



## APPENDIX 2

### EFN DRAFT AMENDMENTS TO THE EUROPEAN PARLIAMENT ON THE LEGISLATIVE PROPOSAL TO MODERNISE THE DIRECTIVE 2005/36/EC

The legislative proposal is now in hands of the Council and the **European Parliament**. The European Parliament exchanged their first views on 28<sup>th</sup> February under the leadership of the rapporteur MEP Bernadette Vergnaud (FR), supported by MEPs Emma McClarkin (UK), Emilie Turunen (DK) and Matteo Salvini (IT), Cristian Silviu Busoi (RO) and Mikael Gustafsson (SE). In addition to the Committee of EMPL, the ENVI Committee will also provide an opinion to IMCO on the proposal led by the rapporteur Anja Weisgerber (DE).

EFN Amendment 1  
Tabled to MEP

#### *Text proposed by the Commission*

Whereas:

(22) Whilst the Directive already provides for detailed obligations for Member States to exchange information, such obligations should be reinforced. Member States should not only react to request for information but also alert other Member States in a proactive manner. Such alert system should be similar to that of Directive 2006/123/EC. **A specific alert mechanism is however necessary for health professionals benefiting from automatic recognition under Directive 2005/36/EC.** This should also apply to veterinary surgeons unless the Member States have already triggered the alert mechanism provided for in Directive 2006/123/EC. **All Member States should be alerted if a professional due to a disciplinary action or criminal conviction is no longer entitled to move to another Member State.** This alert should be activated through the IMI regardless of whether the professional has exercised any of the rights under Directive 2005/36/EC or of whether he has applied for recognition of his professional qualifications through the issuance of a European Professional Card or through any other method provided for by that Directive. The alert procedure should comply with Union law on the protection of personal data and other fundamental rights.

#### *EFN Amendment*

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(22) Whilst the Directive already provides for detailed obligations for Member States to exchange information, such obligations should be reinforced. Member States should not only react to request for information but also alert other Member States in a proactive manner. Such alert system should be similar to that of Directive 2006/123/EC. **A specific alert mechanism is however necessary for health professionals benefiting from automatic recognition under Directive 2005/36/EC.** This should also apply to veterinary surgeons unless the Member States have already triggered the alert mechanism provided for in Directive 2006/123/EC. **All Member States should be alerted if a professional due to a disciplinary action or criminal conviction is prohibited from exercising a professional activity.** This alert should be activated through the IMI regardless of whether the professional has exercised any of the rights under Directive 2005/36/EC or of whether he has applied for recognition of his professional qualifications through the issuance of a European Professional Card or through any other method provided for by that Directive. The alert procedure should comply with Union law on the protection of personal data and other fundamental rights.

#### *Justification*

*The aim of the alert mechanism is to alert the Member States to professionals who, due to whatever reasons, are no longer authorised to practice the profession in their home Member State and not because they cannot move to another country. Therefore, EFN asks the Commission legal services to better clarify the alert mechanism*

EFN Amendment 2  
Tabled to MEP

*Text proposed by the Commission*

Whereas:

(24) In order to supplement or amend certain non-essential elements of Directive 2005/36/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating of Annex I, setting the criteria for the calculation of fees related to the European Professional Card, establishing the details of the documentation necessary for the European Professional Card, the adaptations of the list of activities set out in Annex IV, the adaptations of points 5.1.1 to 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 of Annex V, clarifying the knowledge and skills for medical doctors, nurses responsible for general care, ..., the amendments to the list set out in points 5.2.1, 5.3.1, 5.4.1, 5.5.1 and 5.6.1 of Annex V.... It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

*EFN Amendment*

Whereas:

(24) In order to supplement or amend certain non-essential elements of Directive 2005/36/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of updating of Annex I, setting the criteria for the calculation of fees related to the European Professional Card, establishing the details of the documentation necessary for the European Professional Card, the adaptations of the list of activities set out in Annex IV, the adaptations of points 5.1.1 to 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 of Annex V, clarifying the knowledge and skills for medical doctors, nurses responsible for general care, ..., the amendments to the list set out in points 5.2.1, 5.3.1, 5.4.1, 5.5.1 and 5.6.1 of Annex V.... It is of particular importance that the Commission carries out appropriate consultations **at national and European level during its preparatory work, including experts from professionals' organisations.** The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

*Justification*

*When acting through delegated acts the Commission needs to ensure that appropriate consultation with relevant professional stakeholders, from the national and European level, are undertaken. This is needed to ensure a harmonised, transparent and effective policy process leading to implementation acts.*

EFN Amendment 3  
Tabled to MEP

*Text proposed by the Commission*

Whereas

(44) Deletion

*EFN Amendment*

Whereas

(44) This Directive is without prejudice to measures necessary to ensure a high level of health and consumer protection.

