and/or by the probationary or professional practice required in addition to this course, or*
 - b) *of a technical or professional nature, supplemented, where appropriate, by a course of education or professional training as referred to in point (a), and/or by the probationary or professional practice required in addition to this course.*

The following shall be treated as level 2 training within the meaning of the first subparagraph: regulated training courses which confer on the holder a comparable level of professional training and a similar level of responsibilities and functions, are specifically aimed at the practice of a particular profession and consist of a programme of study supplemented, where appropriate, by a course of vocational training, professional traineeship or practical work experience, whose structure and level are laid down in the legislative, regulatory or administrative provisions of the Member State in question, or which are subject to supervision or approval by the authority designated for that purpose.

4. *Level 3 corresponds to a diploma certifying:*
- a) *either training at post-secondary level, other than that referred to in paragraphs 5 and 6, of a duration of at least one year, or of an equivalent duration part-time, which requires successful completion of a secondary-level course of study for access to training at higher or university level, and any professional training that may be required in addition to this post-secondary study, or*
 - b) *training courses with a special structure that provide a comparable level of professional training and prepare the trainee for a comparable level of responsibilities and functions. The courses listed in Annex II are specific examples.*

The following shall be treated as level 3 training within the meaning of the first subparagraph: regulated training courses which confer on the holder a comparable level of professional training and a similar level of responsibilities and functions, are specifically aimed at the practice of a particular profession and consist of a programme of study supplemented, where appropriate, by a course of vocational training, professional traineeship or practical work experience, whose structure and level are laid down in the legislative, regulatory or administrative provisions of the Member State in question, or which are subject to supervision or approval by the authority designated for that purpose. The regulated training courses listed in Annex III are specific examples.

5. *Level 4 corresponds to a diploma certifying that the holder has successfully completed a post--secondary course of at least three, and not more than four, 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.

The following shall be treated as level 4 training: regulated training that is directly aimed at the practice of a particular profession and consists of a programme of post-secondary study of at least three, and not more than four, years' duration, or a part-time programme of post-secondary study of equivalent duration, carried out at a university or an institution providing an equivalent level of training, and, possibly, professional training, or probationary or professional practice required in addition to the programme of post-secondary study.

The structure and level of the professional training and probationary or professional practice shall be laid down in the legislative, regulatory or administrative provisions of the Member State in question or be subject to monitoring or approval by the body designated for that purpose.

6. *Level 5 corresponds to a diploma certifying that the holder has successfully completed a post-secondary course of more than four 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.*

The following shall be treated as level 5 training: regulated training which is directly aimed at the practice of a particular profession and consists of a programme of post-secondary study of more than four years' duration or a part-time programme of post-secondary study of equivalent duration, carried out at a university or an institution providing an equivalent level of training, and, possibly, professional training or probationary or professional practice required in addition to the programme of post-secondary study.

The structure and level of the professional training and probationary or professional practice shall be laid down in the legislative, regulatory or administrative provisions of the Member State in question or be subject to supervision or approval by the body designated for that purpose.”

Amendment 151 specifies that the host Member State can derogate from the requirement that it give the applicant a choice between an adaptation period and an aptitude test only for well-founded and indispensable reasons. It also adds a subparagraph to Article 14 of the proposal in which it asks the Member States to endeavour to take the applicant's preference for one of the two alternatives into account, even if the Commission accepts the derogation. With regard to these two points, the Commission can accept the amendment, which provides a useful framework for the above-mentioned derogation and provides flexibility for the migrant, while not creating any obligations for the Member States. Lastly, the amendment eliminates the mechanism for tacit acceptance from the procedure under which the Commission gives its decision on a Member State's request for derogation. The Commission does not accept this part of the amendment, insofar as allowing the Commission to tacitly accept the derogation simplifies the procedure. The Commission therefore partially accepts Amendment 151, redrafting Article 14 as follows:

*“Article 14
Compensatory measures*

1. *Unchanged.*

2. *If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.*

If a Member State considers, with respect to a given profession, that it is necessary to derogate from the requirement, set out in the previous subparagraph, that it give the applicant a choice between an adaptation period and an aptitude test, the derogation must be based on a well-founded and indispensable reason. In such a case, the Member State in question shall inform the other Member States and the Commission in advance, providing suitable justification for the derogation.

If, after receiving all the relevant information, the Commission believes that the derogation referred to in the second subparagraph is inappropriate or that it is not in accordance with Community law, it shall, within three months, ask the Member State in question to refrain from taking the envisaged measure. In the absence of a response from the Commission by the above-mentioned deadline, the derogation may be applied.

If the Commission recognises the derogation, the Member States shall nevertheless endeavour to take the applicant’s preference for one of the two alternatives into account

3. and 4. *Unchanged.”*

Amendment 12 relates to Recital 9 and identifies the bodies that are competent to present professional platforms as the bodies and/or associations recognised as being representative of a profession at European level. Specifying which bodies are able to present common platforms under the Directive is helpful. However, this should be reworded, as the bodies/associations in question do not “have the task” but rather “may” establish common platforms. This procedure must be optional.

Amendment 185 adds a Recital 9a which states that the professional organisations/associations that take part in the platforms must enjoy democratic legitimacy under national rules. With regard to this, the amendment must be reworded, particularly to replace the idea of “democratic legitimacy” with that of “representativeness”. The amendment also makes the helpful point that the organisations/associations have no legislative powers.

The Commission therefore redrafts amendment 12 and 185, combining them into a single recital: “(9) *In order to promote the free movement of workers, freedom of establishment and the freedom to provide services, while ensuring an adequate level of qualification, various professional associations and organisations have established common platforms at European level under which professionals meeting a number of criteria relating to professional qualifications are awarded the right to bear the professional title awarded by those associations or organisations. The Directive should take account, under certain conditions and in compliance with Community law, and in particular Community law on competition, of those initiatives, while promoting, in this context, recognition of a more automatic nature under the general system. Professional associations and organisations that are able to present common platforms must be representative of their professions. The capacity of the*

said professional associations and organisations to present common platforms in no way confers any legislative powers on them.”

Amendment 70 specifies that Article 15 does not affect the responsibilities of Member States with regard to education systems and vocational training. The Commission accepts this amendment with technical redrafting to maintain the overall consistency of the text, while also taking into account amendment 68.

Amendment 68 replaces the term “professional associations” used to describe the bodies competent to present common platforms under Article 15 of the Directive with “European professional organisations”. These are described as “representative organisations of the professional associations or comparable organisations in the Member States for a specific profession”. The Commission accepts this initial part of the amendment in a redrafted version. This is because the definition of “professional organisations” needs to be broadened to include all representative organisations and associations, both public and private, particularly so as to permit the involvement of associations under private law in Member States that do not regulate the profession in question. Moreover, there is no need to restrict the right to present platforms under Article 15 to European-level professional organisations or associations. Rather, it should be extended to national organisations or associations that conclude multilateral agreements to this end.

An additional amendment made to the French version replaces “*la Commission communique*” with “*la Commission transmet*”. This makes no difference to the substance of the Directive and presents no legal difficulties. The amendment to the French version is therefore accepted, but has no impact on the English version.

Lastly, the amendment excludes from the scope of Article 15 national regulations that lay down by law the qualification criteria for practising professions. This part of the amendment is intended to specify that this provision is without prejudice to the power of Member States to regulate professions on their territory. The Commission accepts this part of the amendment in a redrafted version.

Consequently, the Commission redrafts Article 15 as follows:

“Article 15

Waiving of compensatory measures on the basis of common platforms

1. *Public or private European and national professional organisations and associations that represent professions may notify the Commission of common platforms that they establish at European level. For the purposes of this Article, “common platform” means a set of criteria applied to professional qualifications that attest to a sufficient level of competence for the purpose of practising a given profession and on the basis of which those organisations and associations accredit the qualifications obtained in the Member States.*

If the Commission considers that the platform in question facilitates the mutual recognition of professional qualifications, it shall inform the Member States thereof and take a decision in accordance with the procedure referred to in Article 54(2).

2. and 3. *Unchanged.*

4. *Nothing in this Article shall affect the power of Member States to determine the qualifications required for the practice of a profession on their territory or their responsibility for the content and organisation of their systems of education and vocational training.”*

3.1.4. Freedom of establishment **Recognition of professional experience**

Amendment 207 modifies Article 17(1)(a) to (d) by changing the duration of professional experience required for the automatic recognition of professional qualifications for the activities set out in List I in Annex IV to the proposal for a Directive. Firstly, the amendment increases the minimum time the activities in question must have been practised on a self-employed basis or as the manager of a business by one year (raising it from five to six years). In order to maintain the *acquis* as set out in Directive 1999/42/EC, this part of the amendment is accepted solely for the activities that are currently subject to this requirement. This modification requires more extensive redrafting in the form of a new Article and a third list of activities in Annex IV. Moreover, the amendment allows for the additional possibility of eight consecutive years as a member of the professional and managerial staff of a business. This part of the amendment is not accepted as it does not meet the desired goal of simplification.

The Commission therefore accepts amendment 193 in part, in a redrafted version.

