

Directive on the Recognition of Professional Qualifications adopted on 7th September 2005 (2005/36/EC)

How can it be used to facilitate the movement of psychotherapists across EU borders?

1. Aim of the Directive: freedom of movement of workers

The aim of the Directive is to facilitate the movement of workers across EU borders to pursue their profession in a Member State (host Member State) other than the one in which they have obtained their professional qualifications (home Member State). To this end, the Directive:

- Establishes a **general EU regime of mutual recognition** of professional qualifications through the recognition of diplomas and other evidence of formal qualifications delivered by Member States. Under this general regime, the host Member State retains the right to prescribe the minimum level of qualification required for the pursuit of a profession, but it must take into account (recognise) the qualifications (diplomas) obtained by the candidate migrant in another Member State and assess whether they correspond to those, which it requires.
- Coordinates existing sectoral directives that harmonise the level of formal qualification required (setting of minimum training conditions) for workers in regulated profession¹ such as doctors of medicine, nurses, dental practitioners etc and consequently grant these professions the benefit of a regime of **automatic mutual recognition**.

This Directive is however not intended for the regulation of as yet un-regulated professions such as psychotherapy. Psychotherapists are therefore subject to the general regime of recognition, which implies:

- Going through the procedure of recognition by the host Member States of the candidate migrants' professional qualifications, i.e. their diplomas and other evidence of formal qualifications delivered by their home Member States and
- The obligation for the candidate migrants to comply with case by case national compensation measures imposed by host Member States (choice between an aptitude test or an adaptation period of up to three years). The imposing of compensations measures and their content will depend from the respective levels of qualification required in the host and the home countries.

However, considering the potential obstacle to freedom of movement that such a regime can constitute, the EU Institutions have included a new possibility in the Directive, i.e. **the establishment of a common platform**², that is open to and can be used by non-regulated professions to improve the current state of play with regards to the difficulties encountered by their migrant workers. Indeed, the establishment of such a professional platform would guarantee the professionals of that sector the benefit of a more transparent, facilitated, recognition procedure.

As such, the establishment of a common platform is the objective, which the European Association for Psychotherapy (EAP) has set to itself as described in the present note.

¹ To recap, a regulated profession means a profession, the practice of which is subject to the possession of specific professional qualifications.

² A common platform is a set of criteria, which make it possible to compensate for the widest range of substantial differences which have been identified between the training requirements in at least two thirds of the Member States including all the Member States which regulate that profession.

2. Procedure: Directive adopted on 7th September 2005

The Proposal (COM (2002) 119) was adopted by the European Commission (ECOM) and communicated to the Council and European Parliament (EP) on 7th March 2002.

Since the issue relates to the achievement of the Internal Market (freedom of movement of workers), the file fell within the scope of the competences of the European Commission's Directorate-General Internal Market and was subject to the co-decision procedure with the European Parliament. In its Report adopted during the first reading on 11 February 2004, the EP introduced the important amendment establishing the principle of European common platforms under article 15.

On the basis of the EP Report, the Commission then adopted a Modified Proposal, which itself was the basis for the Council's Common Position adopted on 21 December 2004. Due to the fact that the Council's Common Position did not take on board all of the EP's amendments, the file was sent back to the EP for the 2nd reading. The EP's subsequent opinion was released on 11 May 2005. The Directive was finally adopted by the Council on 7 September 2005. **The deadline for implementation into national legislation is 20 October 2007.**

With respect to the follow-up to the implementation of the Directive, the Commission will be assisted by a specific Committee on the recognition of professional qualifications made up of representatives from the Member States. This Committee will notably be responsible for assessing the proposals for common platforms put forward by interested professions.

3. European Association for Psychotherapy (EAP) action

▪ Initial meeting with the Commission in June 2004: setting the task

The EAP has closely followed the developments of the adoption of the Directive over the last years and a first meeting was organised with the representatives responsible for the file at the Unit "Regulated Professions" of DG Internal Market on 3 June 2004. The **EAP was represented by Mr Mony Elkaïm, member of the board**, and Mrs Annik Lambert.

At that stage, the purpose of the meeting was to enquire about the perspectives for the psychotherapist profession with respect to Directive and to clarify the basis upon which article 15 could be used to improve the free movement of Psychotherapists in the EU. Indeed, the current state of play with regards to the movement of psychotherapists is considered unsatisfactory insofar as the compensation measures imposed in a number of MS are so diverse and stringent that they often prevent psychotherapists from moving.

The **Commission's reaction was very positive**. The Commission was all the more favourable to the EAP endeavouring to establish a common platform that, considering the very wide divergences between the state of affairs in EU Member States with regard to the approach towards the psychotherapy profession (regulation, self-regulation or no regulation at all), it was the Commission's belief that it would be a long time before the regulation of the profession could be harmonised at EU level. Indeed, no regulatory initiative could be considered by the Commission without a need being expressed by a sufficient number of Member States - no such need had ever been raised.

As such, the Commission did confirm the possibility of the EAP using the concept of a common platform introduced by article 15 of the Directive with a view to facilitating the free movement of their members. In practical terms, the establishment of such a platform amounts to the sector being able to propose a harmonised set of compensation

measures that would be acceptable by all Member States notwithstanding their respective systems. According to article 15, these common platforms can be established by both European professional associations and Member States.

The condition for the common platform proposed by a professional association to be taken into account by the Commission is that the professional association endeavouring such an undertaking is truly representative of the European market, which is clearly the case for the EAP.