*Justification*

*EFN emphasises that this was a previous recital in the Directive and believes it should be maintained also in relation to the partial access debate.*

EFN Amendment 4  
Tabled to MEP

*Text proposed by the Commission*

*EFN Amendment*

**Article 4f**

Partial access

1. The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:

(a) differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that in reality the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;

(b) the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State. For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the home Member State.

2. **Partial access may be rejected if such rejection is justified by an overriding reason of general interest**, such as public health, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary.

**Article 4f**

Partial access

1. The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that **professionals under the automatic recognition are excluded from this provision and that** the following conditions are fulfilled:

(a) differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that in reality the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;

(b) the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State. For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the home Member State.

2. **Partial access may be rejected if such rejection is justified by an overriding reason of general interest**, such as public health, patient safety **and consumer protection, or if it is requested by patient's and professionals' organisations**. It would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary.

*Justification*

*The EFN opposes partial access to the nursing profession within the context and review of the Directive on Mutual Recognition of Professional Qualifications. If the Commission plans to develop new professions within the healthcare system, or plans to regulate non-qualified nursing staff (see ICN continuum of level), those existing professionals should keep on falling within the general system. Partial access would create a two tier system of professionals and promote systems of inequity for patients receiving nursing care. There is evidence to support the fact that higher educated nurses result in improved patient outcomes and better retention rates in the profession<sup>1,2,3,4,5</sup>. There is need to balance the objective of simplifying arrangement for professional recognition in another Member State with the overriding need to maintain safety and quality. The EFN opposes partial access as it*

<sup>1</sup> Aiken, L. & Havens, D. (1999) *Shaping Systems to Achieve Desired Outcomes*. *Journal of Nursing Administration*, 29, 14-20.

<sup>2</sup> Buchan, J. (2000) *Health Sector Reform and Human Resources: Lessons from the United Kingdom*. *Health Policy and Planning*, 15, 319-325.

<sup>3</sup> Aiken L et al. "Educational Levels of Hospital Nurses and Surgical Patient Mortality," *Journal of the American Medical Association*, 290(12): 2003.

<sup>4</sup> Aiken L et al. "Effects of Hospital Care Environment on Patient Mortality and Nurse Outcomes," *Journal of Nursing Administration*, 38(5): 2008.

<sup>5</sup> Ofori R, Charlton J. A path model of factors influencing the academic performance of nursing students. *Journal of Advanced Nursing*, 2002, 38:5, 507-515.

*creates confusion for the patients and consumers. It would be unacceptable for EFN if within the modernisation of the Directive partial access slipped in as a concept to make health services cheaper in contrast to the Commission ambitious flagships 2020.*

EFN Amendment 5

Tabled to MEP

*Text proposed by the Commission*

**Article 3** (Definitions)

NEW (1) **'lifelong learning'**: all general education, vocational education and training, non-formal education and informal learning undertaken throughout life, resulting in an improvement in knowledge, skills and competences."

*EFN Amendment*

**Article 3** (Definitions)

NEW (1) **'lifelong learning'**: all general education, vocational education and training, non-formal education and informal learning undertaken throughout life, resulting in an improvement in **competencies** (knowledge, skills, **attitudes** and **values**)."

*Justification*

*COMPETENCY: "intersection between knowledge, skills, attitudes and values" (Gómez del Pulgar, M. 2011; ICN, 2008; World Health Organisation, 2001, 2009)*

Note: the word "competences" when referring "competencies" should be changed in the following articles: Whereas 10 and 18, and Articles 11 (b)ii, 14 (5), 14 (6), 31, 24 (4), 34 (4), 49a, 58.

EFN Amendment 6

Tabled to MEP

*Text proposed by the Commission*

Under **Article 4a** (European Professional Card)

**7. Any fees which applicants may incur in relation to administrative procedures to issue a European Professional Card shall be reasonable, proportionate and commensurate with the costs** incurred by the home and host Member States and shall not act as a disincentive to apply for a European Professional Card. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the setting of criteria for the calculation and distribution of fees.

*EFN Amendment*

Under **Article 4a** (European Professional Card)

**7. Any fees which applicants may incur in relation to administrative procedures to issue a European Professional Card shall be reasonable, proportionate and commensurate with the costs** incurred by the home and host Member States and shall not act as a disincentive to apply for a European Professional Card **not representing any additional cost for the individual professional**. The Commission shall be empowered to adopt delegated acts in accordance with Article 58a concerning the setting of criteria for the calculation and distribution of fees.

