



15.3.2012

NOTICE TO MEMBERS

(31/2012)

Subject: Reasoned opinion by the French Senate on the proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and regulation on administrative cooperation through the Internal Market Information System (COM(2011)0883 – C7-0512/2011 – 2011/0435(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the French Senate on the above-mentioned proposal.

No 107

SENATE

ORDINARY SESSION, 2011-2012

6 March 2012

EUROPEAN RESOLUTION

CONTAINING A REASONED OPINION

*on the **conformity with the subsidiarity principle** of the proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the **recognition of professional qualifications** and regulation on administrative cooperation through the **Internal Market Information System** (E 6967)*

Pursuant to Article 73 octies, paragraphs 4 and 5, of the Senate's Rules of Procedure, the motion for a resolution of the Committee on Social Affairs, worded as follows, has become a Senate resolution:

See publications:

Senate: 325 and 450 (2011-2012).

The proposal for a Directive aims to amend the system of mutual recognition of professional qualifications in the European Union in order to benefit the mobility of professionals qualified in a situation of freedom of establishment and freedom to provide services. Medical professions, which would continue to benefit from the changes to the rules, would be directly targeted by the new provisions, particularly those concerning the European Professional Card, partial access to a profession and assessment of linguistic ability.

Having regard to Article 88-6 of the Constitution,

The Senate makes the following comments:

(1) A European text must be comprehensible if it is to conform with the subsidiarity principle. If it lacks clarity, neither the parameters for Member States' competence and obligations nor the scope of a set of rules can be fixed. It then becomes impossible for national parliaments to conduct the task of supervising subsidiarity, which it falls to them to do.

In this context it is worth highlighting the high degree of uncertainty surrounding the European Professional Card project. Whilst the statement of reasons in the proposal for a Directive stresses that the Card is optional for each profession, this is not reflected in the proposal itself. This ambiguity concerning a central element of the proposal calls into question its comprehensibility and, as a result, its conformity with the subsidiarity principle.

The same applies to the common training framework and common training test projects, which have an unspecified scope whilst aiming to extend the automatic recognition of qualifications.

(2) The European Union has only limited powers in health matters. In particular its actions must 'respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care' (Article 168(7) of the Treaty on the Functioning of the European Union).

A number of provisions contained in the proposal for a Directive, if applied to the health care professions, would put at risk the proper functioning of national health care systems and the safety of patients. This is particularly true of the provisions concerning partial access to professions and assessment of language ability, which would deprive the Member States of some of their power of control. By taking this step, the European Union would be going beyond the powers conferred on it by the Member States in the Treaties. The Member States remain responsible for the proper functioning of their health care systems. Preventing them from exercising controls which contribute to patient safety runs counter to the subsidiarity principle.

(3) Similarly, the European Union has only limited powers in education matters, where it may act solely in support of Member States. A number of provisions in the proposal for a Directive might lead to a harmonisation of national education provisions, which would

contravene Article 165 of the Treaty on the Functioning of the European Union. This is also true of extending the scope of the Directive to paid traineeships.

(4) The proposal for a Directive contains a large number of references to delegated acts adopted by the European Commission which are worded in a way which makes it impossible to judge the scope of the delegation. This might lead to an intervention by the European Commission in training courses for doctors, nurses, midwives, dentists and pharmacists.

(5) Finally, the proposal for a Directive requires the Member States to submit a number of reports to the European Commission, some on a regular basis. In terms of the further training of health care professionals, this goes beyond the scope of the Directive. These notification and evaluation reports clearly exceed the means necessary to achieve the EU's objectives and thus contravene the proportionality principle.

The Senate therefore thinks that, as it stands, proposal for a Directive E 6967 does not comply with Article 5 of the Treaty on European Union and Protocol No 2 annexed thereto.

This text became a Senate resolution on 6 March 2012.

The President

Signed: Jean-Pierre BEL