

EUA Briefing Note on Directive 2013/55/EU, containing the amendments to Directive 2005/36/EC on the Recognition of Professional Qualifications

This briefing note focuses on aspects of the new legislation which are directly relevant to higher education providers.

1 Directive 2013/55/EU of 20 November 2013 presents the agreed amendments to Directive 2005/36/EC on the recognition of professional qualifications. It covers EU28 and the three EEA countries.

2 It was published in the Official Journal on December 28 and will come into effect on 18 January. Member States [MSs] will have a two-year transposition period in which to make the necessary adjustments to their national legislations. For the full text, see

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0132:0170:en:PDF>

3 A consolidated text is in preparation and will be posted on the Commission website at

http://ec.europa.eu/internal_market/qualifications/index_en.htm

Background

4 Directive 2005/36/EC on the recognition of professional qualifications fell due for review five years after coming into force in 2007. In 2011 the Commission set in train a far-reaching consultation and evaluation process. Politically, it was driven by President Barroso's determination to 're-launch the Single Market' in response to the crisis in the eurozone and beyond. Specifically, this aimed at:

- raising the level of cross-border service delivery
- increasing cross-border professional mobility, particularly where patterns of demand had been significantly changed by demographic factors, notably in healthcare
- reducing the level of professional protectionism
- bringing the Directive into closer alignment with Directive 2006/123/EC on Services in the Internal Market

5 Amending the Directive was only one element in a complex agenda. Two important follow-up initiatives are just getting off the ground:

5.1 The Commission has set in motion a review of the Lawyers' Services Directive of 1977 and the Lawyers' Establishment Directive of 1998. For historical reasons, these fall outside the scope of DIR 2005/36/EC. Their review was due in 2008, but was delayed pending observation of the effects of the 2004 and 2007 enlargements. It has since become a pressing issue because of the rise of the so-called alternative business structure (ABS), in which non-lawyers occupy senior posts in law firms.

5.2 In an attempt to rationalise the EU's labyrinthine regulatory landscape, the Commission has asked each MS to spell out which professions it regulates and why. Their statements will then be subjected to peer review at MS level. The hope is that mutual evaluation will eliminate anomalies and cut 'unnecessary' regulation, thereby boosting transparency, professional mobility and cross-border service delivery.

The push for greater automatic recognition of qualifications

6 The drive to simplify also targets qualifications. Currently, automatic recognition operates in only seven 'sectoral' professions: medical doctor, general care nurse, dentist, midwife, veterinary surgeon, pharmacist and architect. Professionals qualified to a specified agreed minimum level are permitted to practise in MSs other than the one in which they trained.

7 All other professional qualifications fall into the 'General System', which works by comparing the level of a mobile professional's attainment with the level required by the host MS and by imposing appropriate compensation measures, such as adaptation periods and aptitude tests.

8 In 2010 Mario Monti recommended that automatic recognition should be speedily extended to these other professional qualifications, with priority going to digital and green professions with a high growth potential. The Monti Report is available at http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_en.pdf

9 Parallel exploratory work in the field of academic qualifications is being undertaken by a group of 'Pathfinder' countries (Belgium [Flanders], Estonia, Netherlands, Portugal), led by the Commission. This is not an EU initiative. It was called for by Bologna Process Ministers in Bucharest in 2012. The conclusions will be presented to the next Ministerial Conference in Yerevan in 2015.

What is new in the amended Directive?

10.1 A route to wider automatic recognition for professional qualifications has been opened up by the introduction of **common training frameworks** (CTFs) [Recital 25 and new Article 49a]. These will allow groups of MSs – at least one third of the total number (i.e. 10 of EU28) – to agree curricula based on 'common sets of knowledge, skills and competences'. Other MSs may then opt in.

10.2 The curricula may be proposed by representative professional bodies operating at EU or national level, or by Competent Authorities (CAs

are normally ministries or statutory regulatory bodies). The reference to 'knowledge, skills and competences' is significant and marks a shift towards competence-based curricula which is visible throughout the amended Directive.

