



**COUNCIL OF  
THE EUROPEAN UNION**

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**STATEMENT OF THE COUNCIL'S REASONS**

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Subject : Common position adopted by the Council on 21 December 2004 with a view to the adoption of a Directive of the European Parliament and of the Council on the recognition of professional qualifications

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**STATEMENT OF THE COUNCIL'S REASONS**

## **I. INTRODUCTION**

1. On 7 March 2002 the Commission submitted a proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications<sup>1</sup>, based on Article 40, Article 47(1), (2) first and third sentences and Article 55 of the EC Treaty.
2. The Economic and Social Committee delivered its Opinion on 18 September 2002<sup>2</sup>.
3. The European Parliament delivered its Opinion at first reading on 11 February 2004<sup>3</sup>.
4. The Commission submitted an amended proposal on 20 April 2004<sup>4</sup>.
5. The Council adopted its common position according to Article 251 of the EC Treaty on 21 December 2004

## **II. AIMS**

6. The over-arching aim of the proposal is consolidation and simplification. It seeks to consolidate into a single Directive the twelve "sectoral" Directives covering doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects, as well as the three "general system" Directives, in order to provide a simpler and clearer set of rules for the professions concerned. While maintaining the principal conditions and guarantees, it simplifies the structure and improves the working of the system. It also provides for simpler conditions for the cross-frontier provision of services than those

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<sup>1</sup> OJ C 181E, 30.7.2002, p. 183.

<sup>2</sup> OJ C 61, 14.3.2003., p. 67.

<sup>3</sup> Not yet published in the Official Journal.

<sup>4</sup> COM(2004) 317 - 8722/04

applicable to freedom of establishment, in order to contribute further to the flexibility of labour and services markets. Administrative simplification is sought by replacing a number of existing committees by a single regulatory committee. The proposal also includes a number of provisions concerning enhanced cooperation between national administrations and with the Commission for the provision of information and advice to citizens and for problem solving.

### **III. COMMON POSITION**

#### **Title I - General provisions**

7. The Council has replaced "regulated professional activities" in Article 2(2) by "a regulated profession within the meaning of Article 3(1)(a)", since the former term is not defined in Article 3 while the latter is.
8. In order to clarify the relationship between this Directive and existing Directives other than those which are repealed by Article 57 of the proposal (Article 61 of the common position)<sup>5</sup>, the Council has added a new paragraph 3 in Article 2 and a new recital (recital 37 of the common position).
9. The European Parliament has proposed a new paragraph 2a in Article 2, which would exclude notaries from the scope of this Directive. The Council has not accepted this amendment for the reasons given by the Commission in its amended proposal.

In this context, the Council has accepted the spirit of the European Parliament's amendment 31 in recital 31 (recital 36 of the common position), while aligning the wording more closely on that of Article 45 of the EC Treaty. Moreover, the Council

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<sup>5</sup> The common position uses continuous numbering. Where this results in recitals, Articles and/or paragraphs having different numbers in the common position from those of the Commission proposal, the present document mentions both the number in the Commission proposal and the number in the common position.

considers it superfluous to state that a Directive is without prejudice to the application of provisions of the Treaty (Articles 45 and 39(4)) and has therefore deleted this statement from this recital. The Council also considers that the reference to health and consumer protection merits a separate recital (recital 38 of the common position).

10. The European Parliament has proposed a new Article 2a which would extend the scope of the Directive to third-country nationals (amendment 36). The Council has not accepted this amendment for the reasons given by the Commission in its amended proposal. For similar reasons, the Council has limited the application of Article 2(2) to "Member State nationals".
11. In Article 3(1), the Council has added further definitions (d) to (h), taking over definitions already used in existing Directives. Similarly, the Council has added further clarification to Article 3(1)(a) and (2), using wording taken from Article 1 of Directive 92/51/EEC.
12. The European Parliament has proposed adding a definition of "liberal profession" in Article 3(1) (amendment 37). The Council has not accepted this amendment for the reasons given by the Commission in its amended proposal.
13. The European Parliament has proposed an addition to Article 3(3) (amendment 38). The Council agrees with the Commission that this addition is superfluous and has therefore not accepted it.
14. The European Parliament has proposed (amendment 39) referring not only to rights but also to obligations in Article 4(1). The Commission accepts this amendment in principle in its amended proposal, while preferring to use the terminology of Directives 89/48/EEC and 92/51/EEC ("same conditions"). The Council has followed the Commission in this respect.

