EUROPEAN COMMISSION
Internal Market and Services DG

Update 22 October 2010
MARKT D/3418/6/2006-EN

GROUP OF COORDINATORS FOR THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

FREQUENTLY ASKED QUESTIONS

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Directive 2005/36/EC

Frequently Asked Questions

This version represents an update of a document published in June 2008. In the meantime, the Treaty of the European Communities has been replaced by the Treaty on the Functioning of the European according to the Treaty of Lisbon. This does not have any bearing on the responses given in June 2008.

As to the Directive itself, the Commission published a User's Guide on 9 December 2009. That guide is not designed to provide legal clarification but only to provide information on the Directive in an easily understandable form for interested citizens.

The Articles referred to hereinafter without further specification are those of Directive 2005/36/EC. Quotes from the Directive appear in italics. Questions follow the order of the Directive.

1. GENERAL PROVISIONS (ARTICLES 1 TO 4)

- **What is the scope of the Directive, rationae personae ?**

Article 2 (1): *"This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis."*

The Directive only applies to natural persons and not to companies. The persons concerned may be employed or self-employed. Private and public employees are both covered.

The Directive also applies whenever nationals of a Member State A having obtained their qualifications in a Member State B want to exercise their regulated profession in Member State A.

See as well point 8 on third country citizens.

- **Does the Directive apply in the case of "Zig Zag" (free riders?)?**

Recital 12: *"This Directive (…) does not, however, concern the recognition by Member States of recognition decisions adopted by other Member States pursuant to this Directive. Consequently, individuals holding professional qualifications which have been recognised pursuant to this Directive may not use such recognition to obtain in their Member State of origin rights different from those conferred by the professional qualification obtained in that Member State, unless they provide evidence that they have obtained additional professional qualifications in the host Member State."*

The concept of Zig Zag refers to cases such as the following. An EU national follows a specific training programme in Member State A but does not obtain the qualification giving access to the profession in this Member State at the end of his training. He then

goes to Member State B where his training in Member State A is recognised on the basis of the academic studies he had pursued, without any additional education or work experience acquired in Member State B. Can he invoke this recognition by Member State B to go back and work in Member State A?

Recital 12 clarifies that the migrant cannot invoke the Directive in such cases. Indeed, this would constitute a circumvention of the system. However, the Directive applies whenever the migrant has acquired additional training or experience in the Member State B.

- **What is the significance of the reference to "professional experience" in the definition of "professional qualifications"?**

Article 3(b): *"Professional qualifications": qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a), subparagraph (i) and/or professional experience"*

With the terms "and/or professional experience", reference is made to all cases in which professional experience can be required or must be taken into account by the host Member State. This concerns not only Articles 16-20 according to which recognition is solely based on the migrant's professional experience but also other provisions of the Directive such as Articles 5 and 13 (requirement of 2 years of professional experience when the profession is not regulated in the Member State of establishment/home Member State) and Article 14 (obligation for the host Member State to take into account professional experience when requiring a compensatory measure). Professional experience is also relevant for acquired rights in "sectoral" professions, as in Articles 23, 27, 30, 33, 37, 39, 43 and 49 of Directive 2005/36/EC.

In all cases, professional experience is to be understood with regard to the profession concerned which the professional has to have effectively and lawfully pursued. The type of document to be produced to prove the professional experience is sometimes imposed by the Directive (e.g. the certificate referred to under Annex VII(1)(c) for the experience required under Articles 17 to 19). In other instances, proof can be provided by any means (see for example Article 7(2)(d) of the Directive).

2. FREE PROVISION OF SERVICES (TITLE II ARTICLES 5 TO 9)

2.1. Scope of application

- **Does Title II cover the situation of employed professionals?**

The references in Directive 2005/36/CE to "service provider" and to "provision of services" include the professionals wishing to practice temporarily in the host Member State both on a self-employed and employed basis. Moreover, the term "established" referred to in Title II of the Directive includes the situations of professional practice in the home Member State both on a self-employed and employed basis.