10.3 Recital 25 suggests that such proposals will pass through the filter of the national coordinators (each MS has a coordinator to advise on implementation of the Directive). The list of coordinators is posted at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2061&NewSearch=1&NewSearch=1>

10.4 Who might take advantage of this facility? Medical and dental specialties – that is to say, training programmes pitched at the level beyond basic medical and dental training – which exist in two fifths of MSs (i.e. currently 12) are already subject to automatic recognition. CTFs might be used by those that do not currently reach this threshold, as well as by specialties attaching to other sectoral professions (hospital pharmacists, for example¹). Finally, all other professions in the General System might be interested, particularly those which have developed competence-based curricula in the framework of the Tuning Project.

11.1 Article 49a.2.d specifies that CTFs will be designed in line with the **European Qualifications Framework (EQF)**. Recital 11 describes the EQF as a 'tool designed to promote the transparency and comparability of professional qualifications' – a strikingly narrow definition. In fact, the scope of the EQF is much broader, embracing all qualifications in the post-secondary education sectors, whether in vocational education and training (VET) or in higher education (HE), whether professional or academic. The 49 Bologna HE systems are progressively referencing their national qualifications frameworks to the EQF. The Commission's EQF website includes a portal dedicated to the comparison of national frameworks. A new portal is due to go live in the course of 2014; the current one can be consulted at http://ec.europa.eu/eqf/home_en.htm

11.2 Sadly, the legislators have opted not to import the EQF into the mechanics of the General System. The gap between the attainment level of a would-be incoming professional and the level required by the host MS was measured in the previous Directive – and still is, in the amended Directive – by means of a five-level qualifications grid. The grid was designed some thirty years ago. The decision to retain it misses the opportunity to benefit from the greater transparency, intelligibility and scope of the EQF.

11.3 Specifically, the amended Directive perpetuates the lack of clarity characterising the definition of the two higher education levels (d) and (e). The previous Article 11 defined (d) as 'at least three and not more than four years' duration' and (e) as of 'at least four years' duration', thus allowing four-year training programmes to be assigned either to (d) or to

¹ See the website of the European Association of Hospital Pharmacists, at <http://www.eahp.eu/practice-and-policy/hospital-pharmacy-specialisation>

(e). This ambiguity worked in favour of MSs in which the combined duration of a Bachelor and Master sequence was four years.

11.4 The Commission had proposed that (e) cover courses of 'more than four years', thus clearly separating two durations. Traces of this intention are evident in Recital 11 of the amended Directive, which indicates that level (d) should be interpreted as the Bologna Bachelor and level (e) as the Bologna Master, but this wording is not carried into the text of Article 11. Partly this is because in the European Higher Education Area (EHEA) put in place by the Bologna Process there is no standard duration for either the Bachelor or the Master. Partly it is because the EU enjoys exclusive competence in matters relating to the Single Market but only complementary competence in the field of education.

12.1 The amended Directive, while retaining the five-level grid, nevertheless goes further than its predecessor by allowing levels (d) and (e) to be expressed as credit points within the **European Credit Transfer and Accumulation System** (ECTS). This innovation is welcome, insofar as it retrieves some of the transparency compromised by the failure to deploy fully the benefits of the EQF. Even so, ECTS remains only an option: (d) and (e) 'may be expressed as credit points...'.

12.2 The same is true in the sectoral professions, where the durations formally prescribed in hours and/or academic years 'may' also be expressed as ECTS credits: for medical doctors (Article 24), general care nurses (Article 31), dentists (Article 34), veterinary surgeons (Article 38), midwives (Article 41), pharmacists (Article 44) and architects (Article 46). The Commission's proposal to allow ECTS to be used in postgraduate dental specialties has not been retained.

12.3 The Commission is currently chairing an ad hoc Bologna working group which is revising the ECTS Users' Guide. The 2014 edition will appear later in the year. It will stress the principle that ECTS credits are assigned on the dual basis of student workload and learning outcomes.