15. Article 4(3) of the Commission's proposal concerns the situation where the profession for which the applicant is qualified in the home Member State constitutes an autonomous activity of a profession covering a wider field of activities in the host Member State; it requires that recognition of the applicant's qualifications give him access to that activity alone in the host Member State if the difference is too great to be made up by a compensation measure under Article 14. The Council is opposed to an obligation on Member States to grant partial access to a profession in this way and has therefore deleted this provision. As a consequence, the amendments proposed by the European Parliament to Article 4(3) (amendments 41 and 139) are no longer necessary. The Council has also deleted the second subparagraph of Article 48(1) as redundant in the absence of Article 4(3) (this corresponds to the European Parliament's amendment 112).

## **Title II - Free provision of services**

16. The existing "general system" Directives do not contain specific provisions on the conditions applicable to the cross-border provision of services. The purpose of Title II of the Commission's proposal is to lay down provisions making it clear that less onerous conditions should be applied to the temporary and occasional cross-frontier provision of services than apply to the right of establishment, in accordance with the case-law of the Court of Justice. The Council, while agreeing with this objective, has introduced a number of changes intended mainly to strike a better balance between the facilitation of cross-border service provision on a temporary and occasional basis on the one hand and strict respect for public health and safety and consumer protection on the other. These changes are explained in more detail below.
17. The Commission proposed in Article 5(2) a presumption that cross-border service provision on a temporary and occasional basis would not exceed sixteen weeks per year. The European Parliament (amendments 45 and 4) has proposed removing this presumption. The Council agrees with the European Parliament that no single time criterion would be appropriate for all professions and in all circumstances, and has

therefore opted for a provision whereby the temporary and occasional nature of the provision of services is to be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity. Recital 5 has also been adapted accordingly.

18. Article 5(1)(b) of the proposal contains a condition that the service provider has pursued the profession concerned for at least two years in the Member State of establishment in cases where that profession is not regulated in the Member State of establishment. The Council considers that, in the interests of consumer protection, these two years should fall within the last ten years prior to the provision of the service. It also considers that the two-year requirement should not apply where, although the profession concerned is not regulated in the Member State of establishment, the education and training leading to the profession is regulated.
19. The Council considers that, where the temporary or occasional service provision involves the service provider's physical presence in the host Member State, the service provider should be subject to certain disciplinary provisions of the host Member State in the interest of consumer protection and safety. For reasons of proportionality, Article 5(3) of the common position and the accompanying recital (recital 8 of the common position) limit the disciplinary provisions applicable to those which are strictly relevant.
20. Article 6(a) of the proposal exempts temporary and occasional service providers established in another Member State from requirements relating to authorisation by, registration with, or membership of, a professional organisation or body in the host Member State. In order to facilitate the application of the host Member State's disciplinary provisions where necessary (see point 19 above), the Council has added the possibility for Member States to derogate from this exemption by providing for either automatic temporary registration with, or pro forma membership of, such an organisation or body. This derogation is also based in part on the European Parliament's amendments 141 and 5, including the proviso that such registration or membership

should not delay or complicate in any way the provision of services and should not entail any additional costs for the service provider. In the light of this general derogation, the Council does not consider it necessary to make a specific derogation from Article 6 for service providers who are subject to a special professional liability regime, as proposed by the European Parliament in its amendments 189 and 143.