“Article 17 *Activities referred to in List Ia in Annex IV*

1. *For the activities in List Ia in Annex IV, the activity in question must have been previously practised:*
 - a) *either for six consecutive years on a self-employed basis or as a manager of a business, or*
 - b) *for three consecutive years on a self-employed basis or as a manager of a business, if the beneficiary proves that he has received previous training of at least three years’ duration for the activity in question, as attested by a certificate recognised by that Member State or judged by a competent professional body to be fully valid, or*
 - c) *for four consecutive years on a self-employed basis or as a manager of a business, if the beneficiary can prove that he has received, for the activity in question, previous training of at least two years’ duration, as attested by a certificate recognised by the Member State or judged by a competent professional body to be fully valid, or*
 - d) *for three consecutive years on a self-employed basis or as a manager of a business, if the beneficiary can prove that he has performed the activity in question on an employed basis for at least five years, or*
 - e) *for five consecutive years as a manager of a business, of which at least three years must have been spent in a technical capacity involving responsibility for at least one sector of the business, if the beneficiary proves that he has received previous training of at least three years’ duration for the activity in question, as attested by a*

certificate recognised by that Member State or judged by a competent professional body to be fully valid.

2. *In cases a) and d), the activity must not have finished more than 10 years before the date on which the complete application was submitted by the person concerned to the competent body referred to in Article 52.*
3. *Paragraph 1(e) does not apply to the activities covered by ISIC Group 855 "Hairdressing establishments".*

Article 17a

Activities referred to in List Ib in Annex IV

1. *For the activities in List Ib in Annex IV, the activity in question must have been previously practised:*
 - a) *either for five consecutive years on a self-employed basis or as a manager of a business, or*
 - b) *for three consecutive years on a self-employed basis or as a manager of a business, if the beneficiary proves that he has received previous training of at least three years' duration for the activity in question, as attested by a certificate recognised by that Member State or judged by a competent professional body to be fully valid, or*
 - c) *for four consecutive years on a self-employed basis or as a manager of a business, if the beneficiary can prove that he has received, for the activity in question, previous training of at least two years' duration, as attested by a certificate recognised by the Member State or judged by a competent professional body to be fully valid, or*
 - d) *for three consecutive years on a self-employed basis or as a manager of a business, if the beneficiary can prove that he has performed the activity in question on an employed basis for at least five years, or*
 - e) *for five consecutive years on an employed basis, if the beneficiary can prove that he has received, for the activity in question, previous training of at least three years' duration, as attested by a certificate recognised by that Member State or judged by a competent professional body to be fully valid, or*
 - f) *for six consecutive years on an employed basis, if the beneficiary can prove that he has received previous training in the activity in question of at least two years' duration, as attested by a certificate recognised by that Member State or judged by a competent professional body to be fully valid.*
2. *In cases a) and d), the activity must not have finished more than 10 years before the date on which the complete application was submitted by the person concerned to the competent body referred to in Article 52.*

“ANNEX IV

Activities relating to the categories of professional experience referred to in Articles 17, 17a and

18

List Ia

Classes covered by Directive 64/427/EEC, as amended by Directive 69/77/EEC, and by Directives 68/366/EEC, 75/368/EEC, 75/369/EEC, 82/470/EEC and 82/489/EEC

1

Directive 64/427/EEC

(liberalisation Directive: 64/429/EEC)

NICE nomenclature (corresponding to ISIC classes 23-40)

Major Group 23 Manufacture of textiles

- 232 Manufacturing and processing of textile materials on woollen machinery*
- 233 Manufacturing and processing of textile materials on cotton machinery*
- 234 Manufacturing and processing of textile materials on silk machinery*
- 235 Manufacturing and processing of textile materials on flax and hemp machinery*
- 236 Other textile fibre industries (jute, hard fibres, etc.), cordage*
- 237 Manufacture of knitted and crocheted goods*
- 238 Textile finishing*
- 239 Manufacture of other textiles*

Major Group 24 Manufacture of footwear, other wearing apparel and bedding

- 241 Machine manufacture of footwear (except from rubber or wood)*
- 242 Manufacture by hand and repair of footwear*
- 243 Manufacture of wearing apparel (except furs)*
- 244 Manufacture of mattresses and bedding*
- 245 Skin and fur industries*

Major Group 25 Manufacture of wood and cork, except manufacture of furniture

- 251 Sawing and industrial preparation of wood*
- 252 Manufacture of semi-finished wood products*
- 253 Series production of wooden building components including flooring*
- 254 Manufacture of wooden containers*
- 255 Manufacture of other wooden products (except furniture)*
- 259 Manufacture of straw, cork, basketware, wicker-work and rattan products; brush-making*

Major Group 26 260 Manufacture of wooden furniture

Major Group 27 Manufacture of paper and paper products

- 271 *Manufacture of pulp, paper and paperboard*
- 272 *Processing of paper and paperboard, and manufacture of articles of pulp*
- Major Group 28 280 *Printing, publishing and allied industries*
- Major Group 29 *Leather industry*
 - 291 *Tanneries and leather finishing plants*
 - 292 *Manufacture of leather products*
- Ex Major Group 30 *Manufacture of rubber products, plastic materials, artificial and synthetic fibres and starch products*
 - 301 *Processing of rubber and asbestos*
 - 302 *Processing of plastic materials*
 - 303 *Production of man-made fibres*
- Ex Major Group 31 *Chemical industry*
 - 311 *Manufacture of chemical base materials and further processing of such materials*
 - 312 *Specialised manufacture of chemical products principally for industrial and agricultural purposes (including the manufacture for industrial use of fats and oils of vegetable or animal origin falling within ISIC group 312)*
 - 313 *Specialised manufacture of chemical products principally for domestic or office use[excluding the manufacture of medicinal and pharmaceutical products (ex ISIC group 319)]*
- Major Group 32 320 *Petroleum industry*
- Major Group 33 *Manufacture of non-metallic mineral products*
 - 331 *Manufacture of structural clay products*
 - 332 *Manufacture of glass and glass products*
 - 333 *Manufacture of ceramic products, including refractory goods*
 - 334 *Manufacture of cement, lime and plaster*
 - 335 *Manufacture of structural material, in concrete, cement and plaster*
 - 339 *Stone working and manufacture of other non-metallic mineral products*
- Major Group 34 *Production and primary transformation of ferrous and non-ferrous metals*
 - 341 *Iron and steel industry (as defined in the ECSC Treaty, including integrated steelworks-owned coking plants)*
 - 342 *Manufacture of steel tubes*
 - 343 *Wire-drawing, cold-drawing, cold-rolling of strip, cold-forming*
 - 344 *Production and primary transformation of non-ferrous metals*
 - 345 *Ferrous and non-ferrous metal foundries*
- Major Group 35 *Manufacture of metal products (except machinery and transport equipment)*
 - 351 *Forging, heavy stamping and heavy pressing*
 - 352 *Secondary transformation and surface-treatment*
 - 353 *Metal structures*
 - 354 *Boilermaking, manufacture of industrial hollow-ware*
 - 355 *Manufacture of tools and implements and finished articles of metal (except electrical equipment)*
 - 359 *Ancillary mechanical engineering activities*
- Major Group 36 *Manufacture of machinery other than electrical machinery*

- 361 *Manufacture of agricultural machinery and tractors*
- 362 *Manufacture of office machinery*
- 363 *Manufacture of metal-working and other machine-tools and fixtures and attachments for these and for other powered tools*
- 364 *Manufacture of textile machinery and accessories, manufacture of sewing machines*
- 365 *Manufacture of machinery and equipment for the food-manufacturing and beverage industries and for the chemical and allied industries*
- 366 *Manufacture of plant and equipment for mines, iron and steel works foundries, and for the construction industry; manufacture of mechanical handling equipment*
- 367 *Manufacture of transmission equipment*
- 368 *Manufacture of machinery for other specific industrial purposes*
- 369 *Manufacture of other non-electrical machinery and equipment*

Major Group 37 Electrical engineering

- 371 *Manufacture of electric wiring and cables*
- 372 *Manufacture of motors, generators, transformers, switchgear, and other similar equipment for the provision of electric power*
- 373 *Manufacture of electrical equipment for direct commercial use*
- 374 *Manufacture of telecommunications equipment, meters, other measuring appliances and electromedical equipment*
- 375 *Manufacture of electronic equipment, radio and television receivers, audio equipment*
- 376 *Manufacture of electric appliances for domestic use*
- 377 *Manufacture of lamps and lighting equipment*
- 378 *Manufacture of batteries and accumulators*
- 379 *Repair, assembly, and specialist installation of electrical equipment*

Ex Major Group 38 Manufacture of transport equipment

- 383 *Manufacture of motor vehicles and parts thereof*
- 384 *Repair of motor vehicles, motorcycles and cycles*
- 385 *Manufacture of motorcycles, cycles and parts thereof*
- 389 *Manufacture of transport equipment not elsewhere classified*

Major Group 39 Other manufacturing industries

- 391 *Manufacture of precision instruments, and measuring and controlling instruments*
- 392 *Manufacture of medico-surgical instruments and equipment and orthopaedic appliances (except orthopaedic footwear)*
- 393 *Manufacture of photographic and optical equipment*
- 394 *Manufacture and repair of watches and clocks*
- 395 *Jewellery and precious metal manufacturing*
- 396 *Manufacture and repair of musical instruments*
- 397 *Manufacture of games, toys, sporting and athletic goods*
- 399 *Other manufacturing industries*

Major Group 40 Construction

- 400 *Construction (non-specialised); demolition*
- 401 *Construction of buildings (dwellings or other)*
- 402 *Civil engineering; building of roads, bridges, railways, etc.*
- 403 *Installation work*

