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Response by European Council of Optometry and Optics (ECOO)

to the

EUROPEAN COMMISSION GREEN PAPER **Modernising the Professional Qualifications Directive** **COM (2011) 367 final - 22 June 2011**

Introduction

The European Council of Optometry and Optics (ECOO) is grateful to the European Commission for the opportunity to comment on its ideas for modernising the professional qualifications directive. ECOO would wish to remain fully engaged in the Commission's process of consultation.

Question 1: Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

We agree with the Commission's proposal to mobilise the member state of departure to verify the applicant's qualifications and conditions, as a means of reducing the administrative burden on the receiving member state. We also agree that such a re-balancing could reduce the overall administrative burden.

Question 2: Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).



c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

In relation to a) we favour Option 2, if only because some member states are likely to oppose the abolition of the prior declaration.

In relation to b) we agree.

In relation to c) we agree.

Question 3: Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle.)

We agree. The issue is particularly important in the area of optometry and optics. For instance a dispensing optician, who is trained essentially to dispense corrective spectacles and contact lenses but who wishes to practise in another member state where the single profession has a wider scope of practice and includes optometry, should only be allowed to practise the dispensing he/she is trained for in the receiving member state. (Optometrists are usually trained also to examine eyes, prescribe corrective optical appliances, detect pathology and refer patients for medical attention if necessary.)

Question 4: Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.)

We regret the failure of the concept of common platforms. We support the lowering of the threshold. We agree on the need for an internal market test provided by the interested professional association. Given the variations in training and scope of practice of optometrists and opticians across the EU, it is important that a common platform for our profession is clear and simple, yet at the same time preserves the 'ladder' system inherent in the practice of the two sub-groups of the profession.

Question 5: Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.

Optometrists are not permitted to exercise their profession in some member states, where such a scope of activity is considered to be a medical act. Such a prohibition is unjustified and disproportionate in relation to the need to protect public health. A good illustration of this position was given in the judgment of the European Court of



Justice on 1 February 2001 in the case of *Denis MacQuen, others and Grandvision Belgium versus Union Professionnelle Belge des Médecins Spécialistes en Ophtalmologie et Chirurgie Oculaire* (C-108/96).

Question 6: Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

We agree that the two proposals would facilitate the free movement of professionals. However we note that, in the case of optometrists and opticians, it is not always clear whether there actually is a competent authority in some member states; or, if there is, which organisation acts as the competent authority. We suggest, therefore, that member states be placed under an obligation to identify their competent authority in respect of a profession, if it has not been identified hitherto.

Question 7: Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

Since the scenario described by the Commission is unlikely to occur in the case of optometrists and opticians, we have no comment to make.

Question 8: Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)

We do not agree. We believe that the notion of regulated education and training should remain geared to the profession in question. We cannot see how extending the notion, while remaining relevant to the profession, would improve the current position.

Question 9: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

We would support the deletion of the classification in the interests of simplicity. While we are fearful of giving more discretion to member states, we nevertheless agree that the identification of substantial differences in training is the key to deciding whether compensation measures are necessary. In reality, this is already the case as far as optometrists and opticians are concerned.



Question 10: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

We would favour the recalibration of the system of compensation measures, as proposed by the Commission. Again, the four steps would simplify the general system, while retaining sufficient safeguards for competent authorities to impose compensation measures as necessary. Although it may be thought that the duration of training or of two years of professional experience is crucial in determining whether compensation measures are necessary, it is rather the content and the assessed outcome of training and of professional experience which are more important. We agree that it should be the responsibility of the competent authority to justify its decision with regard to substantial differences.

Question 11: Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

We support the Commission's proposal. In a single market of increasing mobility, it is logical that graduates should be able to complete their practical experience in another member state. We see no practical difficulty why such an arrangement should not be allowed.

Question 12: Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?

Option 1: Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)

Option 2: Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)

We favour an alert mechanism and would favour Option 2 for health professionals which would offer better protection for the European public. This could simply operate (and cost-effectively) by electronic communications between the Member States' competent authorities.