21. Under Article 7 of the Commission proposal, the service provider who moves to the host Member State to provide services on a temporary or occasional basis would be required to inform in advance the contact point of the Member State of establishment. The European Parliament has proposed (amendment 50) that he should inform the competent bodies in both the Member State of establishment and the host Member State, as well as imposing obligations on the competent body in the Member State of establishment. The Council considers in its common position that the appropriate body to be informed is the competent authority in the host Member State, which should be aware that the service provider is providing a service on its territory; to require the service provider to inform both Member States and to impose further administrative tasks on the competent authority of the Member State of establishment (as the European Parliament has proposed) would be contrary to the aim of facilitating cross-border service provision. Moreover, the Council considers that the service provider should make a corresponding declaration only if the host Member State so requires, and that this declaration may be required only on the first occasion when the service provider moves to the host Member State to provide a service and thereafter once a year if he intends to provide such services in the host Member State in that year (Article 7(1) of the common position). The Council has also introduced the possibility for Member States to require that the declaration be accompanied by a limited number of documents (Article 7(2) and recital 7 of the common position).
22. The Council considers that the provision concerning the professional title under which temporary and occasional cross-border services are to be provided belongs in Article 7, rather than in Article 5(3) as proposed by the Commission. It therefore appears as Article 7(3) in the common position. Moreover, the Council has derogated in two

specific cases from the general principle that such services should be provided under the professional title of the Member State of establishment: they are to be provided under the professional title of the host Member State in the cases set out in the last sentence of Article 7(3) and in the last subparagraph of Article 7(4) of the common position.

23. The Council has introduced the possibility for the professional qualifications of the provider of temporary or occasional cross-border services to be checked prior to the first provision of services in clearly-defined cases: in the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition under Title III, Chapter III; only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and where this does not go beyond what is necessary for the purposes (Article 7(4) and recital 6 of the common position).
24. The Council has removed from the items which the host Member State may request from the Member State of establishment under Article 8, proof of the service provider's nationality and proof that he meets the requirement of Article 5(1)(b), as these are elements which the service provider himself may be required to provide under Article 7(2)(a) and (d) of the common position. On the other hand, in the interests of protecting the health and safety of the service recipient, the Council has added the possibility for the competent authorities of the host member State to ask its counterparts in the Member State of establishment to provide any information concerning the absence of any disciplinary or criminal sanctions of a professional nature (Article 8(1) of the common position). The Council has further added, for the same reason, a provision concerning the exchange of information in the context of a complaint against a service provider (Article 8(2) of the common position).
25. The Council considers that requiring Member States to oblige the service provider to furnish the service recipient with all the information set out in Article 9 in all cases would be imposing an unnecessary administrative burden both on Member States and on the service provider. Consequently, the Council has given Member States the option

of requiring the service provider to furnish any or all of the items of information listed and has excluded from this option the cases where the service is provided under the professional title of the host Member State. The Council has deleted from the list as unnecessary the item relating to the professional rules applicable in the Member State of establishment (Article 9(e) of the Commission's proposal). It has added an item concerning insurance cover or other means of personal or collective protection with regard to professional liability (Article 9(f) of the common position), following part of the European Parliament's amendment 53.

26. The European Parliament has proposed a new Article 9a excluding the statutory audit of accounts from the scope of Title II (amendment 55). While accepting this amendment in principle, the Commission considers in its amended proposal that more general wording should be used to ensure that all professions governed by specific legislation and future legislative developments are covered. The Council agrees with the Commission that this amendment should be taken into account by using the wording "Without prejudice to specific provisions of Community law ..." at the beginning of Article 5(1).