13 The amended Directive sets out changes to the **agreed minimum training conditions in the sectoral professions**.

13.1 The requirement that **medical doctors** undergo at least 5 500 hours of theoretical and practical training is retained, but set within a minimum five-year, rather than six-year, period. This is to bring the Directive into line with the practice in some MSs which effectively operated five-year programmes. That they were able to do so is partly attributable to the wording of the previous Directive, which specified a number of hours 'or' a number of years. The syntax has been changed to remove all ambiguity.

13.2 The same is true of the minimum 4 600 hours required in the training of **general care nurses**. The major amendment here concerns the length of successfully completed general education which must precede the training course. Previously it was at least 10 years. Now, thanks to sustained pressure for nursing to become a graduate profession, the

requirement becomes 12 years in those MSs which deliver nursing training in HE institutions. In a minority, where it is located in VET, the 10-year requirement is retained; in VET institutions, the ECTS option is not available. However, wherever training takes place, general care nurses must now acquire a specific set of competences detailed in a new paragraph 7 to Article 32. These are added to the list of knowledge and skills set out in the previous Directive.

13.3 The prescribed minimum training duration for **dentists**, five years, is now also specified as 5 000 hours (Article 34).²

13.4 Article 38.3, which itemises the knowledge and skills required of **veterinary surgeons**, now puts greater stress on competences than was the case before.

13.5 For **midwives**, there has long been more than one route to qualification. Route 1 (three full-time years of theoretical and practical study) must now be preceded by at least 12, rather than 10, years of successfully completed general education. The 10-year possibility open to certain general care nurses is not available to midwives. Routes 2 and 3 are open, as before, to intending midwives who have already qualified as general care nurses and who may or not have completed one year of professional experience. For all three routes, ECTS is now a possible tool for expressing course durations. As for the content of the training, the amended Directive (Article 40.3) adds elements of pharmacology, as well as a much more elaborated specification of the competences of the midwife and of the legal limits of the midwife's clinical responsibility.

13.6 The amended Directive specifies that the six-month traineeship obligatory for **pharmacists** may be undertaken during or after the four-year course. Article 45.2 sets out a longer and more detailed list of the activities which a qualified pharmacist may be expected to undertake.

13.7 The previous qualification route for **architects** (a four-year training programme or equivalent) has been replaced by two possibilities: five full-time years of study OR four years plus a two-year traineeship which cannot be undertaken before the end of year three (Article 46.1).³ Despite the addition of 'competence' to the phrase 'knowledge and skills', the list of required training contents remains unchanged, except for the inclusion of a reference to a framework of sustainable development.

14 Both pharmacy and architecture feature **traineeships**. Here the amended Directive has taken on board the European Court of Justice's Morgenbesser ruling (case C-313/01). Morgenbesser allows traineeships to be undertaken in any MS, irrespective of where the professional qualification is delivered, and to enjoy full recognition. However, Recital

² This has been welcomed by the Council of European Dentists. Its press release can be accessed via <http://www.eudental.eu/>

³ This has been welcomed by the Architects' Council of Europe (ACE) as a step in the right direction. ACE will continue to lobby for a 5+2 model. See http://www.ace-cae.eu/public/contents/getdocument/content_id/1729

27 makes clear, and Article 55a specifies, that particular attention must be paid to the role of the supervisor. The European Parliament had wanted supervisors to be approved by the CA in the home MS and the traineeship to be evaluated by the CA in the light of agreed learning objectives and tasks. The final text, however, requires only that CAs publish guidelines.

15 During the review of Directive 2005/36/EC there was much discussion of **continuous professional development** (CPD).⁴ Should it be made mandatory, particularly in the healthcare professions, in the cause of patient safety? Should this be managed at EU level? Formerly the responsibility of MSs, the Commission proposed to firm up this responsibility by requiring quinquennial reports. The Parliament sought, in addition, for MSs to exchange best practice and for CPD training providers to be evaluated by agencies on the European Quality Assurance Register (EQAR). Recital 15 now endorses the need for the exchange of good practice and locates CPD explicitly in a lifelong learning framework. Quality assurance therefore now reverts to being an MS responsibility. MSs must report to the Commission, by the end of the transposition period, on how they 'encourage' CPD in the sectoral professions.