*Justification*

*In the EFN case study on the European Professional Card (Steering Committee), published in September 2011 and presented during the Single Market Act Conference, the recommendations on costs were very clear in saying that the EPC should not represent any additional cost for the individual nurse wanting to move within the EU.*

EFN Amendment 7  
Tabled to MEP

*Text proposed by the Commission*

**Article 4c**

*European Professional Card for the temporary provision of services other than those covered by Article 7(4)*

1. The competent authority of the home Member State shall verify the application, create and validate a European Professional Card within two weeks from the date it receives a complete application. It shall inform the applicant and the Member State in which the applicant envisages to provide services, of the validation of the European Professional Card. The transmission of the validation information to the host Member States concerned shall constitute the declaration provided for in Article 7. The host Member State may not require a further declaration under Article 7 for the following two years

*EFN Amendment*

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*Justification*

*There is a relaxation of the rules for health professionals providing services temporarily when they choose to use the European Professional Card that could potentially jeopardise the quality of the healthcare provided. The host Member State should be able to verify documentation of a migrant seeking to practise temporarily in their country when they have overriding concerns.*

EFN Amendment 8  
Tabled to MEP

*Text proposed by the Commission*

**Article 31:**

(c) In paragraph 3, the first subparagraph is replaced by the following:

"The training of nurses responsible for general care shall comprise at least three years of study consisting of at least 4600 hours of theoretical and clinical training, the duration of the theoretical training representing at least one third and the duration of the clinical training at least one half of the minimum duration of the training. Member States may grant partial exemptions to persons who have received part of their training on courses which are of at least an equivalent level."

*Amendment*

**Article 31:**

(c) In paragraph 3, the first subparagraph is replaced by the following:

"The training of nurses responsible for general care shall comprise at least three years of study, **which may also be expressed with the equivalent ECTS credits**, consisting of at least 4600 hours of theoretical and clinical training, the duration of the theoretical training representing at least one third and the duration of the clinical training at least one half of the minimum duration of the training. Member States may grant partial exemptions to persons who have received part of their training on



courses which are of at least an equivalent level."

#### *Justification*

*A large majority of Member States offer nursing studies at university level making use of the ECTS credits and adapting their nursing curricula to them. Therefore, it is necessary to introduce the possibility to also express the duration of the nursing programme in ECTS, not affecting the other requirements for automatic recognition.*

EFN Amendment 9  
Tabled to MEP

#### *Text proposed by the Commission*

In **Article 53**, the following second paragraph is added:

"A Member State shall ensure that any controls of the knowledge of a language are carried out by a competent authority after the decisions referred to in Articles 4d, 7(4) and 51(3) have been taken and if there is a serious and concrete doubt about the professional's sufficient language knowledge in respect of the professional activities this person intends to pursue.

In case of professions with patient safety implications, Member States may confer to the competent authorities the right to carry out language checking covering all professionals concerned if it is expressly requested by the national health care system, or in case of self-employed professionals not affiliated to the national health care system, by representative national patient organisations.

Any language control shall be limited to the knowledge of one of the official languages of the Member State according to the choice of the person concerned, it shall be proportionate to the activity to be pursued and free of charge for the professional. The person concerned shall be allowed to appeal such controls before national courts."

#### *EFN Amendment*

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In case of professions with patient safety implications, Member States may confer to the competent authorities the right to carry out language checking covering all professionals concerned if it is expressly requested by the national health care system **or the national competent authority**, or in case of self-employed professionals not affiliated to the national health care system, by representative national patient organisations.

Any language control shall be limited to the knowledge of one of the official languages of the Member State according to the choice of the person concerned, it shall be proportionate to the activity to be pursued and free of charge for the professional. The person concerned shall be allowed to appeal such controls before national courts."

#### *Justification*

*There were necessary provision in the Directive for Member states to introduce systems to control the language skills of migrant professionals on patient safety grounds, which should include the regulator testing for general language competency, the employer testing for skills related to specific activities and as request by representative patient organisations.*

EFN Amendment 10  
Tabled to MEP

*Text proposed by the Commission*

*EFN Amendment*

**Article 58a**

2. The **power to adopt delegated acts** referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4) 49a(3) and 49b(3) **shall be conferred on the Commission for an indeterminate period of time from** [insert the date - date of entry into force of the amending Directive].

3. The delegation of power referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4), 49a(3) and 49b(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

**Article 58a**

2. The **power to adopt delegated acts** referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4) 49a(3) and 49b(3) **shall be conferred on the Commission for an indeterminate period of time from** [insert the date - date of entry into force of the amending Directive] **and under the condition of carrying out appropriate consultations of national and European experts during its preparatory work, as mentioned in whereas 24.**

3. The delegation of power referred to in Articles 3(2), 4a(7), 4b(2), 20, 21a(3), 24(4), 25(5), 26(2), 31(2), 31(7), 34(2), 34(4), 35(4), 38(1), 38(4), 40(1), 40(4), 44(2), 44(4), 46(4), 49a(3) and 49b(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Justification*

*When acting through delegated acts the Commission needs to ensure that appropriate consultation with relevant stakeholders and concerned organisations are undertaken. This is needed to ensure a harmonised and smooth process of transparency and collaboration when taking decisions at EU level.*

*EFN Draft Amendments on Modernised Proposal on Mutual Recognition of Professional Qualifications – April 2012*

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