### **Title III, Chapter I - Freedom of establishment - General system for the recognition of evidence of training**

27. Article 10 of the Commission's proposal extends the general system in a subsidiary manner to all cases which are not eligible for automatic recognition on the basis of professional experience or the coordination of minimum training conditions. The Council considers that this extension is too far-reaching; in its view, the general system should apply only to professions not covered by Chapters II and III of Title III, as well as to the particular cases listed in Article 10(a) to (g) of the common position in which the applicant, while belonging to a profession covered by those Chapters, does not satisfy, for specific and exceptional reasons, the conditions laid down in those Chapters. The cases listed cover situations currently covered by the Treaty as interpreted by the European Court of Justice and situations subject to specific solutions under existing Directives. The Council has adapted recital 10 of the Commission's proposal (recital 14 of the common position) accordingly.

28. Article 11 of the Commission's proposal provides for five levels of professional qualifications. The Council considers it more appropriate to keep the four levels provided for in the existing Directives, together with the bridging measure provided for in Article 13(3) of the common position, than to introduce a fifth level. The Council has therefore deleted Article 11(6) of the Commission's proposal and adapted other provisions accordingly.
29. The European Parliament has proposed (amendments 192, 193, 216 and 217) clarifications to Article 11(2), (3), (5) and (6), which are in line with the *acquis*. The Commission has accepted these clarifications, subject to redrafting, in its amended proposal. The Council has also accepted them, subject to redrafting and subject to the Council's position as explained under point 28 above.
30. The Council has not accepted the European Parliament's amendments 57 and 218 to Article 11 for the reasons given by the Commission in its amended proposal.
31. The Council has added in Articles 11(4) and 13(2) of its common position the possibility of updating the lists in Annexes II and III under the "comitology" procedure.
32. The Council has not accepted the European Parliament's proposal for a new Article 12a (amendment 59) for the reasons given by the Commission in its amended proposal.
33. The Council has not accepted the amendment proposed by the European Parliament to Article 13(1) and its proposal for a new paragraph 1a (amendment 60) for the reasons given by the Commission in its amended proposal.
34. The Council agrees with the Commission in its amended proposal that the new paragraph 2a of Article 13 proposed by the European Parliament (amendment 62) is unnecessary in the light of Annex VII.

35. The European Parliament has proposed a number of amendments relating to qualifications acquired on the basis of franchised education (amendments 63, 214, 8 and 10 relating to Article 13(2b) and (2c) and recitals 7a and 7c) The Council has not accepted amendments 214 and 10 for the reasons given by the Commission in its amended proposal. The Council also considers it unnecessary to make the additions proposed in amendments 63 and 8. However, the Council does consider it necessary to provide, with regard to qualifications acquired on the basis of franchised education, that, in cases of justified doubt, the host Member State is entitled to verify with the competent body of the Member State in which the qualification was awarded whether the part of the training received in an establishment in a different Member State has been formally certified by the educational establishment based in the Member State in which the qualification was awarded, whether the evidence of formal qualifications issued is the same as that which would have been awarded if the course had been followed entirely in the latter Member State, and whether the evidence of formal qualifications confers the same professional rights in the territory of the latter Member State. The Council considers that the appropriate place for this provision is Article 46 of the Commission proposal concerning documentation and information which may be required from competent authorities (Article 50(2) in the Council's common position).
36. The Council has added a new paragraph to Article 14 (Article 14(3) of the Council's common position), which allows the host Member State, rather than the applicant, to choose which compensation measure should be applied where precise knowledge of national law is concerned and in certain specific cases falling under Article 10(a), (b), (c), (d), (f) and (g) (see point 27 above).
37. In Article 14(1) and (2), the Council has not adopted the European Parliament's amendment 64 and the part of amendment 151 relating to tacit acceptance, for the reasons given by the Commission in its amended proposal. The Council also considers the part of amendment 151 relating to "well-founded and indispensable reasons" to be redundant in the light of the requirement in the same subparagraph to "provide sufficient justification". The Council considers that the remaining part of amendment 151 would create uncertainty and therefore has not accepted it.