404 *Decorating and finishing*

2

Directive 68/366/EEC

((liberalisation Directive: 68/365/EEC)

NICE nomenclature

Major Group 20A Industries producing animal and vegetable fats and oils

20B Food manufacturing industries (excluding the beverage industry)

201 Slaughtering, preparation and preserving of meat

202 Milk and milk products industry

203 Canning and preserving of fruits and vegetables

204 Canning and preserving of fish and other sea foods

205 Manufacture of grain mill products

206 Manufacture of bakery products, including rusks and biscuits

207 Sugar industry

208 Manufacture of cocoa, chocolate and sugar confectionery

209 Manufacture of miscellaneous food products

Major Group 21 Beverage industry

211 Production of ethyl alcohol by fermentation, production of yeasts and spirits

212 Production of wine and other unmalted alcoholic beverages

213 Brewing and malting

214 Soft drinks and carbonated water industries

Ex 30 Manufacture of rubber products, plastic materials, artificial and synthetic fibres and starch products

304 Manufacture of starch products

3

Directive 75/368/EEC (activities referred to in Article 5(1))

ISIC nomenclature

Ex 04 Fishing

043 Inland fishing

Ex 38 Manufacture of transport equipment

381 Shipbuilding and repairing

382 Manufacture of railway equipment

386 Manufacture of aircraft (including space equipment)

Ex 71 Activities allied to transport and activities other than transport coming under the following groups:

Ex 711 Sleeping- and dining-car services; maintenance of railway stock in repair sheds; cleaning of carriages

Ex 712 Maintenance of stock for urban, suburban and interurban passenger transport

Ex 713 Maintenance of stock for other passenger land transport (such as motor cars, coaches, taxis)

Ex 714 Operation and maintenance of services in support of road transport (such as roads, tunnels and toll-bridges, goods depots, car parks, bus and tram depots)

Ex 716 Activities allied to inland water transport (such as operation and maintenance of waterways, ports and other installations for inland water transport; tug and piloting services in ports, setting of buoys, loading and unloading of vessels and other similar activities, such as salvaging of vessels, towing and the operation of boathouses)

73 *Communications: postal services and telecommunications*

Ex 85 Other service activities

854 *Laundries and laundry services, dry-cleaning and dyeing*

Ex 856 Photographic studios: portrait and commercial photography, except journalistic photographers

Ex 859 Personal services not elsewhere classified (only maintenance and cleaning of buildings or accommodation)

4

Directive 75/369/EEC (Article 6: where the activity is regarded as being of an industrial or small craft nature)

ISIC nomenclature

The following itinerant activities:

- a) – *the buying and selling of goods by itinerant tradesmen, hawkers or pedlars (ex ISIC Group 612)*
 - *in covered markets other than from permanently fixed installations and in open-air markets.*
- b) *activities covered by transitional measures already adopted that expressly exclude or do not mention the pursuit of such activities on an itinerant basis.*

5

Directive 82/470/EEC (Article 6(3))

Groups 718 et 720 of the ISIC nomenclature

The activities comprise in particular:

- *organising, offering for sale and selling, outright or on commission, single or collective items (transport, board, lodging, excursions, etc.) for a journey or stay, whatever the reasons for travelling (Article 2(B)(a))]*

6

Directive 82/489/EEC

ISIC nomenclature

Ex 855 Hairdressing establishments (excluding chiropodists' activities and beauticians' training schools)

List Ib

Classes covered by Directive 82/470/EEC (Article 6(1))

Groups 718 et 720 of the ISIC nomenclature

The activities comprise in particular:

- acting as an intermediary between contractors for various methods of transport and persons who dispatch or receive goods, and carrying out related activities:
 - aa) by concluding contracts with transport contractors, on behalf of principals*
 - bb) by choosing the method of transport, the firm and the route considered most profitable for the principal*
 - cc) by arranging the technical aspects of the transport operation (e.g. packing required for transportation); by carrying out various operations incidental to transport (e.g. ensuring ice supplies for refrigerated wagons)*
 - dd) by completing the formalities connected with the transport such as the drafting of way bills; by assembling and dispersing shipments*
 - ee) by coordinating the various stages of transportation, by ensuring transit, reshipment, transshipment and other termination operations*
 - ff) by arranging both freight and carriers and means of transport for persons dispatching goods or receiving them:*
 - assessing transport costs and checking the detailed accounts
 - taking certain temporary or permanent measures in the name of and on behalf of a shipowner or sea transport carrier (with the port authorities, ship's chandlers, etc.).
- [The activities listed under Article 2(A)(a), (b) and (d)].

List II

Unchanged.”

3.1.5. Freedom of establishment
Recognition on the basis of coordination of minimum training conditions

Amendment 152 clarifies the relationship between Article 20(1) of the proposal with regard to automatic recognition of the evidence of formal qualifications on the basis of coordinated minimum conditions for training and the relevant annexes, with no changes to its substance. The Commission emphasises that this amendment should be drawn up as follows to remain faithful to the drafting of the proposal and, where applicable, to the existing *acquis*:

“Article 20
Principle of automatic recognition

“1. Each Member State shall recognise evidence of training for

- a) doctors, giving access to the professional activities of general practitioners, described in Annex V, point 5.1.2,*
- b) doctors, giving access to the professional activities of specialist doctors, described in Annex V, point 5.1.3,*
- c) nurses responsible for general care, described in Annex V, point 5.2.3,*
- d) dental practitioners, described in Annex V, point 5.3.3,*
- e) veterinary surgeons, described in Annex V, point 5.4.3,*
- f) pharmacists, described in Annex V, point 5.6.4, and*
- g) architects, described in Annex V, point 5.7.2,*

that meets the minimum training conditions referred to in Articles 22, 23, 29, 32, 35, 36, 40 and 42 respectively, and shall, for the purposes of access to performance of such professional activities, give such evidence the same effect on its territory as the evidence of training which it itself issues.

Such evidence of formal qualifications must be issued by the competent bodies in the Member States and accompanied, where appropriate, by the certificates listed, respectively, in

- a) Annex V, point 5.1.2, for general practitioners,*
- b) Annex V, point 5.1.3, for specialist doctors,*
- c) Annex V, point 5.2.3, for nurses responsible for general care,*
- d) Annex V, point 5.3.3, for dental practitioners*
- e) Annex V, point 5.4.3, for veterinary surgeons,*
- f) Annex V, point 5.6.4, for pharmacists, and*
- g) Annex V, point 5.7.2, for architects.*

The provisions of subparagraphs 1 and 2 do not affect the established rights referred to in Articles 21, 25, 31, 34 and 45.

2. to 4. Unchanged.

5. See below.

6. Unchanged.”

Amendments 80, 88, 90, 93, 95, 97 and 161 move the lists of knowledge and skills for general practitioners, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives and pharmacists into the body of the proposal, thereby deleting the relevant annexes. This is acceptable insofar as the content of the lists of knowledge and skills has not changed. However, it does not seem necessary to create new Articles; rather, adding a new paragraph to each Article regarding the training for each profession should suffice. Moreover, this change results in the deletion of Annex V, points 5.1.1, 5.2.1, 5.3.1, 5.4.1, 5.5.1 and 5.6.1. Lastly, for reasons of consistency, Article 42(1) and (2) on the training of architects must also be modified so as to include the list of knowledge and skills in the Article itself, and Annex V, point 5.7.1 must be deleted.

Amendment 154 modifies for reasons of consistency the references in Article 20(5) to the lists of knowledge and skills. This is acceptable, but the references to the Articles should be made more specific to ensure legal certainty. Furthermore, this amendment removes from the paragraph the reference to the regulatory procedure (comitology) for updating the knowledge and skills with regard to the sectoral professions in question. This cannot be accepted, as the regulatory procedure makes updating the lists simpler and more flexible. Moreover, this delegation of power is sufficiently regulated, and eliminating it would be contrary to one of the proposal's main objectives.

The Articles in question are therefore modified as follows:

*“Article 20
Principle of automatic recognition*

1. Cf. above.

2. to 4. Unchanged.

5. Each Member State shall make access to and the practice of the professional activities of doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives and pharmacists subject to possession of evidence of formal qualifications referred to in Annex V, points 5.1.2, 5.1.3, 5.1.5, 5.2.3, 5.3.3, 5.4.3, 5.5.4 and 5.6.4 respectively, attesting that the person concerned has acquired, over the duration of his training, and where appropriate, the knowledge and skills referred to in Articles 22(2b), 29(5a), 32(2b), 35(2b), 36(3a) and 40(2b).

The knowledge and skills referred to in Articles 22(2b), 29(5a), 32(2b), 35(2b), 36(3a) and 40(2b), may be amended in accordance with the procedure referred to in Article 54(2) with a view to adapting them to scientific and technical progress.

Such updates shall not entail, for any Member State, an amendment of its existing legislative principles regarding the structure of professions as regards training and conditions of access by natural persons.

