



## Response to the Public Consultation on the Green Paper “Modernising the Professional Qualifications Directive”

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The mission of CEPI, the European Real Estate Council, is to support European and cross-border transactions by enhancing and strengthening the work and activities of property professionals. We represent more than thirty national professional associations of estate agents and property managers based in 20 EU and EFTA countries.



## Green Paper on the modernisation of the Professional Qualifications Directive

The following replies to the questions shown represent the views of CEPI and its member associations and are submitted by way of response to the Green Paper published by DG Internal Market and Services on 22 June 2011 (using the numbering in the Green Paper).

### 2. New Approaches to Mobility

#### 2.1. The European Professional Card

The statements in the Green Paper reflect some of the points that CEPI has been making, that the card should be voluntary and be issued by the competent authority in the home Member State which means that there must be more focus on the Member State of departure. **We are looking for a role for professional associations and also for a clear point of common reference particularly in the case of permanent establishment.** We argue that the professional card should be issued by competent authorities with the assistance of professional associations. This assistance could be particularly valuable in the case of unregulated countries and in updating information about continuous education. The professional card could confirm that the qualifications of the professional are consistent with the minimum standards of a revised Directive.

CEPI also believes that it is necessary to establish a common point of reference to which the professional card can be linked. There are various possibilities in this respect, a European curriculum or 28<sup>th</sup> regime, the European Qualifications Framework (EQF), a common platform according to the rules under consideration in the Green Paper, or another initiative to measure and agree on qualifications and competences.

We encourage the development of a professional card which represents a real added value for professionals who want to work cross-border.

**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 that a European professional card, issued by the competent authority in the Member State where the qualification is acquired, and under the condition that the professional is entitled to practice, could facilitate the process by increasing the role of the Member State of departure at an early stage. We consider it to be very important that there is full disclosure of information between Member States and that discussion between Member States is facilitated.

**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 process (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 process (receiving Member State would have to take a decision within one month instead of four months).



With regard to the options contained in question 2 we agree that a professional card could have the effects outlined in option 2 (question 2a) for temporary mobility if a sufficient level of skills and experience is proved and 2c) for permanent establishment. For professionals (like property professionals) covered by the general system where applications have to be dealt with on a case by case basis recognition could be quicker because the information would already have been verified by the home Member State.

## 2.2. Focus on economic activities: the principle of partial access

**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?

There could be certain advantages to inserting the principle of partial access and specific criteria for its application into the Directive particularly for the professions which are regulated, but there is a risk this could present obstacles for non-regulated professions if they do not have a clearly defined job specification. For this reason we do not see important advantages to inserting the principle of partial access and specific criteria for its application into the Directive as it might in fact lead to further difficulties. However the putting in place of a common platform (as referred to below) could also define common activities and criteria on partial access.

## 2.3. Reshaping common platforms

This is a very important issue for CEPI, which has worked for years on common platforms and came to the conclusion that the current wording of Article 15 of the Directive on the establishment of common platforms does not work because it is too restrictive.

**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?

CEPI is pleased that the Commission has received the message about the difficulties of establishing a common platform under the current system and is looking at new ideas about reshaping them. CEPI is particularly pleased at the notion that the number of Member States required could be reduced and considers the new proposal to be much more flexible. Therefore we support lowering the current threshold of two-thirds of the Member States to one-third.

We do have some concerns about how the internal market test could be applied and overseen to ensure that it does not present an obstacle to others. It must be remembered that participation in a common platform is voluntary. It is unfortunate that the link between the different initiatives proposed, including the European Professional Card, is not more strongly expressed. A common platform represents an opportunity to agree on a point of reference for professionals who wish to offer services abroad, while substantial differences in requirements between Member States still represent obstacles, and need judgement from the competent authorities of host Member States that are said to be too restrictive in their interpretation of the existing rules.

## 2.4. Professional qualifications in regulated professions

**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.

CEPI is not able to answer this question.

### 3. Building on Achievements

#### 3.1. Access to information and e-government

**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 online access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals?

The modernisation of the Directive is an opportunity to improve access to information. Not surprisingly these should take into account developments in modern technology and build on the existing national contact points or points of single contact under the Services Directive.

It is important to maximise the benefit of modern technology and the development of a central online access point in each Member State is a logical progression. It would also be logical to provide an option for online completion of recognition procedures for professionals. It will be important to have a proper control of the accuracy of the information.

Therefore CEPI would support these obligations.

#### 3.2. Temporary mobility

Special arrangements for temporary mobility were an innovation of the 2005 Directive, providing a lighter regime for those who want to offer services in another Member State on a temporary basis only.

##### 3.2.1. Consumers crossing borders

**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?

CEPI does not consider that the example of the tourist guide justifies the removal of the requirement for two years of experience. On what basis will the qualification of such a professional be assessed? There is also the danger that trying to make such a distinction in general could lead to confusion. This needs to be discussed further because of the different interest of different professions. In the interests of consumers it is better to improve the functioning of the system in general. The host Member State should still be entitled to require a prior declaration.

##### 3.2.2. The question of “regulated education and training”

The current Directive defines regulated education as education involving training geared towards the pursuit of a given profession.