38. The Council has found it necessary to make a number of clarifications to Article 15 and to the accompanying recital 9 (recital 13 in the Council's common position), which concern common platforms. First of all, the Council considers it appropriate to begin this Article with a more detailed definition of the term "common platforms" than that proposed by the Commission (Article 15(1) of the common position). The Council considers that it would not be appropriate to make provision for common platforms which cover only a few Member States and that therefore, for a common platform to be eligible for consideration in the context of this Article, it must cover at least two thirds of the Member States of the European Union, including all the Member States which regulate the profession concerned. An indicative, non-exhaustive list of possible criteria to be included in a common platform has been added to the recital.

The Council considers it necessary to make clearer the respective roles of professional associations, Member States and the Commission with regard to common platforms. To this end, the Council has made it clear that:

- not only professional associations but also Member States may submit common platforms to the Commission (Article 15(2) of the common position),
- the Commission should consult the Member States before deciding whether or not a draft common platform would facilitate the mutual recognition of professional qualifications (Article 15(2) of the common position),
- this Article does not affect the competence of Member States to decide the professional qualifications required for the pursuit of professions in their territory as well as the contents and the organisation of their systems of education and professional training (Article 15(4) of the common position).

The Council has also added the requirement that professional associations which submit draft common platforms must be representative at national and European level (Article 15(2) and recital 13 of the common position). The Council has further added a clause for a review of this Article three years after the transposition date (Article 15(6) of the common position).

Many of the clarifications made by the Council in Article 15 concur with the substance of proposals made by the European Parliament in its amendments 68, 70, 12 and 185. On the other hand, the Council has not accepted the European Parliament's amendment 188 for the reasons given by the Commission in its amended proposal.

### **Title III, Chapter II - Recognition of professional experience**

39. The Commission proposed to simplify Article 4 and Annex A of Directive 1999/42/EC by reducing the number of categories of activities provided for from six to two (Articles 16 to 19 and Annex IV of the Commission proposal). The Council agrees with the desirability of reducing the number of categories of activities, but considers that the number should be reduced to three rather than two. Accordingly, the Council has split Article 17 of the Commission proposal into two separate Articles (Articles 17 and 18 of the common position) and has rearranged the two lists in Annex IV into three lists.

The Council has accepted the European Parliament's proposal (amendment 207) to replace "five years" by "six years" in Article 17(1)(a), but only in respect of the activities covered by Article 17 of the common position; it has not accepted this change in respect of the activities covered by Article 18 of the common position, for the reasons given by the Commission in its amended proposal. The Council has also not accepted the part of European Parliament amendment 207 concerning a new subparagraph (da) in Article 17(1), for the reasons given by the Commission in its amended proposal.

40. In order to comply with Court of Justice case-law, which requires implementing powers conferred upon the Commission by the legislator to be sufficiently specific insofar as they must clearly specify the bounds of such powers, the Council has specified in Article 19 of the proposal (Article 20 of the common position) that the purpose of amendment by the "comitology" procedure of the lists of activities in Annex IV must be that of "updating or clarifying the nomenclature, provided that this does not involve any change in the activities related to the individual categories"<sup>6</sup>.

**Title III, Chapter III - Recognition on the basis of coordination of minimum training conditions**

41. The Council has accepted the proposals by the European Parliament in its amendments 80, 88, 90, 93, 95, 97 and 161 to move the lists of knowledge and skills for the professions covered by Title III, Chapter III from Annex V, points 5.1.1, 5.2.1, 5.3.1, 5.4.1, 5.5.1 and 5.6.1 to the body of the Directive. Rather than create new Articles, the Council has incorporated these lists into Articles 22, 29, 32, 35, 36 and 40 of the proposal (Articles 24(3), 31(6), 34(3), 38(3), 40(3) and 44(3) of the common position). However, the Council has not accepted the European Parliament's proposal in its amendment 154 to delete from Article 20(5) (Article 21(6) of the common position) the possibility of updating these lists under the "comitology" procedure, for the reasons given by the Commission in its amended proposal. For the sake of consistency, the Council has also moved the list of knowledge and skills for architects from Annex V, point 5.7.1 to Article 42 of the proposal (Article 46(1) of the common position).
42. The Council has also accepted the European Parliament's amendments 96 and 162 which move the list of professional activities for midwives and pharmacists from Annex V, points 5.5.3 and 5.6.3 to Articles 38 and 41 of the proposal (Articles 42(2) and 45(2) of the common position).