As this is a brand new procedure, the Commission could however not refer the EAP to existing models but they confirmed their willingness to advise and follow up whenever requested.

- **EAP Working Group establishing a questionnaire on national frameworks**

Given the terms of article 15, the drafting of proposals for compensation, which the EAP has undertaken to present, appeared to be a complex task. It required extensive preliminary work encompassing the collection, translation and thorough comparison of existing pieces of legislation in all those Member States, where the profession is (self) regulated and, wherever possible, explanatory notes of the systems/practices in those Member States, where the profession is not regulated.

Indeed, article 15 of the Directive requires that the proposed platform takes into account the practice of at least 2/3 of the Member States, i.e. 17 out of 25 (shortly 18 out of 27), necessarily including all those Member States, in which the profession is regulated.

The Working Group (WG) held a first meeting in Brussels on 30 April 2005 during which it acknowledged that the task at hand required the legislation and descriptions of systems, which had been gathered so far, to be complemented and formatted in a structured and comparable way. They therefore established a detailed questionnaire that was designed to cover all aspects necessary to enable the WG to identify satisfactory proposals for compensation. The questionnaire was sent for completion to EAP contacts in all of the 25 Member States and 2 Accession Countries during the course of June.

The questionnaire includes 5 sections that cover regulated, self-regulated and non-regulated systems, as well as a number of more general questions.

- **Second meeting with the Commission in August 2005: discussing first results**

This second meeting was organised with a view to checking with the Commission that the general approach taken by the WG, and especially the questionnaire on national frameworks, was appropriate, which was confirmed.

The discussion led to a number of helpful clarifications, notably on the concept of regulated professions. Indeed, it appeared that the difference between regulated and non-regulated profession is perhaps not as clear-cut as the results from the contributions (questionnaires) received would appear to suggest. In the Commission's view, countries with self-regulation designed by national professional associations, which are legally empowered to do so, are to be considered as regulated countries and the adopted regulation as a legal framework.

The Commission also insisted on the need for the EAP to put forward a clear definition of the profession. The purpose of the definition would be to make a clear distinction between psychotherapy and other medical professions and to therefore prevent any overlap with platforms of professions, which are close in nature, for instance psychologists.

On the concept of a common platform, the Commission emphasised that the establishment of such a platform does not in any way imply the establishment of a professional cursus to be followed by candidates, but rather the identification of compensation for differences between national systems with different levels of demand. It must take into account the content of the training, theoretical and practical, as well as its duration. The platform should lead to the identification of compensation that can be considered satisfactory vis-à-vis the most demanding national legislation/systems. The level of conditions achieved should not however be the same as for the medical profession, as the level would be so high that the platform would be rendered useless. Finally, it should also be borne in mind that any proposal should not necessitate modification of national legislation.

The Commission confirmed their interest in being kept informed of the developments of the EAP's work, as well as their availability to help wherever possible.

▪ **Current state of play**

By this stage, the EAP has gathered completed questionnaires for nearly all of the 27 EU countries and, most importantly, for all the regulated countries as demanded by the Directive.

Based on these questionnaires, the 27 countries have been divided up between three categories depending on their legislative situation:

- **Regulated countries:** 11 countries out of 27;
- **Self-regulated countries:** 8 countries out of 27;
- **Non-regulated countries:** 8 countries.

The next step was then the preparation of **detailed country tables** summarising the situation in the Member States and designed to aid:

- The comparison of existing systems, with and without (self) regulation;
- The identification of differences in the requirements imposed on psychotherapists in terms of education and training, i.e. content and duration, in the Member States;
- The subsequent assessment of the necessary level of compensation to be proposed, i.e. establishing a set of criteria of professional qualifications suitable for the compensation of the national differences identified. This has been done with a view to satisfying the most demanding systems.

In conducting its work, the EAP has been careful to take into account the indications that had been provided by the Commission, notably the need for any proposed platform to **include a clear definition of the profession**. As such, the EAP has endeavoured to design a clear and complete definition of psychotherapy that encompasses all the features of the profession in the EU Member States and situates the profession within the wider frame of mental healthcare professions in the EU. It has also treated the UK and Ireland as regulated countries based on the consideration that the self-regulation enforced in countries where self-regulation is designed by national professional associations, which are legally empowered to do so, are to be considered as regulated countries and their adopted self-regulation as a legal framework.

Based on these tables, the EAP was finally in a position to **establish a first draft Common Platform for psychotherapists**. As provided for by article 15 of the Directive, the EAP's proposed common platform defines compensation for differences identified between the EU national systems with different levels of demand at a level that, it believes, should be considered satisfactory by the most demanding national legislation/systems. It is based on a thorough assessment of the level of qualifications and duration of education (diplomas) as well as of the scope of the profession and

content of the training (courses, practical training, personal experience, etc.) required in the Member States.

This first draft common platform is now to be discussed shortly with the European Commission with a view to assessing whether it addresses all the necessary issues and with a view to identifying possible further refinement before it is submitted officially. The outcome of this meeting will then be **submitted to the EAP board meeting scheduled on 17 February 2007**, which will grant it the necessary follow-up with a view to finalising its proposal for a common platform for psychotherapists.

Once it has been officially introduced, the Commission will then be responsible - after consultation with the Member States - for the evaluation of whether the proposed Common Platform is appropriate to fulfil its objective and will facilitate the mutual recognition of professional qualifications of a given profession. If this is the case, the Commission will launch the procedure designed for its adoption.

Mony Elkaïm & Annik Lambert