2.2. Substantial conditions (Article 5)

- **What does the condition of legal establishment imply?**

Article 5 (1): *(…) Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State: (a) if the service provider is legally established in a Member State for the purpose of pursuing the same profession there (…)*

A person legally established in a Member State in accordance with Directive 2005/36/EC is a person who fulfils the conditions to exercise the profession in this Member State, i.e. a person having the right to practice the profession there. The term "legal" in "legal establishment" refers to the fact that the person must not be prohibited from exercising his/her activity as a self-employed or an employed person. For example, a professional pursuing his/her activity while being struck off a register would not be legally established. On the contrary, a professional not having paid all his/her taxes whilst not being suspended in his/her country of establishment would be deemed to be legally established. When renewal of a licence is required to practice, a person not fulfilling the necessary conditions would not longer be legally established.

Persons are legally established under Directive 2005/36/EC if they have the right to practice even if they do not exercise their activity at the time when they intend to provide a service. Hence, a person wishing to provide temporary services right after a maternity leave would be considered to be legally established in the sense of the Directive even though she was not practising in the Member State of establishment just before providing the service. The situation of temporarily unemployed people would be the same. Similarly, recent graduates being authorised to practice in their country of establishment (for example by being registered there) would be entitled to provide temporary services in another Member State even if they did not start to exercise their activity in their Member State of establishment. Of course, this would only apply if their profession is regulated in their Member State of establishment (otherwise two years of professional experience may be required).

For "sectoral" professions, the qualifications, be they Community or third-country qualifications, shall meet the requirements of the Directive.

- **What happens if a migrant does not have the two years of professional experience required when the profession is not regulated in the Member State of establishment?**

Article 5 (1) (b): (…) *if he has pursued that profession in the Member State of establishment for at least two years during the 10 years preceding the provision of services when the profession is not regulated in that Member State (…).*

In such a case, the migrant does not meet one of the substantial conditions laid down by the Directive. Therefore, he/she cannot enjoy the benefit of Title II of the Directive. Instead, the TFEU Treaty (to be interpreted in the light of the jurisprudence of the previous EC Treaty provisions), applies.

- **What proof should be given of the professional experience of two years?**

Any means of proof should be accepted as confirmed by Article 7 (2)(d) of the Directive ("*for cases referred to in Article 5(1)(b), any means of proof that the service provider has pursued the activity concerned for at least two years during the previous ten years").*

Hence, the migrant does not have to submit a certificate delivered by a competent authority. For instance, pay slips or attestations from employers must be accepted by the host Member State.

- **Must holders of third country diplomas have a minimum of three years of professional experience in order to provide services?**

Article 5 § 1 does not require that holders of third country diplomas must have a minimum of three years of professional experience in order to provide temporary services. The regime of Title II of Directive 2005/36/EC is based on the existence of legal establishment in a Member State, including the qualifications required in this respect.

2.3. Insurance cover (Article 7(1))

- **What can a host Member State require in terms of insurance cover ?**

Article 7(1): *"Member States may require that, where the service provider first moves from one Member State to another in order to provide services, he shall inform the competent authority in the host Member State in a written declaration to be made in advance including the details of any insurance cover or other means of personal or collective protection with regard to professional liability. Such declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services in that Member State during that year. The service provider may supply the declaration by any means."*

By virtue of Article 7(1), Member States can require information about any insurance coverage. This provision contains an obligation just to provide information and not to take out insurance. Such an issue is dealt with by the Services Directive 2006/123/EC, provided that the regulated profession at stake falls under its scope. If this is not the case, the TFEU Treaty applies.