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<sup>6</sup> For the same reason, the Council has specified the bounds of the implementing powers provided for in Articles 23(6) and 24 of the proposal (Articles 25(5) and 26 of the common position).

43. The Council has not accepted the European Parliament's amendments 153 and 128 which propose to add provisions concerning psychotherapists in Article 20 of the proposal and in a new point 5a of Annex V, for the reasons given by the Commission in its amended proposal.
44. The European Parliament has proposed in its amendment 75 that Article 20(6) of the proposal be amended to the effect that, where a Member State adopts provisions with regard to the issuing of evidence of formal qualifications in the area covered by Chapter III of Title III, that Member State should notify not only the Commission but also the other Member States. The Council accepts this amendment to the extent that qualifications relating to architects are concerned (Article 21(7) of the common position), but not in respect of the other professions covered by this Chapter, for the reasons given by the Commission in its amended proposal. The Council considers that this extension of the notification to the other Member States in respect of architects is justified by the different systems applicable to architects and to the other professions under the existing Directives.

The Council has not accepted the European Parliament's amendment 77, which proposes a new paragraph 6a in Article 20, for the reasons given by the Commission in its amended proposal. However, in the light of the different system applicable to architects (see previous subparagraph), the Council notes that the Commission has indicated in the statement referred to in point 68 below that, if a Member State has serious doubts as to whether evidence of formal qualifications of architects meets the criteria laid down in the Directive, the Commission intends to bring the matter before the expert group referred to in the Commission's statement.

45. The European Parliament has proposed a number of amendments relating to part-time training for professions covered by Title III, Chapter III of the proposal (amendments 81, 86, 159, 160 and 94). In accordance with the aim of simplification which underlies this Directive, the Council has preferred to merge in a single provision

(Article 22(a) of the common position) all the provisions relating to part-time training, with the consequent deletion of Articles 23(4), 26(4), 29(3) third subparagraph and 36(3) of the Commission's proposal.

46. The European Parliament has proposed in its amendment 101 that a provision similar to Article 22(3) of the Commission's proposal, concerning continuing education and training, be included in Article 40 in respect of pharmacists. The Council agrees with the view of the Commission in its amended proposal that such a provision should apply in respect of all professions covered by Title III, Chapter III. The Council has therefore introduced a single provision (Article 22(b) of the common position) to this effect, resulting in the deletion of Article 22(3) of the Commission's proposal.
47. The Council has added a number of provisions in Chapter III of Title III, as well as in the Annexes, which take account of the accession to the European Union of ten new Member States on 1 May 2004 and which are based on corresponding adaptations to the existing Directives made in the relevant Acts of Accession.

The Council has also added provisions in respect of qualifications for nurses and midwives awarded in Poland, which take account of legislation introduced in Poland since the conclusion of the Acts of Accession referred to above (Articles 33(3) and 43(4) of the common position).

48. The Council has corrected the date in Articles 21(2)(a) and 39(2) of the Commission proposal from 3 October 1989 to 3 October 1990 (Articles 23(2)(a) and 43(2) of the common position).
49. The Council has not accepted the European Parliament's amendment 155 proposing the deletion of Article 23(6) of the Commission proposal for the reasons given by the Commission in its amended proposal.

50. The European Parliament proposed in its amendment 156 to the second subparagraph of Article 24 that it should be possible to include in Annex V, point 5.1.4, by the "comitology" procedure not only new medical specialties common to all the Member States, but also new medical specialties common to a limited number of Member States. The Commission did not accept this amendment in its amended proposal. The Council has opted for a compromise solution, whereby new medical specialties may be included if they are common to at least two fifths of the Member States (Article 26, second subparagraph and recital 17 of the common position). This entails a redistribution of medical specialties between Annex V, point 5.1.4 (point 5.1.3 of the common position) and Annex VI, point 6.1.

