ENMCA position

European Network of Medical Competent Authorities

Position paper of the European Network of Medical Competent Authorities on the Proposal to amend the 2005/36/EC professional qualifications Directive

The Network brings together the medical competent authorities in the European Economic Area (EEA) responsible for the recognition of medical qualifications in accordance with Directive 2005/36/EC.

We welcome the opportunity to respond to the European Commission legislative proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation […] on administrative cooperation through the IMI System (December 2011).

Our statement focuses on the key questions of relevance to the Network and is informed by our considerable expertise and practical experience of the implications of high levels of professional mobility[1]. In light of the important role of competent authorities in the recognition process, we would encourage the EU institutions to enshrine their participation in the Directive especially in the context of the establishment of the alert mechanism, the review of the minimum training requirements and the professional card through delegated and implementing acts. As currently drafted recitals 24-26 do not

[1] According to the EC's *Evaluation of the Professional Qualifications Directive* (July 2011) doctors are one of the most mobile professions in the EEA.

provide sufficient assurances that the relevant stakeholders will be involved in the process. The Directive must set out a clear and transparent decision-making framework to ensure the formal participation of all relevant stakeholders, including competent authorities, in the process.

This position paper is in complement to the Network response to European Commission (EC)'s March 2011 consultation; our joint Green Paper submission in July 2011; and individual positions from Network participants.

Internal Market Information system

IMI and professional cards

1. Network participants continue to have concerns regarding the introduction and role of the European professional card. A professional card as outlined in the proposal should only be adopted at European level if it becomes a genuine tool to facilitate the recognition process but should not replace the process itself or dilute the existing safeguards for patients. Whilst we welcome greater involvement from the home competent authority in the recognition process, we do not support the proposal that it should validate[2] (recognise) the professional card. Its role must be limited to issuing the card after it has certified that the information it has received from the applicant is authentic. There should be no confusion as to where the responsibility for recognition lies. This must reside solely with the host member states.

2. The Network fully agrees that the recognition process could be improved through a more comprehensive use of the Internal Market Information System (IMI). We support the proposal that IMI be made compulsory and that users should be subject to enforceable deadlines to ensure that competent authorities respond to IMI requests in an effective and timely manner. We remain of the view that this could be achieved by allowing competent authorities to exchange documents, including Certificates of Current Professional Status[3] (CCPS) / Certificates of Good Standing (CGS), directly through IMI. Network participants also welcome the Commission's clarification that the card will take the form of an e-certificate and call on the EU institutions to change the terminology used in the proposal and refer to the card as either a professional qualifications e-certificate or an e-mobility certificate.

3. We oppose the suggestion that on presentation of an e-certificate, the host member state would no longer be required to check the identity and the original documentation submitted by applicants. To guarantee patient safety, host competent authorities must be able to carry out their own verification of

[2] The use of the term "validate" was clarified by the Commission and means "recognise".

[3] A template for the certificate was developed and agreed by the Healthcare Professionals Crossing Borders (HPCB) initiatives in 2005 and is included in the Edinburgh agreement.

the documents required for recognition, even if at times this might be considered resource intensive and especially in cases of doubt. We are also concerned that the home competent authorities will find it difficult to cover the increased administrative costs that will result from a shift in responsibility for recognition, and may lack sufficient resources to carry out a thorough assessment of a professional's documentation at the point of departure.

4. Participants agree with the principle that the deadline for recognition decisions, on submission of a complete application, could be gradually decreased. However the Network believes that the timelines proposed in the Directive (articles 4.c.1; 4.c.2; 4.c.3; 4.d.1; 4.d.2; 4.d.3; 4.d.4; 4.d.5) are too ambitious, even if a new system based on an electronic certificate exchanged via IMI, that gives more responsibility to the member state of establishment, is implemented. Ultimately, no matter how good the new process, finite human resources will be required to assess applications and reach recognition decisions, and there is no evidence in the EC's Impact Assessment that shifting responsibilities from host to home competent authority will indeed speed-up the process. The Network therefore believes that the deadlines proposed in Article 4 are unrealistic. They must instead be tested and established in the context of pilot projects after the Directive has been adopted, and be implemented via subsequent delegated acts.

5. The Network also holds the view that it is unacceptable that an e-certificate shall be deemed to be validated (recognised), if the host member state fails to take a decision within the set time limits. In the interest of patient safety the concept of tacit authorisation (article 4.d.5) must be removed. Similar provisions for temporary and occasional recognition which are enshrined in the existing Directive by Article 7.4, must also be revoked.

6. We remain of the view that, for general systems, it would not be appropriate for the competent authority of establishment to carry out a comparison of the training for the purpose of issuing a card. The Network firmly believes that the host competent authority is best placed to establish whether the education and training of a migrant doctor is equivalent and whether compensation measures are required. We also doubt that an IMI electronic translation mechanism would provide accurate enough translations of complex documents such as specialist training curricula and will therefore continue to require official translations of these documents.