**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?



CEPI is interested in the concept of regulated education and thinks that this could be developed further. If the definition is extended to include all training recognised by a Member State which is relevant to a profession this could be helpful in terms of recognising different forms and means of acquiring competences and lifelong learning. However the question has to be answered if there should be more of a focus on training than on education, which is also important for the content of common platforms.

### **3.3. Opening up the general system**

#### **3.3.2. Levels of qualification**

Property professionals fall within the general system created by the Directive. This means that (in the absence of a common platform) applications for the recognition of qualifications have to be dealt with on a case by case basis.

**Question 9:** Would you support the deletion of the classification outlined in Article 11 (including Annex II)?

It is unclear to what extent it would simplify or clarify the existing system to give more discretion to Member States in identifying substantial differences in training.

It also remains to be determined to what extent the host Member State will have to predefine its requirements to facilitate easy, quick, if not automatic recognition of qualifications and access to its market. Without detailed knowledge of the requirements of the host Member State the role of the competent authority in the home Member State could be difficult, the delivery of the card and the development of common platforms could be limited to an administrative process to collect information and prepare a request for the recognition of qualifications by one single host country at a time.

It further remains to be experienced to what extent the host Member State will facilitate and accelerate procedures. The revision of the Directive is mainly due to many complaints about the restrictive attitude of too many host Member States. A priori, this shift in attitude cannot simply be assumed and it is therefore questionable whether host Member States should simply be given more discretion in identifying substantial differences and imposing compensation measures, albeit with an obligation to answer more quickly and justify in more depth refusals to recognize a professional's qualifications.

We fear that this is likely to lead to more and more complicated compensation measures.

#### **3.3.3. Compensation measures**

Deleting Article 11 and giving more discretion to Member States could mean that more compensation measures are imposed. The Commission also suggests changes to the system of compensation measures in four steps:

- 1). Deleting the condition relating to the duration of training which allows a Member State (in the case of a difference of training of at least one year) to impose compensation measures.
- 2). Deleting Article 13(2) of the Directive which requires professionals to have at least two years of experience if their profession is not regulated in their home Member State. This is based on the logic that a Member State would in any event need to assess their existing qualifications including their professional experience.
- 3). The Commission wants to avoid what it considers to be arbitrary compensation measures. Therefore the host Member State would have to justify its decision with regard to substantial differences between the training of the applicant and the training required in the host Member State, and why these substantial differences prevent the professional from exercising his profession in the host Member State.

4). Making essential provisions of the code of conduct for national administrative practices falling under the Directive mandatory.

**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?

CEPI is not particularly aware of difficulties concerning the current system of compensation measures but would question removal of the requirement for two years of professional experience and also whether such changes in general would lead to great simplification. It is unlikely that a removal of the two years rule and the absence of any pre-defined criteria would simplify administration and add value to the professional. He/she would possibly have to negotiate with the home Member State to get a card, and consecutively with the host Member State to have the qualification recognised. This would possibly also complicate the set up of common platforms that assume and call on a collective approach.

#### **3.3.4. Partially qualified professionals**

The current Directive is limited to fully qualified professionals. Nevertheless a lot of newly qualified professionals want to complete their studies with some time abroad.

**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?

CEPI favours all measures to assist young professionals in developing their careers by gaining experience abroad and welcomes recognition of this in the modernisation of the Directive.

### **3.4. Exploiting the potential of IMI**

#### **3.4.2. Mandatory use of IMI for all professions**

The existing IMI (Internal Market Information system) is a means of cooperation between Member States for the supply of information). It is seen as having potential to facilitate further the exchange of information between Member States and it is suggested that the terms of the Directive ensure that all competent authorities respond via IMI to queries from their counterparts in other Member States.

#### **3.4.3. Alert mechanism for health professions**

**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).

CEPI supports the development of the IMI system to meet the needs of the modernised Directive. CEPI favours option 1 namely extending the alert mechanism as foreseen under the Services Directive to all professionals but cannot speak for the health professions.

### 3.5. Language requirements

**Question 13:** Which of the two options outlined 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.

CEPI does not suggest any amendments to the terms of the Directive concerning language requirements but cannot speak for health professionals.

### 4. Modernising Automatic Recognition

4.2. to 4.6. This part of the Green Paper deals with the modernisation of training conditions for doctors, dentists, general care nurses, midwives, pharmacists, veterinary surgeons and architects.

This response will not deal with questions 14 to 23 as they relate to the sectoral professions benefiting from automatic recognition whereas property professionals fall within the general system.

### 4.7. Automatic recognition in the areas of craft, trade and industry

This refers to the list of professions in Annex IV of the Directive which benefit from automatic recognition on the basis of professional experience.

**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.

CEPI recognises the need to modernise the list of activities referred to in Annex IV but does not have a view as to the list which should replace it at present. Automatic recognition could be mixed based on training leading to a diploma, professional experience of a certain minimum duration or a minimum level of diploma and experience.

### 4.8. Third country qualifications

**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?

We see this as a political question which CEPI is not in a position to answer.