6. *Unchanged.*”

*“Article 22
Basic medical training*

1. to 2a. *Unchanged.*

2b. *Basic training for doctors provides an assurance that the person in question has acquired the following knowledge and skills:*

- a) *adequate knowledge of the sciences on which medicine is based and a good understanding of the scientific methods including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;*
- b) *sufficient understanding of the structure, functions and behaviour of healthy and sick persons, as well as relations between the state of health and physical and social surroundings of the human being;*
- c) *adequate knowledge of clinical disciplines and practices, providing him with a coherent picture of mental and physical diseases, of medicine from the points of view of prophylaxis, diagnosis and therapy, and human reproduction;*
- d) *suitable clinical experience in hospitals under appropriate supervision.*

3. *Unchanged.*”

*“Article 29
Training of nurses responsible for general care*

1. and 2. *Unchanged.*

3. *Cf. below.*

4. and 5. *Unchanged.*

5a. *Training for nurses responsible for general care provides an assurance that the person in question has acquired the following knowledge and skills:*

- a) *adequate knowledge of the sciences on which general nursing is based, including sufficient understanding of the structure, physiological functions and behaviour of healthy and sick persons, and of the relationship between the state of health and the physical and social environment of the human being;*
- b) *sufficient knowledge of the nature and ethics of the profession and of the general principles of health and nursing;*

- c) *adequate clinical experience; such experience, which should be selected for its training value, should be gained under the supervision of qualified nursing staff and in places where the number of qualified staff and the equipment are appropriate for the nursing care of the patient;*
 - d) *the ability to participate in the practical training of health personnel and experience of working with such personnel;*
 - e) *experience of working with members of other professions in the health sector.*
- 5b. *Cf. below.*”

*“Article 32
Dental training*

1. and 2. Unchanged.

2a. Cf. below.

- 2b. *Training for dental practitioners provides an assurance that the person in question has acquired the following knowledge and skills:*
 - a) *adequate knowledge of the sciences on which dentistry is based and a good understanding of scientific methods, including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;*
 - b) *adequate knowledge of the constitution, physiology and behaviour of healthy and sick persons as well as the influence of the natural and social environment on the state of health of the human being, insofar as these factors affect dentistry;*
 - c) *adequate knowledge of the structure and function of the teeth, mouth, jaws and associated tissues, both healthy and diseased, and their relationship to the general state of health and to the physical and social well-being of the patient;*
 - d) *adequate knowledge of clinical disciplines and methods, providing the dentist with a coherent picture of anomalies, lesions and diseases of the teeth, mouth, jaws and associated tissues and of preventive, diagnostic and therapeutic dentistry;*
 - e) *suitable clinical experience under appropriate supervision.*

This training shall provide him with the skills necessary for carrying out all activities involving the prevention, diagnosis and treatment of anomalies and diseases of the teeth, mouth, jaws and associated tissues.

2c. Cf. below.”

*“Article 35
The training of veterinary surgeons*

1. and 2. Unchanged.

2a. Cf. below.

- 2b. *Training as a veterinary surgeon provides an assurance that the person in question has acquired the following knowledge and skills:*
- a) *adequate knowledge of the sciences on which the activities of the veterinary surgeon are based;*
 - b) *adequate knowledge of the structure and functions of healthy animals, of their husbandry, reproduction, hygiene in general, and their feeding, including the technology involved in the manufacture and preservation of foods corresponding to their needs;*
 - c) *adequate knowledge of the behaviour and protection of animals;*
 - d) *adequate knowledge of the causes, nature, course, effects, diagnosis and treatment of the diseases of animals, whether considered individually or in groups, including a special knowledge of the diseases which may be transmitted to humans;*
 - e) *adequate knowledge of preventive medicine;*
 - f) *adequate knowledge of the hygiene and technology involved in the production, manufacture and putting into circulation of animal foodstuffs or foodstuffs of animal origin intended for human consumption;*
 - g) *adequate knowledge of the laws, regulations and administrative provisions relating to the subjects listed above;*
 - h) *adequate clinical and other practical experience under appropriate supervision.*
- 2c. *See below.*”

*“Article 36
The training of midwives*

1. and 2. Unchanged.

3. Cf. below.

- 3a. *Training as a midwife provides an assurance that the person in question has acquired the following knowledge and skills:*
- a) *adequate knowledge of the sciences on which the activities of midwives are based, particularly obstetrics and gynaecology;*
 - b) *adequate knowledge of the ethics of the profession and the professional legislation;*
 - c) *detailed knowledge of biological functions, anatomy and physiology in the field of obstetrics and of the newly born, and also a knowledge of the relationship between the state of health and the physical and social environment of human beings and their behaviour;*
 - d) *adequate clinical experience gained in approved institutions under the supervision of staff qualified in midwifery and obstetrics;*

- e) *adequate understanding of the training of health personnel and experience of working with such.*

3b. *See below.*”

*“Article 40
Training as a pharmacist*

1. and 2. Unchanged.

2a. *Cf. below.*

2b. *Training as a pharmacist provides an assurance that the person in question has acquired the following knowledge and skills:*

- a) *adequate knowledge of medicines and the substances used in the manufacture of medicines;*
- b) *adequate knowledge of pharmaceutical technology and the physical, chemical, biological and microbiological testing of medicinal products;*
- c) *adequate knowledge of the metabolism and the effects of medicinal products and of the action of toxic substances, and of the use of medicinal products;*
- d) *adequate knowledge to evaluate scientific data concerning medicines in order to be able to supply appropriate information on the basis of this knowledge;*
- e) *adequate knowledge of the legal and other requirements associated with the practice of pharmacy.*

2c. *See below.*”

*“Article 42
Training of architects*

1. Training as an architect shall comprise a total of at least four years of full-time study or six years of study, with at least three years on a full-time basis, at a university or comparable teaching institution. The training must lead to successful completion of a university-level examination.

The training, which must be of university level with architecture as the principal component, must maintain a balance between theoretical and practical aspects of architectural training and guarantee the acquisition of:

- a) *ability to create architectural designs that satisfy both aesthetic and technical requirements;*
- b) *adequate knowledge of the history and theories of architecture and the related arts, technologies and human sciences;*
- c) *knowledge of the fine arts as an influence on the quality of architectural design;*

- d) *adequate knowledge of urban design, planning and the skills involved in the planning process;*
- e) *understanding of the relationship between people and buildings, and between buildings and their environment, and of the need to relate buildings and the spaces between them to human needs and scale;*
- f) *understanding of the profession of architect and the role of the architect in society, in particular in preparing briefs that take account of social factors;*
- g) *understanding of the methods of investigation and preparation of the brief for a design project;*
- h) *understanding of the structural design, constructional and engineering problems associated with building design;*
- i) *adequate knowledge of physical problems and technologies and of the function of buildings so as to provide them with internal conditions of comfort and protection against the climate;*
- j) *the necessary design skills to meet building-users' requirements within the constraints imposed by cost factors and building regulations;*
- k) *adequate knowledge of the industries, organisations, regulations and procedures involved in translating design concepts into buildings and integrating plans into overall planning.*

2. *Unchanged.*

2a and 2b. *Cf. below.*”

Points 5.1.1, 5.2.1, 5.3.1, 5.4.1, 5.5.1, 5.6.1 and 5.7.1 of Annex V are therefore deleted. The whole of Annex V must be renumbered, and, as a result, the references made to these points in the text must be adapted.

Amendments 96 and 162 transfer the list of professional activities for midwives and pharmacists to Articles 38 and 41 respectively and consequently delete the related annexes and change the references to them. This is acceptable insofar as the content of the said lists has not been not changed. With regard to pharmacists, it does not seem necessary to add a new paragraph, as the list can be included in Article 41(2). Points 5.5.3 and 5.6.3 in Annex 5 are also deleted. The whole of Annex V must be renumbered, and, as a result, the references made in the text to these points must be adapted.

Amendment 102 changes the references to evidence of formal training for pharmacists. This is acceptable in principle, but as the reference to paragraph 2 is not correct, it should be modified to be consistent with the renumbered annexes. What is more, **amendment 162** also reintroduces the derogation from automatic recognition of evidence of training for pharmacists that is currently in force in cases where a new pharmacy is being established. This is unacceptable, insofar as the purpose of the proposal is to facilitate the free movement of pharmacists and the derogation, as it currently stands, is intended to be limited in duration. This point is addressed specifically in relation to amendments 18, 104 and 163 (cf. below).

*“Article 38
Pursuit of the professional activities of a midwife*

1. *Unchanged.*

2. *The Member States shall ensure that midwives are able to gain access to and pursue at least the following activities:*

- a) *provision of sound family-planning information and advice;*
- b) *diagnosis of pregnancies and monitoring of normal pregnancies; carrying out the examinations necessary for the monitoring of the development of normal pregnancies;*
- c) *prescribing, or advising on, the examinations necessary for the earliest possible diagnosis of pregnancies at risk;*
- d) *provision of programmes of parenthood preparation and complete preparation for childbirth including advice on hygiene and nutrition;*
- e) *caring for and assisting the mother during labour and monitoring the condition of the foetus in utero by the appropriate clinical and technical means;*
- f) *conducting spontaneous deliveries including episiotomies, where required, and, in urgent cases, breech deliveries;*
- g) *recognising the warning signs of abnormalities in the mother or infant that necessitate referral to a doctor and assisting the latter where appropriate; taking the necessary emergency measures in the doctor’s absence, particularly the manual removal of the placenta, possibly followed by manual examination of the uterus;*
- h) *examining and caring for the new-born infant; taking all initiatives that are necessary in the case of need and carrying out immediate resuscitation if necessary;*
- i) *caring for and monitoring the progress of the mother in the post-natal period and giving all necessary advice to the mother on infant care to enable her to ensure the optimum progress of the new-born infant;*
- j) *carrying out treatments prescribed by doctors;*
- k) *drawing up the necessary written reports.*

[...] »

Point 5.5.3 in Annex V is therefore deleted.