2.4. Declaration (Article 7)

- **Is there any time limit to the validity of the documents accompanying the declaration?**

Article 7(2)**:** *"Member States may require that the declaration be accompanied by the following documents: (a) proof of the nationality of the service provider, (b) an attestation certifying that the holder is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation, (c) evidence of professional qualifications, (d) for cases referred to in Article 5(1)(b), any means of proof that the service provider has pursued the activity concerned for at least two years during the previous ten years, (e) for professions in the security sector, where the Member State so requires for its own nationals, evidence of no criminal convictions."*

Article 7(2) does not allow the host Member State to place a time limit on the validity of the documents referred to under this provision. Firstly, if any time limits are allowed, this is explicitly stated in the Directive. Secondly, such a time limit would not be consistent with the overall approach under Article 7, according to which these documents can be

requested only for the first provision of services, which means that any subsequent provision of service can take place without any further documentation, unless the situation of the service provider has changed.

If the Member State concerned so decides, service providers will also have to submit the documents if there is a material change in their situation during the service provision. The documents related to a material change may be required each time there is such a change within the year following the declaration/the renewal of the declaration, if a service is provided after the change has occurred. Otherwise, Member States may only require the documents at the time of the yearly renewal of the declaration.

The accuracy of the information contained in the documents provided can be checked at any time through administrative co-operation.

- **What measures will a host Member State be able to take when a migrant fails to produce the documents required for the first provision of service ?**

A service provider who does not produce the documents required in accordance with Article 7(2), would fail to respect the formalities imposed on him, but would not fail to fulfil any substantive condition (legal establishment and possibly professional experience). Any sanctions imposed would have to be non discriminatory, justified and proportionate to the infringement. For example, a prohibition to practise for failing to respect formalities would go beyond what could be considered a proportionate sanction.

- **What is the scope of application of the prior check of qualifications?**

Article 7(4): *"For the first provision of services, in the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition under Title III Chapter III, the competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services."*

Article 7 (4) covers "regulated professions having public health or safety implications", which do not benefit from automatic recognition, including the cases referred to in Article 10.

There can be no prior check of the professional qualifications where there is automatic recognition under Chapter III of Title III (recognition on the basis of coordination of minimum training conditions). However, when a professional does not meet the requirements of Chapter III of Title III (see the cases listed under Article 10 of the Directive), he/she may be subject to a prior check of qualifications.

In the same vein, there should be no prior checks of qualifications for the activities falling under Annex IV when the migrant fulfils the conditions of professional experience listed in Chapter II of Title III. Otherwise, it would be more difficult for the migrants concerned to provide temporary services than to establish themselves permanently which would contradict the ECJ jurisprudence (see for example point 13 of the Judgment of the Court of 25 July 1991in the "Säger" case C-76/90).

- **What type of compensatory measures can be imposed under Title II?**

Compensatory measures can only be envisaged in cases where a prior check of qualifications is allowed and under the following conditions.

Article 7(4): *"Where there is a substantial difference between the professional qualifications of the service provider and the training required in the host Member State, to the extent that that difference is such as to be harmful to public health or safety, the host Member State shall give the service provider the opportunity to show, in particular by means of an aptitude test, that he has acquired the knowledge or competence lacking. In any case, it must be possible to provide the service within one month of a decision being taken in accordance with the previous subparagraph."*

An aptitude test is only one example of a possible compensatory measure. Other types of compensatory measures can be envisaged. In any case, the compensatory measure must be such that the service can be provided within one month of the decision taken by the competent authority, which excludes periods of supervised practice exceeding this deadline.

- **What happens if a service provider fails to show that he/she has acquired the knowledge or competence lacking? Should they be refused or can they take the aptitude test again?**

The migrant can be refused until he/she has acquired the relevant knowledge or competence. However, he/she should be given the opportunity to take the aptitude test again.

The Code of Conduct approved by the group of coordinators established for the General system of recognition of diplomas can be referred to. It provides: *"migrants are allowed to resit the test. The rules governing the number of times candidates may take the test should take account of national practice (with due regard for the principle of non-discrimination)."*

- **Can additional verifications such as health checks or police checks be carried out?**

The only additional verifications which are admissible are those referred to under Article 8 (see below). These verifications can only be carried out through administrative co-operation.