7. For temporary and occasional mobility, we do not support the EC's suggestion that the issuing of an e-certificate should replace the prior declaration, which we believe is essential for public protection, and we strongly disagree with the proposal that temporary and occasional should cover a renewable period of up to two years (article 4.b.3.). The temporary and occasional provisions in the Directive must not serve as a route to evade regulatory scrutiny or avoid the payment of registration fees, which cover the cost of regulation for all doctors in the individual member states.

8. We also believe that IMI should remain a mechanism for the exchange of information. Suggestions that an IMI file could be created to hold information would not be proportionate. The creation of files would go beyond the requirements of the Directive, lead to duplication of data already held by

competent authorities and, if not continuously updated, be unreliable and therefore pose a risk to patient safety if, for example, a doctor is given authorisation to practise on the basis of outdated information.

9. In view of the proposal that cards should be made available to employers and patients to enable them to check the authenticity and validity of a doctor's recognition (article 4.e.7), the Network believes that the means by which competent authorities make registration information available to the public after recognition must be left at the discretion of member states[4] . The Network therefore maintains that any issuing of physical cards must be voluntary for the competent authority and should be introduced at national level, only if competent authorities choose to adopt this method to show evidence of registration.

10. The Network would like to signal its interest to the EC to participate in a pilot to develop IMI so that the e-certificate and all other necessary documents (e.g. the CCPS) for the recognition of medical qualifications can be exchanged electronically. This system can be developed alongside a national professional card to be issued, on a voluntary basis, by interested competent authorities after the recognition procedure has been completed.

IMI and alert mechanism

11. We agree that all competent authorities should be required to register with IMI and to respond to queries sent through the system.

12. We also welcome the EC's proposal that an IMI alert mechanism, allowing competent authorities to share information about sanctions that prohibit doctors from pursuing professional activities in line with national and European data protection requirements, should be incorporated in a revised Directive (article 56.a).

13. In addition, the Network urges the European institutions to extend the alert mechanism to medical professionals that seek recognition under the general systems and those that move under the provisions of annex 5.1.1 (basic medical training). The current provisions (article 56.a.1.a and 56.a.1.b) apply to automatic recognition of specialties only, yet the risk to patient safety of any migrant doctor with restrictions exists regardless of the recognition route they took to practice elsewhere in the EEA.

[4] In this context, some participants believe that live online historical registers are a more effective and safe way to prove the current registration status of a professional to employers and patients than cards. The creation of online registers must be left at the discretion of member states and exist outside and independently of IMI in accordance with the Network's position on IMI files (see paragraph 6).

14. We also reiterate our call on the European institutions to consider whether the alert mechanism could be used to support the exchange of intelligence about individuals that try to register with fake diplomas or false identities.

15. We urge the EU institutions to formally involve the Network in the development of implementing acts (article 56.a.5) which will put into practice the alert mechanism provisions of article 56.a. The involvement of the competent authorities must be enshrined in article 56.a of a revised Directive.

Language requirements

16. The Network believes that the language provisions proposed by the EC worsen the patient safeguards that currently exist in article 53 of the 2005/36/EC Directive.

17. To postpone the language assessment after registration is granted, and only if an employer or patient body requires it, would limit the ability of regulatory bodies to protect patients and ensure that only those that are suitably qualified and are fit and safe to practise gain access to the medical profession.

18. We would also like to remind the EU institutions that access to the profession does not rest solely on the recognition of professional qualifications. The regulation of the medical profession extends to the assessment of a doctor's safety to practise medicine, before granting access to the profession. Therefore, in line with the EFTA court opinion[5], we maintain that language proficiency of the host member state, including the ability of a professional to communicate with their patients, colleagues and the wider healthcare system, and the absence of any fitness to practise decision, are essential requirements. Whilst it is true that an obligation currently exists on professionals to have the necessary language skills, the requirement is meaningless unless competent authorities can request evidence of this knowledge.

19. We therefore reiterate our call on the EU institutions to review article 53 and recital 19, and include a derogation in the Directive to allow medical competent authorities to request evidence attesting language knowledge from migrating doctors before granting access to the medical profession. This requirement must apply to both automatic recognition and general system cases,

[5] The recent EFTA court opinion (Case E-1/11) draws a helpful distinction between recognition and access to the profession and confirms that, under the provisions of the existing Directive, competent authorities are entitled to make a licence to practise conditional upon doctors having the linguistic knowledge necessary for practising the profession. EFTA, Court Judgment in Case E-1/11 (15 December 2011), Request to the Court under Article 34 of the Agreement between the EFTA, States on the Establishment of a Surveillance Authority and a Court of Justice the Norwegian Appeal Board for Health Personnel in the case of Dr A concerning the interpretation of Directive 2005/36/EC and other EEA law.

employed and self-employed doctors, and mirror the provisions proposed for acquired rights doctors moving under the temporary and occasional provisions (article 7.2.f).