*“Article 41
Practice of the professional activities of a pharmacist*

1. *Unchanged (subject to renumbering of the reference to Annex V).*

2. *The Member States shall ensure that holders of evidence of training in pharmacy at university level or a level deemed to be equivalent that meets the requirements of*

Article 40 are able to gain access to and practise at least the activities described below, subject to the requirement, where appropriate, of supplementary professional experience.

- a) Preparation of the pharmaceutical form of medicinal products;*
- b) Manufacture and testing of medicinal products;*
- c) Testing of medicinal products in a laboratory for the testing of medicinal products;*
- d) Storage, preservation and distribution of medicinal products at the wholesale stage;*
- e) Preparation, testing, storage and supply of medicinal products in pharmacies open to the public;*
- f) Preparation, testing, storage and dispensing of medicinal products in hospitals;*
- g) Provision of information and advice on medicinal products.*

3. and 4. Unchanged.”

Point 5.6.3 in Annex V is therefore deleted.

Amendment 94 is intended to stop the principle of part-time training for midwives described in Article 36(3) from being presented as exceptional. This is acceptable to the Commission.

Given that part-time training for specialised doctors is exceptional, **amendment 81** redrafts the principle set out in Article 23(4) of the proposal. As for general practitioners, **amendment 86** takes over this idea and amends the conditions, set out in Article 26(4), under which part-time training can be authorised. Conversely, **amendments 159 and 160**, which concern Article 29, are intended to stop the principle of part-time training for nurses responsible for general care from being presented as exceptional. They add a requirement that nurses undergoing training be suitably remunerated, as amendment 86 does for general practitioners undergoing training. Lastly, **amendment 159** lays down conditions which must be met for part-time training to be authorised.

The Commission can accept the deletion of the references to the exceptional nature of part-time training and the introduction of simple and uniform wording for all professions to which coordinated minimum conditions for training apply, in line with the legislation currently in force for nurses responsible for general care and midwives.

Suitable remuneration of general practitioners and nurses responsible for general care who were undergoing training would have a clear budgetary impact in Member States and might require changes to be made to training systems; a prior, detailed impact assessment is required, and none has been carried out in the context of this consolidation. The Commission cannot, therefore, accept this point.

*“Article 22
Basic medical training*

1. and 2. Unchanged.

2a. The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.

2b. Cf. above.

3. Unchanged.”

*“Article 23
Specialist medical training*

1. to 3. Unchanged.

4. The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.

4a. Cf. below.

5. and 6. Unchanged.”

*“Article 26
Training of general practitioners*

1. to 3. Unchanged.

4. The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.

4a. Cf. below.

5. and 6. Unchanged.”

*“Article 29
Training of nurses responsible for general care*

1. and 2. Unchanged.

3. The training of nurses responsible for general care shall comprise at least three years of study or 4 600 hours of theoretical and clinical training, the duration of the theoretical training representing at least one-third and the duration of the clinical

training at least one-half of the minimum duration of the training. Member States may grant partial exemptions to persons who have received part of their training on courses of at least an equivalent level.

The Member States shall ensure that institutions providing nursing training are responsible for the coordination of theoretical and clinical training throughout the entire study programme.

The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time character.

4. and 5. Unchanged.

5a. Cf. above.

5b. Cf. below.”

*“Article 32
Dental training*

1. and 2. Unchanged.

2a. The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.

2b. Cf. above.

2c. Cf. below.”

*“Article 35
The training of veterinary surgeons*

1. and 2. Unchanged.

2a. The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.

2b. Cf. above.

2c. Cf. below.”

*“Article 36
The training of midwives*

1. and 2. Unchanged.

3. *The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.*

3a. *Cf. above.*

3b. *Cf. below.*”

“Article 40
Training as a pharmacist

1. *and 2. Unchanged.*

2a. *The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.*

2b. *Cf. above.*

2c. *Cf. below.*”

“Article 42
Training of architects

1. *Cf. above.*

2a. *The Member States may authorise part-time training on the conditions allowed by the competent national bodies. The total duration of part-time training may not be less than that of full-time training, and the level of the training may not be compromised by its part-time nature.*

2b. *Cf. below.*”

Amendment 101 adds to Article 40(2a) a reference to the role played by ongoing training for pharmacists under arrangements specific to each Member State. This amendment, which takes over the wording of the current legislation on general practitioners, is acceptable to the Commission insofar as the said reference is made for all the professions that have coordinated minimum training conditions.

“Article 23
Specialist medical training

1. *to 3. Unchanged.*

4. *Cf. above.*

4a. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in specialised medicine.*

5. and 6. *Unchanged.*”

“Article 26
Training of general practitioners

1. to 3. *Unchanged.*

4. *Cf. above.*

4a. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in general medicine.*

5. and 6. *Unchanged.*”

“Article 29
Training of nurses responsible for general care

1. and 2. *Unchanged.*

3. *Cf. above.*

4. and 5. *Unchanged.*

5a. *Cf. above.*

5b. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in general care nursing.*”

“Article 32
Dental training

1. and 2. *Unchanged.*

2a and 2b. *Cf. above.*

2c. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in dentistry.*”

“Article 35
The training of veterinary surgeons

1. and 2. *Unchanged.*

2a and 2b. Cf. above.

- 2c. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in veterinary science.”*

*“Article 36
The training of midwives*

1. and 2. Unchanged.

3. and 3a. Cf. above.

- 3b. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in midwifery.”*

*“Article 40
Training as a pharmacist*

1. and 2. Unchanged.

2a and 2b. Cf. above.

- 2c. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in pharmacy.*

*“Article 42
Training of architects*

1. Cf. above.

2. Unchanged.

2a. Cf. above.

- 2b. *Further training shall ensure, in accordance with the procedures specific to each Member State, that persons who have completed their studies are able to keep abreast of progress in architecture.*

**3.1.6. Freedom of establishment
Common provisions on establishment**

Amendments 32, 89 and 110 to Recital 31a, Article 31a and Article 46(2) respectively reinforce the exchange of information between Member States with regard to prior circumstances that are liable to affect the practice of the professional activities in other Member States. To accomplish this, amendments 32 and 89 ask the Commission to consider setting up a database to enable the Member States to exchange information about healthcare

professionals who have been struck off or on whom professional restrictions have been imposed, with amendment 89 being added to the section on nurses responsible for general care. The Commission accepts the approach taken by amendment 110, which adds to Article 46 a general provision, applicable to all the professions in question, regarding the exchange between Member States of information on any serious circumstances that arose when the individual in question was established on their territory and that are liable to have consequences for the practice of the professional activities concerned. This exchange of information must be carried out in compliance with existing legislation on data protection.

To this end, Recital 23 must be amended as follows: “(23) *Since collaboration among the Member States and between them and the Commission is likely to facilitate the implementation of this Directive and compliance with the obligations deriving from it, the means of collaboration must be organised. In particular, the exchange between competent bodies of information regarding serious, specific circumstances that are liable to have consequences for the practice of the activities in question must be carried out in compliance with Community legislation on the protection of personal data.*

“Article 46
Documentation and formalities

1. *Unchanged.*

2. *Within the context of the application of this Directive, the competent bodies in the Member States shall exchange information regarding serious, specific circumstances that are liable to have consequences for the practice of professional activities in compliance with the provisions on the protection of personal data set out in Directives 95/46/EC and 2002/58/EC.*

3. *Unchanged.*”

Amendment 114 adds to Article 49 a provision allowing Member States to ask migrants to provide proof of language proficiency prior to granting access to the profession. The Commission accepts this amendment provided that the provision is applied proportionately, which rules out the systematic imposition of language tests before a professional activity can be practised. This must be clearly stated in the text. What is more, the amendment deletes the reference to the role of Member States with regard to language knowledge. This provision of the proposal takes over the *acquis* of the sectoral Directives and is a necessary counterbalance to the proportionate requirement of language knowledge. It must therefore be maintained.

“Article 49
Knowledge of languages

1. *Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State. The competent bodies may ask applicants to provide proof of language knowledge within the limits of the principle of proportionality which, in particular, rules out systematic examination of such knowledge.*

2. *Unchanged.*”

3.1.7. Administrative cooperation and responsibility for implementation

Amendment 116 replaces the term “competent authorities” of the Member States in Article 52 with “competent bodies”. This change to the terminology is acceptable if “body” is taken to include all bodies vested with authority with regard to training and/or the recognition of professional qualifications. Consequently, a Recital 23a should be added to clarify this: “(23a) For the purposes of this Directive, “competent body” means any body vested with authority and competent in particular to award or receive certificates of training and other documents or information, and those competent to receive applications and take the decisions referred to in this Directive.”

For reasons of consistency, this change must be made to all the relevant provisions in the proposal.

Moreover, the proposed areas of responsibility for the contact points (which provide citizens with information and assistance) are transferred to the “competent bodies”. The purpose of the contact points is to make it easier for citizens to gain access to information on the recognition of professional qualifications, and to do this, they must be easy to identify in every Member State. Transferring their areas of responsibility to the “competent bodies” is not in line with this requirement for clarity, and would therefore strip the proposed provision of its usefulness. Therefore, this amendment cannot be accepted.