2.5. Exchange of information (Article 8)

- **What is the significance of the term "good conduct"?**

Article 8: *"The competent authorities of the host Member State may ask the competent authorities of the Member State of establishment, for each provision of services, to provide any information relevant to the legality of the service provider's establishment and his good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature. The competent authorities of the Member State of establishment shall provide this information in accordance with the provisions of Article 56."*

"Good conduct" and "good character" (see Annex VII) have the same meaning, which is in substance the absence of reprehensible behaviour which affects the exercise of the profession.

2.6. Use of professional titles (Article 7) / information to consumers (Article 9)

Article 7(3) *"The service shall be provided under the professional title of the Member State of establishment (…) By way of exception, the service shall be provided under the professional title of the host Member State for cases referred to in Title III Chapter III".*

Article 7(4): *"In cases where qualifications have been verified under this paragraph, the service shall be provided under the professional title of the host Member State."*

Article 9: *"In cases where the service is provided under the professional title of the Member State of establishment (…) the host Member State may require the service provider to furnish the recipient of the service with any or all of the following information […].*"

Temporary services are provided under the professional title of the Member State of establishment unless the relevant competent authorities decide to do a prior check of the qualifications in accordance with Article 7(4). In those cases, as well as in the cases of "sectoral" professions, service providers use the professional title of the host Member State. For its part, Article 9 aims at providing the recipients of the services with additional information about the service provider when that service provider is not entitled to use the relevant professional title of the host Member State. Article 9 may therefore be applied only when the professional uses the professional title of the Member State of establishment.

3. FREEDOM OF ESTABLISHMENT – GENERAL SYSTEM (TITLE III ARTICLES 10 TO 15)

3.1. Levels of qualifications

- **Is there a relationship between the 5 levels of Article 11 of the Directive and the 8 levels of the European Qualifications framework (EQF)?**

No, the logic behind the two instruments is different. The EQF levels shall not be used when applying the Directive.

The EQF is an instrument whose purpose aims at increasing transparency of qualifications. The EQF will therefore be a very useful tool with a view to pursuing studies in another Member State but also on the labour market in the area of non-regulated professions. Up to now, when a profession was not regulated in a Member State the employer had no information on qualifications issued in other Member States. He could therefore have been reluctant to recruit holders of such qualifications. With the EQF he will now have information on the level of the qualification, given that by 2012 Member States are invited to indicate the EQF level on each qualification.

However, when national authorities receive an application for the recognition of a qualification with a view to accessing a regulated profession, the examination of such a qualification must be done exclusively by referring to the system put in place by Directive 2005/36/EC.

- **Why are diplomas delivered after the completion of four years post-secondary training classified under two different levels?**

Article 11: *"(…) the professional qualifications are grouped under the following levels as described below: (…)*

(d) a diploma certifying successful completion of training at post-secondary level of at least three and not more than four years' duration, or of an equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment providing the same level of training, as well as the professional training which may be required in addition to that post-secondary course;

(e) a diploma certifying that the holder has successfully completed a post-secondary course of at least four years' duration, or of an equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course."

Article 13

(1) *(…) the competent authority of that Member State shall permit access to and pursuit of that profession (…) to applicants possessing the (…) qualifications required by another Member State (…)*

(b) *they shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host Member State (…)*

(3): *"By way of derogation (…) the host Member State shall permit access and pursuit of a regulated profession where access to this profession is contingent in its territory upon possession of a qualification certifying successful completion of higher or university education of four years' duration, and where the applicant possesses a qualification referred to in Article 11, point (c).*"

The only purpose of the levels defined in Article 11 of the Directive is to enable the functioning of the rules on mutual recognition under the so-called "general system" (Title III, Chapter I). According to Article 13 of the Directive, without prejudice to the possibility for the host Member State to require a compensation measure under certain conditions described in Article 14, the migrant has the right to obtain recognition of his/her professional qualification if he/she is fully qualified in his/her home Member State for the same profession and if the qualifications he/she holds **are at least of the level immediately below that required in the host Member State**. There is no obligation of recognition for the host Member State under the Directive if the migrant's qualifications are of a level lower than that immediately below the level required in the host Member State[1].