16 That **lifelong learning** has become an important policy strand is evidenced by its appearance in amended Article 14.5 on compensation measures. Hitherto, MSs have been able, in the General System, to require adaptation periods or aptitude tests when a 'substantial difference' of course content or duration signals a level of knowledge which is too low to allow professional practice in the host MS. Henceforward, the substantial difference must be calibrated in terms of content, but not duration, and in terms of knowledge, skills and competences, rather than knowledge alone. Moreover, before demanding an aptitude test, MSs must now ascertain that the applicant has not already compensated for the substantial difference by virtue of formally validated lifelong learning.

17 Relevant experience can come before, as well as after, the award of a qualification. The amended Directive contains a modest acknowledgement of the importance of the **recognition of prior learning**. Previous Article 30.3 allowed exemptions to be made in favour of general care nursing students who already had prior formal learning which could be recognised. This facility remains. It is now extended to medical specialties in circumstances outlined in Recital 19 and specified in Article 25.3a.

18 The amended Directive makes no provision for the recognition of non-formal or informal prior learning in its consideration of the sectoral professions. Elsewhere in the General System, such recognition might well be crucial to student progression – particularly in qualifications giving access to professions that are regulated only in some MSs. In 2010-11, 29

⁴ The amended Directive uses 'continuous', rather than 'continuing', which is the more familiar English usage. It departs from the terminology of Directive 2005/36/EC, which used 'continuing'. The difference lies, perhaps, in that 'continuing' allows for brief interruptions, whereas 'continuous' does not.

of the 49 Bologna HE systems actively used this facility.⁵ The broader question of **quality assurance** in HE is not raised by the amended Directive. Indeed, the proposed recourse to EQAR (point 15 above) for the quality assurance of CPD was set aside in the legislative process, as were the opportunities for legislating the cross-border quality assurance of traineeships. The question of quality assurance nevertheless persists in at least two areas:

18.1 Of the seven sectoral professions, architecture is the only one in which it is not mandatory for training programmes to comply with the Directive. This means, effectively, that HE institutions need to comply only if they wish their graduates to be able to work elsewhere in the EU. As a consequence, the Commission has always experienced difficulty in knowing which courses are compliant and which are not. To a lesser degree, the same is true of all sectoral qualifications, in the sense that the Bologna Process has encouraged curricular diversity. To address this problem, the previous Directive relied on **notification** by MSs; notification was essential, since a course became compliant only when listed in its Annex V. New Recital 16 reaffirms the obligation imposed on MSs, as does new Article 21a. However, neither specify which agency shall be responsible for notifying the MS authorities, whether it be the CA, the professional body, the national quality assurance agency, the ENIC/NARIC agency, the HE institution, or an agency established at European level. This omission runs counter to the Commission's wish for MSs to nominate an appropriate notifying agency.

18.2 The previous Directive allowed a temporarily mobile professional to move from a MS in which the profession was regulated to one in which it was not. The professional, however, had to show evidence of having undertaken at least two years of '**regulated education or training**' (previous Article 3e). It does not follow that regulated education and training serve only regulated professions. For both the 2005 and the amended Directives, the phrase means '*any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice*'. It applies at level (c) of the General System grid referred to earlier, which covers post-secondary courses of at least one year in duration. New Article 59.1 requires MSs to supply a list of regulated education and training provision, but as in the matter of notification, does not identify any executive agency. This issue is relevant to HE institutions which deliver a substantial amount of VET provision.