“Article 52 Competent bodies

1. *The competent bodies of the host Member State and of the home Member State shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive. They shall ensure the confidentiality of the information which they exchange.*
2. *Every Member State shall, no later than by the deadline laid down in Article 54, designate the bodies competent to award or receive certificates of training and other documents or information, and those competent to receive applications and take the decisions referred to in this Directive, and shall inform the other Member States and the Commission thereof immediately.*
3. *Every Member State shall designate a coordinator for the activities of the bodies referred to in paragraph 1 and shall inform the other Member States and the Commission thereof.*

The coordinators’ remit shall be:

- a) *to promote uniform application of this Directive;*
- b) *to collect all the information that is relevant for application of this Directive, such as on the conditions for access to regulated professions in the Member States.*

For the purpose of fulfilling the remit described in subparagraph 2, point b), the coordinators may solicit the help of the contact points referred to in Article 53.”

Amendment 26 sets out in a recital that the addresses of the contact points must be published on a page of a Commission website in order to ensure that the system is transparent. This amendment would indeed accomplish this. However, despite the Commission's willingness to cooperate in publishing the information in its possession, it cannot guarantee that the addresses would be updated, as this would depend on information provided by the Member States. More general wording referring to transparency would therefore seem preferable. *“(23b) The establishment of a network of contact points with the task of providing the citizens of the Member States with information and assistance will make it possible to ensure that the system of recognition is transparent. These contact points will provide any citizens who so request and the Commission with all information and addresses relevant to the recognition procedure.”*

Amendment 181 addresses the role of professional associations in implementing the Directive for professions to which minimum training conditions apply. More generally, the Commission envisages setting up a flexible mechanism for consulting with the relevant professional and academic associations as part of the implementation of the system of recognition. This is not specifically covered by the Directive, but the Commission is prepared to give indications in this direction in a declaration.”

3.1.8. Other provisions

Amendment 29 specifies that administrative failings attributable to a Member State do not justify deferment of the transposition of the Directive into national law. This addition reiterates a basic principle of Community law that it may be useful to clarify. Recital: *“(27) There should be a suitable procedure for adopting temporary measures if the application of any provision of this Directive were to encounter major difficulties in a Member State. Administrative failings attributable to the Member State do not justify deferment of the transposition of the Directive into national law.”*

3.2. Amendments not accepted by the Commission

(Amendments 1, 2, 14, 30, 35, 37, 38, 41, 6, 4, 45, 50, 36, 145, 13, 218, 57, 59, 60, 7, 10, 214, 64, 126, 153, 128, 75, 77, 155, 15, 16, 179, 156, 127, 132, 178/rev. 2, 133, 215, 158, 157, 134, 135, 92, 19, 98, 18, 104, 163, 212, 112, 113, 115, 117, 118, 119, 120, 27, 180, 182, 83, 183, 122, 23, 188, 186, 187, 25, 168, 123, 124)

The Commission did not accept 70 of the 125 amendments adopted by the European Parliament.

3.2.1. General provisions

Amendment 1 adds, in a citation, a reference to Article 152 of the EC Treaty regarding a high level of human health protection. **Amendment 2** adds a recital referring to Articles 152 and 153 of the EC Treaty regarding a high level of human health and consumer protection. References to Articles 152 and 153 as such are inappropriate from a legal point of view, since the objectives of Articles 47 and 152 differ. In any case, Recital 31 already refers to the measures needed to ensure a high level of human health and consumer protection.

Amendment 14 adds a recital referring to initiatives taken to bring national legislations on education and training closer together (Bologna and Bruges processes) and encourages continued efforts to this end. The Commission does not accept this amendment, which is not related to the text of the Directive.

Amendment 30 specifies in a recital that it is important, with a view to mobility within Europe, to encourage the learning of other European languages at a young age. Although the Commission shares this view, it feels that it does not have a direct bearing on the issue of the recognition of professional qualifications.

Amendment 35 to Article 2(2a) of the Directive excludes notaries from its scope. The Commission cannot accept this amendment. A derogation from the principle of freedom of establishment and the freedom to provide services for activities that involve direct and specific participation in the exercise of official authority is provided for by Article 45 of the EC Treaty, to which Recital 31 refers. Case-law consistently interprets this derogation as referring to specific activities and not to whole professions. Moreover, it is not good practice to freeze the interpretation of the Treaty by providing derogations for specific activities, the organisation of which may change in Member States.

Amendment 36 adds an Article 2a, which extends the scope of the Directive to nationals of non-member countries. This amendment cannot be accepted for legal reasons. The chapter of the EC Treaty on the free movement of persons, which is the legal basis for the proposed Directive, does not permit nationals of non-member countries to be covered. Extending the benefits of the Directive to these nationals can be accomplished only through a separate legal instrument based on the "Justice and Home Affairs" Chapter of the Treaty, which follows a different legislative procedure. A solution has been found for certain categories of nationals of non-member countries, and the Commission is currently looking at appropriate means for extending the Directive to nationals of non-member countries in general.

Amendment 37 adds to Article 3 of the proposal a definition of “liberal professions”. The Commission cannot accept this amendment insofar as it adds a definition of a concept which is not relevant to the application of the Directive and which is not referred to in any of its provisions. With regard to this, it should be emphasised that restricting the application of the Directive solely to the liberal professions would have the effect of removing an extremely large number of professions from its scope, which would be a considerable step backwards in terms of the *acquis*.

Amendment 38 specifies that the acceptance of evidence of formal training issued by a non-member country as evidence of formal qualifications from a Member State if the holder has three years’ professional experience certified by the Member State that first recognised that evidence of formal qualifications shall not preclude verification of whether the evidence of formal training is equivalent, or the option of applying compensatory measures. The effect of the acceptance provided for is to allow the holder of evidence of formal training acquired in a non-member country that meets the conditions set out in Article 3(3) to benefit from the provisions of the Directive. The amendment is therefore superfluous, as the Directive makes a provision for the host Member State to impose compensation measures. Consequently, the aim of this amendment is already met by the provisions of the proposal.

Amendment 41 specifies in Article 4(3) that, if the profession for which the migrant is qualified constitutes an autonomous activity of a profession covering a wider field of activities in the host Member State and if the difference cannot be made up by a compensatory measure, the applicant has only partial access to the profession in the host Member State. According to the Commission’s proposal, in such a case, the host Member State must allow at least partial access to the profession, without prejudice to the possibility that the migrant might prefer full access by, for example, completing specific, supplementary training. Ruling out any possibility of full access to the profession in the host Member State is a disproportionate restriction, which cannot be accepted.

3.2.2. Free movement of services

Amendment 6 adds a recital which refers to requirements placed on service-providers, particularly those relating to professional qualifications, and to the fact that these requirements must apply on a non-discriminatory basis, be justified on overriding grounds of public interest, be such as to guarantee that the objective set for them is achieved, and be proportionate. The reference to requirements relating to professional qualifications is not compatible with the principle of the provision of services under the original title without checks of the professional qualifications. This amendment tends towards bringing the provision of services into line with the system for establishment, which is not compatible with the goal of simplifying the provision of services.

Amendments 4 and 45 delete from Recital 5 and Article 5(2) the references to defining the concept of provision of services using a presumption based on a time criterion. The proposed 16-week period is intended to make it easier to distinguish between the provision of services

and establishment. This makes the concept of the provision of services clearer. Adhering to the current criteria from case-law is not acceptable as they are likely to change.

Amendment 50 replaces the obligation to inform the contact point in the Member State of establishment laid down in Article 7 with an obligation to inform the competent bodies in the Member State of establishment and the host Member State. It also places an obligation on the Member State of origin to systematically inform the competent body of the host Member State. The Commission is of the opinion that the role of the contact points as “one-stop shops” is crucial to achieving the objective of facilitating the provision of services. Moreover, the logical reference point is the contact point of the Member State of establishment with which the migrant has the closest links. Information should only be passed between contact points between Member States on request, though possibly systematically for certain situations of particular interest, if the system is not to become paralysed.

Amendment 145 uses the same argument put forward in amendment 36 (cf. above) to delete the reference to proof of the service provider’s nationality from Article 8(1). This amendment cannot be accepted for the legal reasons described above.

3.2.3. Freedom of establishment

General system for the recognition of educational qualifications

Amendment 13 is intended to limit, in a recital, the application of the general system on a subsidiary basis to situations where the minimum training conditions set out for “sectoral” professions are not met. This amendment cannot be accepted by the Commission insofar as it would have the effect of ruling out non-automatic recognition of evidence of formal training for the activities currently covered by Directive 1999/42/EC, which would be a step backwards in terms of the *acquis* (Article 3 of Directive 1999/42/EC).

Amendment 218 adds to Article 11 a statement that the Commission shall evaluate the workability in practice of the level system as defined in the same Article five years after the entry into force of the Directive. If significant differences between the Member States were identified, the Commission would come forward with proposals for a points and credit system linked to the quality and contents of training in the Member States. The comitology committee would supervise the allocation of points to each training course. The Commission cannot accept this amendment. The envisaged points and credit system is based more upon bringing national systems of training closer together, which is the responsibility of Member States and is being discussed in other arenas responsible for recognition of academic qualifications. This does not prevent the Commission from proposing other amendments that might seem necessary under its power of initiative.