The diplomas awarded after the completion of a **four-year** post-secondary training course in a university or in an establishment of higher education are contained in both levels described under Article 11 d) and under Article 11 e). This is the result of a difficult compromise and allows the Member States to consider that their corresponding training belongs either to one or the other of those levels. .

[1] In such cases, the EC Treaty as interpreted by the European Court of Justice applies.

This could have resulted in excluding from the benefit of mutual recognition under the Directive holders of qualifications under level 11 (c) when the host Member State would have chosen to classify the post secondary training of 4 years required in its territory for the profession concerned under level 11 (e) (because of the gap of more than one level). In order to avoid this and to keep the situation unchanged compared to the previous Directives 92/51/EEC and 89/48/EEC, a derogation was introduced in Article 13(3). According to this provision, the holder of qualifications under level 11 (c) has the right to have those qualifications recognised under the Directive if the host Member State requires post-secondary training of four years duration regardless of whether this training is classified under level 11d) or 11e).

- **What are the differences between the qualifications referred to in Article 12 and those of Article 11 point c, subparagraph (ii) of the Directive?**

Article 12(1): "*Any evidence of formal qualifications or set of evidence of formal qualifications issued by a competent authority in a Member State, certifying successful completion of training in the Community which is recognised by that Member State as being of an equivalent level and which confers on the holder the same rights of access to or pursuit of a profession or prepares for the pursuit of that profession, shall be treated as evidence of formal qualifications of the type covered by Article 11, including the level in question."*

Article 11 c (ii): "*(…) training with a special structure, included in Annex II, equivalent to the level of training provided for under (i), which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions."*

Article 12(1) deals with qualifications that run "parallel" to "standard" qualifications. This parallel qualification has to be of an equivalent level and has to confer equivalent rights of access to or pursuit of a given profession. For the purpose of recognition of professional qualifications, the "parallel" qualification is classified within the same level as the "standard" qualification (one of the five levels described in Article 11 of the Directive).

Courses having a special structure, which are referred to in Article 11 point c) subparagraph (ii) and are listed in Annex II, are not "parallel" courses but "standard" courses leading to certain professions. They are all classified under the level described under point 11c) of Directive 2005/36/EC.

- **Are migrants entitled to the same rights under the Directive when they have worked part time only?**

Yes, even though this is not explicitly stated in Directive 2005/36/EC (e.g. Article 13 (2) refers to the pursuit of the profession *"on a full time basis for two years during the previous 10 years*"). The professional experience of the migrant having worked part-time has to be equivalent to the required duration on a full time basis.

This only concerns professional experience. For professions where minimum training conditions have been harmonised, each Member State is free to allow part time training, or not, under certain conditions: the overall duration, level and quality of the relevant training cannot be lower than that of full-time training (see Article 22 (a)). However, where such part-time training has been established, it must be accorded the same recognition by the host Member States as full-time training.

3.2. Common platforms

- **Can common platforms constitute a harmonisation of training conditions?**

Article 15 (1): *"(…) "common platforms" is defined as a set of criteria of professional qualifications which are suitable for compensating for substantial differences which have been identified between the training requirements existing in the various Member States for a given profession.(…)"*

Common platforms cannot constitute a harmonisation of training conditions. This would be contrary to Article 149 of the EC Treaty according to which Member States are responsible *"for the content of teaching and the organisation of education systems"* and Article 15 paragraph 4 and Recital 16 of the Directive which recall the *"competence of Member States to decide the professional qualifications required for the pursuit of professions in their territory as well as the contents and the organisation of their systems of education and professional training"*.

Common platforms are only designed to allow migrants fulfilling their criteria to have their qualifications recognised without compensation measures (see Article 15(3)). To date, no common platform has been introduced at European level.