The Council considers it unnecessary to move the lists of established rights of specialised doctors from Annex VI, point 6.1 to Annex V, new point 5.1.4a, as proposed by the European Parliament on its amendments 158, 127, 132, 178/rev. 2, 133 and 215.

51. The Council has incorporated the spirit of the European Parliament's amendment 87, proposing a new Article 28a, into Title II of its common position (see points 19 to 24 above).

52. As in the case of medical specialties (point 50 above), the Council has re-introduced the possibility of automatic recognition for dental specialties common to at least two fifths of the Member States. Accordingly, the Council has considered it necessary to distinguish between basic dental training (Article 34 and Annex V, point 5.3.2 of the common position) and specialist dental training (Article 35 and Annex V, point 5.3.3 of the common position). This has resulted in the deletion of Annex VI, point 6.2 of the Commission proposal and of Article 34(3) and (4), which refer to that point of Annex VI.

53. The Council has not accepted the European Parliament's amendment 92, which proposed adding a new paragraph 2a in Article 35, for the reasons given by the Commission in its amended proposal.

54. The Council has not accepted the European Parliament's amendments 98 and 19, proposing a new paragraph 1b in Article 40 and a corresponding new recital 19a, for the reasons given by the Commission in its amended proposal.
55. In its amendments 162, 163, 104 and 18, the European Parliament has proposed that the derogation in respect of pharmacies contained in Article 2 (2) of Directive 85/433/EEC be retained in Article 41(2a) or (2b) or (4a) and referred to in recital 19 of the proposal. The Council has accepted the retention of this derogation, but considers that it would be better placed in Article 20 of the proposal (Article 21(4) in the common position), as it concerns automatic recognition of evidence of formal qualifications.
56. The Council has also retained the derogation in respect of pharmacies contained in Article 5 second subparagraph of Directive 85/433/EEC in Article 41 of the proposal (Article 45(4) of the common position).
57. The Council has not accepted the European Parliament's amendment 212, which proposes a new Article 45a, for the reasons given by the Commission in its amended proposal.

### **Title III, Chapter IV - Common provisions on establishment**

58. The Council has transferred point 2(b) of Annex VII of the Commission proposal to Article 46 (Article 50(2) in the common position), considering that it should appear in this Article rather than in an Annex.
59. The Council has transferred Article 46(2) of the Commission proposal from Title III to Article 52 (Article 56(2) in the common position) in Title V, considering that this provision should be applicable not only in respect of establishment but also in respect of the cross-border provision of services. The Council has further extended this provision to the exchange of information in both directions between the competent authorities of

the host and home Member States, as proposed by the European Parliament in its amendment 110, as well as adding a specific reference to "disciplinary action or criminal sanctions taken", and making it clear that the exchange of information has to respect personal data legislation.

60. The Council has amended Article 47(2) of the proposal (Article 51(2) of the common position) to allow an extra month in cases falling under Chapters I and II of Title III, in accordance with the time allowed under existing Directives.
61. The Council has not accepted the European Parliament's amendment 113, which adds a new paragraph 2a to Article 48, for the reasons given by the Commission in its amended proposal.

#### **Title IV - Detailed rules for pursuing the profession**

62. The Council has moved Article 49 (Article 53 in the common position) on knowledge of languages to Title IV, which concerns not only establishment but also the provision of services. The Council has further deleted Article 49(2) of the proposal, as it considers that it contains an obligation of result which cannot be guaranteed. The Council has not accepted amendment 114 proposed by the European Parliament, as its considers that Directives should be addressed to Member States, not to migrants.
63. The Council has limited the waiver provided for in Article 51 (Article 55 of the common position) to doctors and dental practitioners, in accordance with the existing Directives.