19 Since the 2005 Directive came into force, issues of patient safety have brought two issues to the fore. CPD is one; the other is the foreign **language proficiency** of the incoming mobile professional. Previous Article 53 noted simply that professionals must have the necessary linguistic knowledge. In practice, it has been unclear at which point in the recognition process language testing should take place, on which agency the burden of language testing falls, who bears the cost and who is liable

⁵ See 'The European Higher Education Area in 2012: Bologna Process Implementation Report', EACEA P9 Eurydice, Brussels, 2012, p.143.

in the event of litigation. New Recital 26 makes it clear that once professional recognition has been granted, the CA may administer a language test and that, this hurdle passed, the future employer should test again. Only then should access to professional activity be allowed. New Article 7.2f specifies that a statement of linguistic proficiency must accompany the first set of declarations made by an intending incoming professional. New Article 53 spells out the detail of these more stringent measures. HE providers will be well advised to bring this matter to the attention of course designers and students, as well as to consider if their provision of foreign language tuition is sufficient.

The new comitology

20 The Treaty of Lisbon brought into effect a new legislative procedure, affecting the balance between the Commission, the Council of Ministers and the Parliament. What was known previously as 'co-decision' has now become the '**ordinary legislative procedure**'.⁶ This was the procedure used to amend the 2005 Directive. It features two instruments which have particular relevance to the amended Directive:

20.1 **Implementing acts** will be used principally to put in place the procedures supporting major innovations (which, however, are not directly relevant to HE providers) such as the European Professional Card, facilitating automatic recognition at the level of the individual professional, and the mechanism which alerts MSs to instances of professional disqualification.

20.2 **Delegated acts**, meanwhile, will be used by the Commission, *inter alia*, to update the minimum agreed training conditions for the sectoral professions and to edit the Directive's Annexes. The full scope of delegation is set out in Recital 31 and in new Article 57c.

Consultation

21 The range of delegated acts prompts the question of whether there will be due consultation of stakeholders. The previous Directive (Articles 58 and 59) relied on a Committee of MS representatives, to which the Commission reported any consultations held with **experts** from relevant professional groups. The amended Directive retains the Committee and, in Recital 31, rehearses the commitment to consult experts. This commitment, however, is not confirmed in the text of the Directive. Instead, the Commission has appended a 'statement', which reads:

The Commission will, when preparing the delegated acts referred to in Article 57c(2) [...] carry out appropriate and transparent consultations well in advance, in particular with experts from competent authorities and bodies, professional associations and educational establishments of all the Member States, and where appropriate with experts from social partners.

⁶ For a summary, see <http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>

What happens after 18 January 2014?

22 After the amended Directive comes into force **consultation with the HE sector** will be crucial, not least because, first, the transposition process allows for the working out in detail how the Directive will be implemented, and, secondly, the new comitology allows it to be further amended before the next review (due in 2019).

23 In the next years there are likely to be proposals for **common training frameworks**, encouraged in principle by the Commission in pursuit of greater automaticity of recognition. Higher education institutions will have an important opportunity to contribute to the design of competence-based curricula.

24 The **Bologna Process** will continue to consolidate, particularly in respect of quality assurance; the Standards and Guidelines (ESG) are currently being revised. So, too, will national qualification frameworks and, by extension, the EQF.

25 Work currently under way in the Commission aims to link the EQF to the **taxonomy of occupations** drawn up by the International Labour Organisation (ILO), under the umbrella of the European Skills/Competences, qualifications and Occupations (ESCO) project.⁷ Recital 14 notes that this type of instrument operates in some areas covered by the Directive (the 'craft' industries, for which no formal qualification exists) and it is not unreasonable to suppose that the Commission might wish to carry this further.

26 The construction of the credit transfer and accumulation system for the VET sector – **ECVET** – will proceed; its articulation with ECTS may become more feasible.

Please feel free to forward this briefing to other interested parties

<http://www.eua.be/eua-work-and-policy-area/building-the-european-higher-education-area/bologna-and-professional-qualifications.aspx>

Howard Davies, 14 January 2014

howard.davies@eua.be tel: 00 44 7780 700 648

⁷ See <https://ec.europa.eu/esco/esco-theme/documents/About%20ESCO.pdf>