A document published on the Commission Website explains how common platforms should be established.
(http://ec.europa.eu/internal_market/qualifications/docs/future/platforms_en.pdf)

- **Who can present a common platform?**

Article 15(2): "*Common platforms (…) may be submitted to the Commission by Member States or by professional associations or organisations which are representative at national and European level*."

The representativeness of the association/organisation concerned at European level will be assessed on the basis of the representativeness of members at national level, taking into account the Member States represented and the other existing organisations/associations active in the field.

- **When is a common platform deemed to facilitate the mutual recognition of professional qualifications ?**

Article 15 (2): *"If the Commission, after consulting the Member States, is of the opinion that a draft common platform facilitates the mutual recognition of professional qualifications, it may present draft measures with a view to their adoption in accordance with the procedure referred to in Article 58(2)."*

The added value provided by a common platform will be assessed on the basis of the following cumulative criteria: (1) the number of countries regulating the profession and the migration rates, (2) the existence of substantial differences between Member States and the imposition of "compensation measures", (3) the nature of these compensation measures (they must be difficult to be fulfilled by migrants and hence constitute an obstacle to the freedom of establishment).

4. FREEDOM OF ESTABLISHMENT – RECOGNITION ON THE BASIS OF COORDINATION OF MINIMUM TRAINING CONDITIONS (TITLE III ARTICLES 21 TO 49)

- **Is continuing education and training an obligation under the Directive ?**

Article 22 (b): *"in accordance with the procedures specific to each Member State, continuing education and training shall ensure that persons who have completed their studies are able to keep abreast of professional developments to the extent necessary to maintain safe and effective practice."*

Article 22, point (b) does not introduce any obligation for Member States to set up programmes of continuing education and training for sectoral professions (neither for any other profession), nor does it entitle Member States to require evidence of continuing professional development in view of recognition. Thus, the absence of continuing education and training in the home Member State cannot be a reason to reject a request for recognition. Member States may only impose on migrants already established on their territory an obligation of continuing education and training to the extent that they do so, with regard to the profession concerned, for their own nationals.

- **How can dental specialties not yet listed in the Directive benefit from automatic recognition?**

No simplified procedure is provided for in Directive 2005/36/EC to introduce additional dental specialities in the system of automatic recognition. Recital 20 of Directive 2005/36/EC refers only to "medical specialities": *"...To simplify the system, however, automatic recognition should apply after the date of entry into force of this Directive only to those new medical specialities common to at least two fifths of Member States"*. This analysis is confirmed, on the one hand, by Article 26 *"Types of specialist medical training"* of Section 2 *"Doctors of medicine"*, which provides that the inclusion in Annex V, point 5.1.3, of new medical specialities common to at least two fifths of the Member States may be decided in accordance with the procedure referred to in Article 58(2) (comitology procedure); and, on the other hand, by the absence, under Section 4 *"Dental practitioners"*, of a similar provision on the inclusion of new dental specialities in Annex V, point 5.3.3. This means that the only possible procedure to introduce new dental specialities in Directive 2005/36/EC would be to amend the Directive itself through a co-decision procedure (i.e. the same procedure as for its adoption). However, as stated in the last sentence of recital 20 of Directive 2005/36/EC, the Directive does not prevent Member States from agreeing amongst themselves on automatic recognition for medical and dental specialities common to them but not automatically recognised.

It has to be noted that non-automatic recognition of dental and medical specialities falls under the general system of recognition of qualifications (chapter I, Article 10 point d) of Directive 2005/36/EC.

- **Is there a time limit to the validity of acquired rights' certificates?**

These certificates are to be considered valid as long as the substantive temporal conditions established in the Directive (in general, three years during the five years preceding the request for access to the profession in another Member State) are fulfilled. In the above case, it means that a certificate would have a validity of two years at the most.