#### **Title V - Administrative cooperation and responsibility for implementation**

64. The Council has not accepted the European Parliament's amendments 116, 117 and 118, which would replace "competent authorities" by "professional associations or similar competent bodies" in Article 52 of the proposal and which would give the role of the

contact points under Article 53 to those bodies, for the reasons given by the Commission in its amended proposal. For the same reasons, it has not accepted the Parliament's related amendment 136 in Article 8(1). Moreover, the Council sees no compelling reason to replace "competent authorities" by "competent bodies".

65. The Council has amended the last subparagraph of Article 53 of the proposal (Article 57 in the common position) to make it clear, in the interests of proportionality, that contact points are not required to inform the Commission systematically of all enquiries which they receive.
66. The Council has made it clear in a new recital (recital 28 in the common position) that it is for each Member State to determine how the single contact point which it is required to designate works together with other offices set up in that State. This recital also takes over a number of elements of the new recital 23a proposed by the European Parliament in its amendment 26.
67. The Council has deleted Article 54(3) of the Commission proposal, as it considers that the contents of this paragraph are a matter for the rules of procedure of the committee set up by this Article, rather than for this Directive.
68. In its amendments 119 and 120, the European Parliament proposes that two committees, rather than one, be set up under Article 54 of the proposal. The Council has not accepted these amendments for the reasons given by the Commission in its amended proposal.

The European Parliament has also made a number of proposals in amendments 119 and 120 as well as in amendments 27, 180, 181, 182, 183, 83 and 157 concerning the organisation of the work of the committee and the setting up of an expert group to assist the Commission (recitals 24, 24a, 24b, 25a and Articles 23a and 24(2a), (2b) and (2c)). The Council agrees with the Commission that these matters should be left to the committee's internal rules of procedure and to the Commission, and should not be regulated in the text of the Directive. In this context, the Council has taken note of a statement by the Commission on the creation and the operation of an expert group, in particular in the context of Articles 54, 15 and 20(6).

## **Title VI - Other provisions**

69. The Council has added to Article 55 of the proposal a new paragraph (Article 59(2) of the common position) which provides for the Commission to draw up a report every five years on the implementation of the Directive.

The Council has not accepted the additions to Article 55 and the related new recitals 21a and 22a proposed by the European Parliament in its amendments 187, 122, 23 and 186, for the reasons given by the Commission in its amended proposal.

70. The Council has not accepted the European Parliament's amendments 168, 123 and 124, which propose amendments to Article 56(2) and a new Article 56(2a) relating to the derogation clause, for the reasons given by the Commission in its amended proposal.

71. The Council has added a clarification in the interest of legal certainty in Article 57 of the proposal (Article 61 in the common position) which makes it clear that any acts adopted on the basis of the Directives which will be repealed by this Directive will not be affected by the repeal of those Directives.

## **Annexes**

72. As explained above (see points 41, 42, 47, 50, 52 and 58), the Council has transferred part of the contents of the Annexes into the relevant Articles of the Directive, has rearranged some of the Annexes, and has added to the Annexes material relating to the Member States which acceded to the European Union on 1 May 2004, on the basis of provisions in the relevant Acts of Accession adding the corresponding material to the existing Directives.

73. The Council has not accepted, as unnecessary, the European Parliament's amendment 126 adding the profession of "tourist guide" to Annex II for Greece.

### **Other European Parliament amendments**

74. The Council has not accepted a number of other amendments proposed by the European Parliament, as it considers them to be unnecessary.

### **IV. CONCLUSIONS**

75. In its common position, the Council has taken over an appreciable number of amendments proposed by the European Parliament. Where the Council has not accepted amendments proposed by the European Parliament, it has been mainly for the reasons given by the Commission in its amended proposal.

While the Commission would have preferred the Council's common position to remain closer to its proposal, in particular with regard to Title II on the temporary and occasional cross-border provision of services, it has accepted the common position as a satisfactory compromise package.

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