Amendment 57 concerns cases under Article 11 where the level of qualification required in the host Member State is higher than the level of qualification held by the applicant. Under this amendment, the professional in question would enjoy the right of recognition only if,

firstly, the Member State of origin had increased the level of training required at some time in the past, and, secondly, the professional had had access to the profession in question in that Member State on the basis of their previous, lower-level training. This amendment must be looked at in the light of amendment 60 and is based on an argument that calls into question a key element of the *acquis*. Consequently, this amendment is not acceptable for the reasons given in respect of amendment 60.

Amendment 59 specifies in Article 12a that when, in a Member State, evidence of formal training to a given level supplemented by professional experience is legally recognised as being equivalent to the level immediately above, the latter level must be taken into account for the purposes of recognition. This amendment is not acceptable for reasons of consistency in the general system for recognition. The levels of qualification established in Article 11 of the proposal are based on the professional's academic training and make it possible to determine the limits of the principle of recognition under the general system: as it currently stands, the principle of recognition does not apply if the difference between the migrant's level of training and the level required in the host Member State is more than one level. Other components of qualifications, such as professional experience, do not interfere with this rule, but they must be taken into account at the subsequent stage when a decision is taken with regard to the need to apply a compensatory measure.

Amendment 60 deletes from Article 13 the right to recognition if the migrant's evidence of formal training is equivalent to the level immediately below that which is required in the host Member State. This part of the amendment fundamentally calls into question the *acquis* from Directives 89/48/EEC and 92/51/EEC, which, in the absence of harmonisation of training conditions, are founded on an instrument for mutual recognition together with a compensatory mechanism for substantial differences that may exist between national systems. The results of this amendment would be to significantly reduce the migration options open to fully-qualified professionals; it cannot be accepted, therefore. Moreover, this amendment adds a provision requiring migrants to pay social insurance in the host Member State. The issue of compliance with obligations in force in the host Member State is addressed in Recital 3 of the proposal. The proposal for a Directive on the recognition of professional qualifications is not the appropriate legal instrument for specific provisions on specific obligations that may be laid down in the various Member States. What is more, such a provision would be contrary to the Community legislation in force with regard to social security.

Amendment 7 deletes from Recital 7 the phrase "*or part of*" so as to limit its scope to situations where migrants acquired all of their qualifications in one Member State. Such an approach is contrary to Community policy on student mobility. Moreover, it is a step backwards in terms of the *acquis*. Individuals who acquired only part of their training in another Member State may nonetheless benefit from the Directive provided that they did not obtain their "final" professional qualification in the Member State where they wish to practise their profession.

Amendment 10 is intended to limit, in a recital, the application of the Directive to individuals who have actually resided in the Member State that issued the professional qualification. This amendment cannot be accepted as it would exclude from the Directive anyone who had taken

a distance-learning course or franchised training without leaving the territory of the Member State in which they wished to practise the profession. We cannot share this interpretation, as residence has no impact on the “nationality” of the qualification, which is the decisive element. Undertaking training of this kind does not constitute avoidance of national legislation.

Amendment 214 adds a paragraph 2c to Article 13 which gives the host Member State the right to control the quality of university education given on its territory under franchising agreements, particularly by laying down the conditions of studies, so as to achieve high-quality university education. This amendment is not acceptable, since, given the independence of Member States with regard to education and training, it is not for the host Member State to lay down the conditions of studies, which are the responsibility of the Member State of origin where the university giving the course is located. On the other hand, it is legitimate for the host Member State to be able to verify that the studies undertaken on its territory confer on the holder the same rights in the Member State of origin as studies undertaken on the territory of the Member State of origin. The scope of such verification is completely different; a proposed reference to it is made in Recital 7, as redrafted in light of amendments 8, 62 and 63.

Amendment 64 refers to Article 14(1)(c) of the proposal, which stipulates that the host Member State may require the migrant professional to take an aptitude test or complete an adaptation period if the profession as defined in the host Member State covers a wider field of activity than the corresponding profession as defined in the Member State of origin, and that this divergence consists of substantial differences with regard to training. The amendment restricts this provision strictly to regulated professions in the Member State of origin. Such a restriction is not consistent with the approach of the general system for recognition, which also applies in cases, specifically referred to in Article 13(2) of the proposal (which, in this respect, takes over the *acquis* of Directives 89/48/EEC and 92/51/EEC), where the profession is not regulated in the applicant’s home Member State.

Amendment 126 adds the profession of “tourist guide” to Annex II for Greece. Given that the proposal freezes Annex II, which is no longer exhaustive, there is no need for such an addition to accept level 3 training with a specific structure as equivalent to level 4 training.

3.2.4. Freedom of establishment

Recognition on the basis of coordination of minimum training conditions

Amendments 153 and 128 add, firstly, the principle of automatic recognition for psychotherapists to Article 20, and, secondly, the relevant knowledge and skills, minimum training conditions including the study programme, professional activities and the evidence of formal training in an Annex Va. Establishing minimum training conditions for a profession is an instrument that facilitates the automatic recognition of the qualifications in question. However, the conditions for automatic recognition of psychotherapists (consensus of the Member States, support of the profession and added value in terms of the free movement of professionals) are not all met. These amendments cannot be accepted, therefore.

Amendment 75 extends notification of the qualifications to which automatic recognition applies, set out in Article 20(6), to the other Member States, whereas the Commission's proposal required only that the Commission be notified. The amendment also requires that the Commission publish this information within three months of notification by the Member State concerned. These additional requirements make the Directive more unwieldy for no purpose. The proposed system was put in place by Directive 2001/19/EC and, according to the information at the Commission's disposal, there have been no problems applying it.

Amendment 77 addresses cases where the Commission or a Member State has doubts as to whether a diploma, degree, certificate or other evidence of formal qualifications meets the minimum training conditions. This amendment would apply to all the professions in question except for general practitioners. In such cases, pursuant to Article 20(6a), the comitology committee would be asked for its opinion. If the committee is of the opinion that the evidence of formal qualifications meets the minimum training conditions, it shall be published within the three months following delivery of the opinion or upon expiry of the deadline for delivery. Publication does not take place if the Member State in question amends its communication in accordance with the committee's opinion, if the committee deems that the minimum training conditions are not met, or if the matter is brought before the Court of Justice. Introducing such a procedure would result in excessively cumbersome administration in the enlarged EU. The proposed notification is sufficient to achieve this objective. What is more, Article 226 of the Treaty provides for only a single procedure for checking the compatibility of national rules with Community law.

Amendment 155 deletes from Article 23(6) the use of the comitology procedure for updating the minimum periods for specialist medical training courses. The comitology procedure makes updating the minimum periods for specialist medical training courses simpler and more flexible. Eliminating it is contrary to one of the proposal's central objectives and is a step backwards in terms of existing Community law.

Amendment 15 deletes the recital that clarifies the difference between the professional activities of basic medical practitioners, specialised practitioners and general practitioners. This recital is crucial to interpreting the relevant provisions and improves understanding, necessary in practice, of the relationship between doctors' various professional activities.

Amendments 16, 179 and 156 to two recitals and Article 24(2) respectively aim to facilitate automatic recognition not only of those medical specialisations that are common to and obligatory for all Member States, but also of those that are common to a limited number of Member States. What is more, **amendments 127, 132, 178/rev. 2, 133 and 215**, in line with amendment 156, add the list of specialisations common to certain Member States to Annex V, point 5.1.4a regarding automatic recognition, and delete the said list from the Annex on established rights. These amendments also update the list of medical specialisations common to certain Member States. One of the political objectives of the proposal is to limit automatic recognition of specialised doctors to the specialisations common to all the Member States, while the general system for recognition would cover the others. The changes made by these amendments, which involve automatic recognition for medical specialisations common to certain Member States, appear to be unacceptable.

Amendment 158 modifies the reference to the Annexes on the medical specialisations common to certain Member States under the acquired rights of specialist doctors referred to in Article 25. This change, which is consistent with the above-mentioned amendments, is unacceptable. Since automatic recognition for medical specialisations common to certain Member States is unacceptable, modifying the system of established rights for medical specialisations that no longer enjoy automatic recognition does not appear to be sufficient. Moreover, a modification of the system along the proposed lines would not be technically acceptable.

Amendment 157 adds to Article 24 accreditation by the Commission of the most representative European professional body of medical doctors. In order to add new specialisations to the list of medical specialisations that are automatically recognised, the accredited professional body would enjoy a right of initiative for the procedure of publishing medical specialisations and would transmit to the Commission all the information needed for this purpose. Its proposals would be part of the comitology procedure. Lastly, the amendment lays down that common platforms are not applicable to common specialisations. This amendment cannot be accepted, as it calls into question the responsibility for implementation given to the Commission with regard to setting and modifying minimum durations of training for medical specialisations. Moreover, ruling out the application of common platforms for medical specialisations that do not enjoy automatic recognition is not justified, as this provision applies to the whole of the general system, with no exceptions.

Amendments 134 and 135 add the list of dental specialisations common to certain Member States to Annex V, point 5.3a, regarding automatic recognition, delete the said list from the Annex on established rights, and update the list of dental specialisations common to certain Member States. The grounds for the non-acceptance of these amendments are identical to those for medical specialisations common to certain Member States. Moreover, with regard to dental specialisations, no substantial provision is contained in the body of the Directive to lay down the principle of automatic recognition for them.