5. COMMON PROCEDURES ON ESTABLISHMENT (TITLE III, CHAPTER IV, ARTICLES 50 TO 52)

● **What is the deadline for a decision when the host Member State requires the applicant to complete an adaptation period or to take an aptitude test?**

Article 51 (2) *The procedure for examining an application for authorisation to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months after the date on which the applicant's complete file was submitted. However, this deadline may be extended by one month in cases falling under Chapters I and II of this Title.*

When the General System of recognition is applicable (Chapter I of Title III), the host Member States should decide within 3 (4) months after the date on which the applicant's complete file was submitted whether (a) this applicant's qualifications are recognised or whether (b) he/she should complete an adaptation period or take an aptitude test. In the latter case (b), the final decision on recognition can only be taken after the migrant has completed the required compensation measure. It should be adopted **immediately after the compensation measure is accomplished**.

6. RULES FOR PURSUING THE PROFESSION (TITLE IV ARTICLES 53 TO 55)

● **Can language requirements be imposed on a migrant?**

Article 53: *"Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State."*

The above provision is not new compared to existing law as set out in the jurisprudence of the European Court of Justice (Cf. Judgment of 4.7.2000, C-424/97, Salomone Haim v. Kassenzahnärztliche Vereinigung Nordrhein). The check on language skills is not connected to the recognition procedure concerning professional qualifications. This means that if a migrant whose qualifications have been recognised does not have the necessary language skills, he/she will have to acquire the necessary language skills. However, the recognition of the professional qualifications cannot be denied or delayed until the migrant has acquired the necessary language skills.

Secondly, the language requirement must be proportionate to what is necessary for practising the profession in the host Member State. The proportionality principle excludes a systematic or standardised language check, which should be imposed only in cases of doubt concerning the language skills of individual migrants (e.g. a check on the language skills of a migrant who has studied partially in the host Member State would be questionable). In this respect, a distinction needs to be made between establishment and temporary provision of services, as a requirement that might be justified and proportionate in the case of establishment may not always be in the case of temporary cross-border provision of services. All circumstances of the individual case must be taken into account.

Migrants cannot be compelled to hold a specific certificate of language knowledge delivered by a particular institution (e.g. the Goethe Intitut or a department of a University).

7. APPLICATION OF DIRECTIVE 2005/36/EC TO SWITZERLAND AND TO THE EEA EFTA STATES

- **How will Directive 2005/36/EC affect Iceland, Liechtenstein and Norway?**

An amendment to Annex 7 of the EEA Agreement was made in order to permit a simultaneous application of the Directive in the EU and in the EEA EFTA States(decision from the EEA Joint Committee taken on 26 October 2007). Since 1st July 2009, Directive 2005/36/EC applies to both EU nationals and nationals from Iceland, Liechtenstein and Norway.

- **How will Directive 2005/36/EC affect Switzerland?**

In 1999, the European Community and its Member States, on the one hand, and Switzerland, on the other, concluded a bilateral agreement on the free movement of persons which entered into force on 1 June 2002 (see OJ L 114 of 30/04/2002 p.6). A protocol, which entered into force on 1 April 2006, was concluded to extend the agreement to the 10 new Member States (see OJ L 89, 28.3.2006).

Article 9 and Annex III of the agreement deal with the recognition of professional qualifications. Article 18 of the agreement provides that amendments to Annex III must be adopted by decision of the Joint Committee. The above procedure has to be completed before Swiss nationals can be covered by Directive 2005/36/EC - which is not yet the case. Until then, the "old" Directives continue to apply (they will apply even when repealed by the new Directive at the end of the transposition period).

8. APPLICATION OF DIRECTIVE 2005/36/EC TO THIRD COUNTRY CITIZENS AND TO REFUGEES

Community rules on the recognition of professional qualifications (including rules on the recognition of third country qualifications) are applicable to third country citizens fulfilling the requirements of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (i.e. persons being family member of an EU citizen who is exercising his right to free movement within the EU). Similarly, community rules on the recognition of professional qualifications apply in the Member State where a migrant has obtained the statute of long term resident. However, the rights of long-term residents are more limited than the rights of family members of EU citizens. Indeed, the relevant Directive, Directive 2003/109/EC on the status of third-country nationals who are long-term residents, does not apply in the United Kingdom, Ireland and Denmark. Moreover, this Directive only covers permanent establishment and not temporary provisions of services.