Question 13: Which of the two options outlines above do you prefer?

Option 1: Clarifying the existing rules in the Code of Conduct;

Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.



We prefer Option 2, for the sake of clarity, provided the rights of health professionals are safeguarded

Question 14: Would you support a three-phase approach to modernisation of the minimum training requirements under the Directive consisting of the following phases:

- the first phase to review the foundations, notably the minimum training periods, and preparing the institutional framework for further adaptations, as part of the modernisation of the Directive in 2011-2012;
- the second phase (2013-2014) to build on the reviewed foundations, including, where necessary, the revision of training subjects and initial work on adding competences using the new institutional framework; and
- the third phase (post-2014) to address the issue of ECTS credits using the new institutional framework?

No comment.

Question 15: Once professionals seek establishment in a Member State other than that in which they acquired their qualifications, they should demonstrate to the host Member State that they have the right to exercise their profession in the home Member State. This principle applies in the case of temporary mobility. Should it be extended to cases where a professional wishes to establish himself? (Please give specific arguments for or against this approach.) Is there a need for the Directive to address the question of continuing professional development more extensively?

No comment.

Question 16: Would you support clarifying the minimum training requirements for doctors, nurses and midwives to state that the conditions relating to the minimum years of training and the minimum hours of training apply cumulatively? (Please give specific arguments for or against this approach.)

No comment.

Question 17: Do you agree that Member States should make notifications as soon as a new program of education and training is approved? Would you support an obligation for Member States to submit a report to the Commission on the compliance of each programme of education and training leading to the acquisition of a title notified to the Commission with the Directive? Should Member States designate a national compliance function for this purpose? (Please give specific arguments for or against this approach.)

We disagree with this proposal which sounds unnecessarily complicated, and would be likely to increase costs for all parties without an obvious benefit.



Question 18: Do you agree that the threshold of the minimum number of Member States where the medical speciality exists should be lowered from two-fifths to one-third? (Please give specific arguments for or against this approach.)

No comment.

Question 19: Do you agree that the modernisation of the Directive could be an opportunity for Member States for granting partial exemptions if part of the training has been already completed in the context of another specialist training programme? If yes, are there any conditions that should be fulfilled in order to benefit from a partial exemption? (Please give specific arguments for or against this approach.)

No comment.

Question 20: Which of the options outlined above do you prefer?

Option 1: Maintaining the requirement of ten years of general school education

Option 2: Increasing the requirement of ten years to twelve years of general school education

No comment.

Question 21: Do you agree that the list of pharmacists' activities should be expanded? Do you support the suggestion to add the requirement of six months training, as outlined above? Do you support the deletion of Article 21(4) of the Directive? (Please give specific arguments for or against this approach.)

No comment.

Question 22: Which of the two options outlined above do you prefer?

Option 1: Maintaining the current requirement of at least four years academic training?

Option 2: Complementing the current requirement of a minimum four-year academic training by a requirement of two years of professional practice. As an alternative option, architects would also qualify for automatic recognition after completing a five-year academic programme, complemented by at least one year of professional practice.

No comment.

Question 23: Which of the following options do you prefer?

Option 1: Immediate modernisation through replacing the ISIC classification of 1958 by the ISIC classification of 2008?

Option 2: Immediate modernisation through replacing Annex IV by the common vocabulary used in the area of public procurement?

Option 3: Immediate modernisation through replacing Annex IV by the ISCO nomenclature as last revised by 2008?



Option 4: Modernisation in two phases: confirming in a modernised Directive that automatic recognition continues to apply for activities related to crafts, trade and industry activities. The related activities continue to be as set out in Annex IV until 2014, date by which a new list of activities should be established by a delegated act. The list of activities should be based on one of the classifications presented under options 1, 2 or 3.

No comment.

Question 24:

Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)

No comment.