Amendment 92 adds to Article 35 a provision for external audits of veterinary schools to assess whether they comply effectively with the corresponding minimum training conditions. The results would be transmitted to the Committee referred to in Article 54. This amendment is not acceptable in so far as Article 226 of the Treaty provides for only a single procedure for checking the compatibility of national rules with Community law.

Amendments 19 and 98 add a recital and a paragraph 1b to Article 40 requiring the Commission to propose that a specialisation in hospital pharmacy be created. The proposal's policy objective is to simplify and clarify the system of recognition of specialisations with regard to professions that enjoy coordinated minimum conditions for training. The proposal does limit the recognition of medical and dental specialisations to those that are common to all the Member States. This amendment is contrary to that objective. Furthermore, under its right of initiative, the Commission would have to base such a proposal on an assessment of impact.

Amendment 18, together with **amendments 104, 162** (cf. above) **and 163**, re-introduce in a recital and in Article 41, a derogation from the automatic recognition of evidence of training as a pharmacist in cases where a new pharmacy is being set up. Moreover, amendment 104 refers to the responsibility of Member States with regard to authorising the establishment of pharmacies. These amendments are not acceptable, as the Directive does not call into question the responsibility of Member States, and the proposed measure is intended to further facilitate the free movement of pharmacists. What is more, the equivalent provision, which is currently applicable, is intended to be limited in duration.

Amendment 212 adds an Article 45a, which enables the Commission to adopt proposals in cases where a professional association at European level, within the meaning of Article 15 (common platforms), requests specific rules for the recognition of qualifications on the basis of coordinated minimum conditions for training. Modifying the Directive in order to extend automatic recognition to new professions is still possible under the Commission's right of initiative, and must be based on an assessment of impact.

3.2.5. *Freedom of establishment* ***Common provisions on establishment***

Amendment 112 deletes from Article 48 the rules on the use of professional titles in the event of partial access to professions. This is not acceptable, for in the event of partial access to a profession, the professional title must include a suitable reference in order to avoid confusion.

Amendment 113 adds to Article 48 a provision that, with regard to professions that enjoy automatic recognition on the basis of coordinated minimum training conditions, and in cases where the host Member State requires a period of professional practice, Member States shall recognise certificates issued by other Member States showing that the professional experience was gained. For architects, the amendment provides for the recognition of certificates issued under specific conditions for *Fachhochschulen*. This amendment is not accepted, as such procedural precision is contrary to the principle of automatic recognition of titles, except for pharmacists, for whom this exception is specifically recognised. For professions that enjoy coordinated minimum training conditions, the Commission's proposal provides for automatic recognition of titles for professionals who are fully qualified in their Member State of origin, regardless of whether they have undergone a traineeship or have gained professional experience, and of whether or not such experience is required in the host Member State.

3.2.6. *Detailed rules for practising the profession*

Amendment 115 adds to Article 51 a restriction on the obligation of Member States not to require migrants to complete a preparatory period of in-service training and/or a period of professional experience in order to be approved by a health insurance fund, particularly for midwives and pharmacists, to the professional activities addressed by the Directive. This is unacceptable, as the Member States are responsible for regulating the professions on their

territory and conferring on them a specific field of activity. Furthermore, the list of activities for the professions in question is only an obligatory minimum.

3.2.7. *Administrative cooperation and responsibility for implementation*

Amendment 117 replaces the term “competent authorities” of the host Member State in Article 52 with “professional associations or similar competent bodies”. This is not acceptable and so far as professional associations and similar competent bodies do not cover all the regulated professions, nor do they exist in identical form in all the Member States, as dictated by the principle of subsidiarity. Moreover, in most Member States, the competent authorities and the professional associations do not play the same role. However, the term “competent bodies”, initially referred to in amendment 116, is accepted (cf. above).

Amendment 118 deletes Article 53 on contact points. The proposed areas of responsibility for the contact points (providing citizens with information and assistance) are transferred to the “competent bodies” / “professional associations or similar competent bodies”, as per amendments 116 and 117 (cf. above) respectively. The purpose of the contact points is to make it easier for citizens to gain access to information on the recognition of professional qualifications. To do this, they must be easily identifiable in every Member State. Transferring their areas of responsibility to the “competent bodies”/“professional associations or similar competent bodies” is not in line with this requirement for clarity, and would therefore strip the proposed provision of its usefulness.

Amendments 119 and 120 modify Article 54 regarding the Committee for the recognition of professional qualifications. They set up two comitology committees, one for the general system and the other for professions that enjoy automatic recognition on the basis of coordination of minimum training conditions. In addition, they aim to ensure that experts from every profession be present as observers at Committee meetings to provide their expertise. **Amendments 27 and 180** reiterate in a recital the idea of setting up two comitology committees and refer to representation of the professions and or management and labour in the comitology committee. Lastly, **amendment 182** introduces a recital which envisages setting up subcommittees for specific issues. These amendments are not acceptable as they make the proposed system more unwieldy. The comitology committee is made up of representatives of Member States, nominated for each meeting, which ensures that they have expertise in the field to be discussed. This approach is simpler than setting up two parallel structures with limited areas of competence, and avoids unnecessary bureaucracy while achieving the desired objective. Moreover, the amendment does not take account of comitology committees’ responsibility for activities that enjoy automatic recognition of professional experience, for which no committee is planned. Lastly, whether observers/experts should be present or subcommittees should be created is to be determined according to the committee’s internal rules of procedure, not in the text of the Directive, which must limit itself to the frame of reference laid down by Council Decision 1999/468.

Amendment 83 introduces an Article 23a setting up a group of experts from Member States whose role would be to assist in the implementation of the Directive and to put in place a flexible method of consultation with the European associations that represent the professions and with educational establishments. The Commission supports these two instruments, but the Directive is not the appropriate legal instrument for implementing them. The expert group must be set up by a Commission Decision which, if appropriate, could address the rules of the flexible method of consultation in its recitals. In any case, the new Recital 23a already describes this approach.

Amendment 183 introduces a recital which, in accordance with the Bologna and Bruges processes, envisages the creation of a European forum for the professions. This would be made up of representatives of the Commission, professional associations and management and labour, and “other institutions in the education sector”. Its role would be to advise the comitology committee and develop a Community framework for the recognition of qualifications for the regulated and unregulated professions. This complex structure seems quite out of proportion with the technical tasks for which it would be responsible and which the Commission currently carries out with the assistance of an expert group. A public/private partnership in this area, such as suggested in Recital 25a, is a more flexible solution. Moreover, issues regarding the unregulated professions fall outside the scope of this Directive. Lastly, this recital does not relate to anything in the body of the Directive.

3.2.8. Other provisions

Amendment 122 specifies in Article 55 that the Member State’s report on the application of the Directive should include proposals for extending its scope and including new professions. This amendment is not acceptable insofar as it covers all the regulated provisions and, consequently, its scope cannot be broadened. What is more, modifying the Directive in order to extend automatic recognition to new professions is still possible under the Commission’s right of initiative, and should be based on an assessment of impact.

Amendment 23 adds a recital which also deals with extending automatic recognition to other professions on the basis of coordinated minimum training requirements. This amendment is not acceptable for the reasons set out above.

Lastly, **amendment 188** suggests in a recital that professional organisations “which do not fall within the scope of this Directive” (i.e. are not covered by a specific section of the Directive) establish joint platforms which could form the basis for “later inclusion in this Directive” (i.e. under Title III, Chapter III of the Directive). The Commission does not accept this amendment. Firstly, the proposal covers all the professions which are not covered by a specific Directive. Secondly, it is not up to the Community legislator to encourage professional associations to put joint platforms in place, but only to create a legal framework which would permit this. Lastly, the role of platforms is not necessarily to lead to the harmonisation of minimum training conditions.

Amendments 186 and 187 add a recital and modify Article 55 respectively such that the Commission would have to submit a legislative proposal for the introduction of a European

professional card containing information on the professional's qualifications, professional experience, and any professional sanctions imposed on him or her, in order to facilitate professional mobility. Such a measure, which would have to be compatible with Community legislation on data protection, remains a possibility under the Commission's right of initiative, and should be based on an assessment of impact.

Amendment 25 modifies a recital to require the involvement of the representatives of the professions concerned in collaboration between the Member States and between them and the Commission in order to facilitate the implementation of the Directive. This is not acceptable as the implementation of the Directive is the responsibility of the Member States and of the Commission under its implementing powers. The role professional associations are to play in implementing the Directive, and their activities, are to be determined by the Member States at national level according to the principle of subsidiarity, and not by the Commission.

Amendments 168 and 123 to the safeguard clause in Article 56 of the proposal stipulate that the clause can be applied only following consultation with the profession concerned on the basis of either the comitology or the codecision procedure, as applicable. If the Commission considers that the difficulties are not substantial or do not exist, it must justify this view. This is not acceptable, as the implementation of the Directive is the responsibility of the Member States and of the Commission under its implementing powers. Moreover, legislative proposals remain possible under the Commission's right of initiative. Consulting with the professions concerned, which is the Commission's usual practice, cannot be an additional condition under the comitology procedure. **Amendment 124** specifies that compensation measures may be imposed where the safeguard clause has been invoked. This clarification is not necessary, and the wording of the text does not make its area of application clear. The desired objective may be achieved more simply through the safeguard clause as proposed.

3.3. AMENDED PROPOSAL

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as described above.