As far as refugees are concerned, Directive 2004/83/EC provides under Article 27.3 that "*Member States shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.*"

This means that when a third country national has obtained the statute of refugee in a Member State he/she must, in this Member State, be treated on equal footing with nationals. As far as recognition of qualifications is concerned, it means that if a refugee holds a qualification obtained in another Member State of the European Union, the Member State which has granted him/her the statute of refugee must recognise this

qualification in accordance with Directive 2005/36/EC. It must be added that Directive 2004/83/EC does not provide for a right of refugees to benefit from rules of the Treaty concerning freedom of establishment and freedom to provide services.

9. RELATIONSHIP WITH OTHER DIRECTIVES DEALING WITH THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Temporary provisions of services carried out by lawyers are ruled by a specific instrument (Directive 77/249/EEC). Directive 2005/36/EC does not apply to them.

Lawyers may benefit, with a view to their permanent establishment, from Directive 98/5/EC when seeking the recognition of the authorisation to practice (i.e. immediate exercise under the professional title of the home Member State) and from Directive 2005/36/EC when requesting the full recognition of the professional qualifications (i.e. professional exercise under the professional title of the host Member State).

Insurance and reinsurance intermediaries are covered by Directive 2005/36/EC to the extent that they fall outside the scope of Directive 2002/92/EC. Natural persons exercising the profession of insurance and reinsurance intermediary not covered by Directive 2002/92/EC would benefit from Directive 2005/36/EC both with a view to temporary provision of services and in the case of permanent establishment. Moreover, natural persons fully qualified as insurance intermediaries in a EU Member State wishing to take up the same profession in another EU Member State on the basis of a permanent establishment, without keeping their original licence, would benefit from Title III, Chapter I of Directive 2005/36/EC since their situation is not covered by Directive 2002/92/EC.

Directive 2005/36/EC does not apply to seafarers covered by Directive 2005/45/EC.

10. RELATIONSHIP WITH THE SERVICES DIRECTIVE

The Services Directive 2006/123/EC and the Professional Qualifications Directive 2005/36/EC are complementary instruments, dealing with different matters (issues linked to the recognition of professional qualifications for the Professional Qualifications Directive. Other matters not linked to professional qualifications such as commercial communications, professional liability insurance, multidisciplinary activities, administrative simplification, tariffs and codes of conduct for the Services Directive).

So, for matters not linked to professional qualifications, the Services Directive will apply for the regulated professions falling within its scope.

11. THE INTERNAL MARKET INFORMATION SYSTEM (IMI)

- **What is the IMI?**

Directive 2005/36/EC reinforces the obligations of Member States in the field of administrative cooperation. In order to facilitate the fulfilment of these obligations under Directive 2005/36/EC, the Commission and Member States have been working on an information system – IMI – which allows connection by computer of all competent authorities in charge of recognition procedures as well as competent authorities in charge of registering professionals on their territory or delivering qualifications and certificates.

IMI is equipped with a translation capacity into all EU languages on the basis of standard questions/ answers.

It is now easier for competent authorities of the host Member State to check whether the migrant has not been struck off the register in his/her Member State of origin or to contact the authorities of the Member State of origin in case of doubt about the diploma or the identity of the migrant.

In such situations, competent authorities are currently faced with the challenges of respecting the strict deadlines set by the Directive (3 to 4 months in the case of permanent establishment) while dealing with technical issues in 20 languages. They face the additional difficulty of identifying their counterparts in the Member State concerned.

- **Which professions are covered by the system?**

When it started, in February 2008, IMI was limited to four professions: doctors, pharmacists, physiotherapists and accountants. Following a pilot phase, it was extended to the rest of the "sectoral" professions in November 2008 (nurses, dentists, veterinary surgeons, midwives and architects) and to secondary school teachers and radiographers. In December 2009, it was further extended to the activities listed under Annex IV to the Directive (crafts, etc).