20. We believe that patient organisations do not have the appropriate expertise or mandate to conduct language assessment and should not be part of this process.

Modernising automatic recognition

21. The Network believes that to ensure trust and confidence in the automatic recognition system, the process of modernisation needs to be transparent, objective and inclusive, formally involving the competent authorities. In this context, we would encourage the European institutions to include a reference to competent authorities in the Directive so that they can assist the EC in this task and play a key role in reviewing the existing requirements, to ensure that qualifications are genuinely comparable.

22. The Network does not support the suggestion in article 24.4 that would empower the Commission to adopt delegated acts to specify the content of basic medical training. Any update of the minimum training requirements needs to be carried out with full collaboration of the member states and competent authorities. As currently drafted the Directive would encroach on the prerogative of national competent authorities to determine the content of basic medical training in line with their national health requirements.

23. Similarly the Network does not support the inclusion of common training requirements and common training tests proposed in articles 49.a and 49.b and maintains the view that medical education and training must remain a responsibility at national level. Common training frameworks must not apply to doctors that currently benefit of recognition under the general systems.

24. Participants welcome the proposal to improve the notification system for the inclusion of new diplomas in the Annexes of the Directive. We also support the proposal for a compliancy document to accompany new notifications to ensure that amended qualifications continue to meet the minimum training requirements and call on the EC to provide further details about the criteria which are to be used in the reports.

25. The Network also believes that the extension of automatic recognition to new specialties, if there are differences in the content of training, must not be imposed on member states, even if the specialty exists in their jurisdiction. We would also like to see a further clarification to the process and criteria used to add new specialties to the Directive. This would be a positive way of improving patients' confidence and transparency in the automatic recognition system.

26. We note the proposal to lower the threshold of member states required to extend automatic recognition. Participants suggest that, before lowering the threshold, the EC must ensure that the

process is made more transparent than the current comitology procedure, and is based on objective criteria for inclusion.

27. The Network considers that the organisation of medical education and training is the competence of member states and maintains the view that automatic recognition should rest on the basis of a completed qualification rather than periods of training. Competent authorities should have sole responsibility for any amendments to the minimum periods of training. In this context we do not support the proposal that would empower the Commission to adopt delegated acts in this area unless member states and competent authorities are fully consulted in this process. The general system already provides an effective route for competent authorities to take periods of training and experience into consideration and we welcome the EC's proposal (article 25.3.a.) that partial exemptions for professionals who have already obtained a specialist qualification should be voluntary and organised at national level. In addition, the provisions of article 25.3.a. must also apply to doctors with training in general medical practice (article 28 and Annex 5.1.4).

Partial access

28. We support the proposal that partial access should be rejected in cases of an overriding reason of general interest, such as public health. To clarify the proposal, we call on the Commission to clearly outline in the Directive which professions are exempt from partial access. This should mirror the list member states will be required to notify to the Commission under the temporary and occasional provisions (article 7.4).

Evidence of current practice

29. We agree with the Commission that the inclusion in the Directive of continuous professional development requirements for the purposes of recognition may not be possible, given the existence of varying competence assurance systems across and within member states. However, we are concerned that the draft proposal does not require professionals to provide evidence of current practice as a condition for automatic recognition.

30. The suggestion that member states would be required to submit information about their continuing education and training procedures every five years will not address the unease competent authorities experience when they have to automatically recognise healthcare professionals that have not practised their profession for many years since the award of their qualification. Some network participants therefore believe that automatic recognition must be linked with a requirement on professionals to demonstrate that they have been effectively and lawfully engaged in recent and relevant professional activities.

Competent authorities in support of this position paper

Austria	Österreichische Ärztekammer
Belgium	General Directory Primary Care and Crisis Management of the Federal Public Service Health, Food Chain Safety and Environment
Cyprus	ΙΑΤΡΙΚΟ ΣΥΜΒΟΥΛΙΟ ΚΥΠΡΟΥ
Czech Republic	Ministerstvo zdravotnictví
Denmark	Sundhedsstyrelsen
Estonia	Terviseamet
Finland	Sosiaali- ja terveysalan lupa- ja valvontavirasto, Valvira
France	Conseil National de l'Ordre de Médecins
Germany	Bundesärztekammer
Hungary	Egészségügyi Engedélyezési és Közigazgatási Hivatal
Ireland	Medical Council
Iceland	Directorate of Health
Italy	Ministero della Salute
Latvia	Latvijas Ārstu biedrība
Luxembourg	Ministre de la Santé
Malta	Kunsill Mediku
The Netherlands	Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst
Norway	Statens autorisasjonskontor for helsepersonell
Portugal	Ordem dos Médicos
Romania	Colegiul Medicilor din Romania
Slovenia	Ministry of Health
	Zdravniška zbornica Slovenije
Sweden	Socialstyrelsen
UK	General Medical Council