



**AURE position paper - proposal amending Directive 2005/36/EC on the recognition of professional qualifications
30 January 2012**

1. This position paper has been produced by the Alliance of UK Health Regulators on Europe (AURE) in response to the European Commission's proposal to amend Directive 2005/36/EC on the recognition of professional qualifications.
2. AURE brings together 10 of the health and social care regulators in the United Kingdom to work collaboratively on European issues affecting patient and client safety. As regulators, our purpose is to protect and promote patient safety through effective regulation and ensuring proper standards in the practice of health and social care.
3. This position paper complements individual responses from AURE members and should be considered alongside our previous responses to the [September 2011 Green Paper](#) and [March 2011 public consultation](#).

Introduction

4. AURE members have considerable experience with high levels of mobility, both from Europe and internationally. According to the Regulated Professions Database¹, the UK receives almost three times as many EEA trained professionals than it sends out.
5. We recognise that there have been substantial benefits to such high levels of mobility but the free movement of professionals and the existing recognition of professional qualifications Directive (2005/36/EC) have raised a number of challenges to public protection. The review of the Directive presents an opportunity to address some of these concerns and we welcome many of the proposals included in the draft legislation.

¹See:

http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=stats.crossBorder&services=false

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Legal basis

6. A revised Directive must guarantee the protection of the public as an overarching objective for the free movement of professionals. To this end AURE considers that the proposal should have a joint legal basis of both public health (article 168 in TFEU) and the internal market (article 114 in TFEU). This would ensure that member states have the means to protect patients and consumers from potential harm, where necessary.

Delegated and implementing acts

7. The Directive proposes to implement and operationalise several important aspects of the legislation through delegated and implementing acts, such as the professional card, the alert mechanism and the proposed competences for the minimum training requirements. Given the sensitivity and complexity of these issues, 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.

Professional cards (article 4)

8. Although we recognise the European Commission has come a long way in its thinking on the professional card, and welcome the proposal that it should take the form of an e-certificate, we still have a number of concerns about its introduction and would like to see further safeguards included in the Directive.

9. Greater involvement from the home competent authority in the recognition procedure is a positive development but should not be at the expense of checks by the host competent authority. In the interest of public protection, receiving member states must still be able to confirm the identity and fitness to practise of incoming professionals and verify the documents required for recognition.

10. We also believe that the deadlines proposed in the Directive are impractical and might be unworkable (articles 4.c and 4.d). This, combined with the suggestion that professionals be given tacit authorisation (article 4.d.5) in the absence of a decision by the competent authority within the deadlines, would put patients at risk and would prevent them from seeking

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regulatory redress if something went wrong. In this context, AURE considers that health and social care professionals should not be allowed to start practising unless explicitly authorised by the host competent authority.

11. We also call for any deadlines to start only on receipt of a complete application by the host competent authority. Otherwise, to ensure public protection, authorities may have to deny recognition in cases where they have not received sufficient or complete information from the home competent authority.

12. We consider that the deadlines for recognition with an e-certificate should not be included in the Directive but be developed and tested in the context of pilot projects and subsequently implemented through delegated acts. This would ensure that the deadlines can be realistically achieved and would allow competent authorities the necessary time to adapt their processes.

13. We support the proposal that the recognition procedure be supported by the Internal Market Information (IMI) system and for registration with IMI to be mandatory for competent authorities. However, we would like to highlight that IMI has not been extended to all AURE members and, as such, many competent authorities would be unable to use it as a means to ensure the authenticity of the e-certificates. Before the e-certificate is rolled out, we call on the Commission to extend IMI to all competent authorities and professions within health and social care.

14. The Directive should not mandate the means by which member states make registration information available to patients and employers. We consider that any e-certificate must only be used for the recognition process and not as a way to confirm the registration status of a professional. In the UK, healthcare professional regulators make web-based searchable lists of registration and disciplinary information freely available to the public. We consider this is a much more effective and safe way to confirm the status of a professional than the proposal that employers and patients should be able to verify the authenticity of a card (article 4.e.7).

15. We do not support the proposal to replace the prior declaration required under temporary and occasional mobility, with the professional card, which would allow a professional to practise for a renewable period of 2 years



(article 4.c.1). We believe that this might enable professionals to exploit the temporary and occasional provisions in the Directive to evade the rules and registration fees for permanent establishment.

IMI alert mechanism (article 55.a)

16. We welcome the inclusion of an alert mechanism in the Directive but consider that it should be extended to all health and social care professions, regardless of whether they have had their qualifications recognised under automatic recognition or general systems. Alerts about all healthcare professionals should be treated with the same urgency as the risk to patient safety is the same. Equally there should be a defined process for the withdrawal of any alerts.

17. We also believe that the alert should apply to any restriction placed on a health or social care professional's ability to practise, such as conditions and limitations. For the alert mechanism to be effective, all organisations responsible for the recognition, registration and fitness to practise of healthcare professionals would also need to be registered on IMI.

18. The Directive must clearly state that competent authorities will be involved in the development of implementing acts, which will determine the application of the alert mechanism (article 56.a.5)

Language (article 53)

19. AURE welcomes the acknowledgement of the importance of language skills for healthcare professionals. However, we believe that the proposal is not sufficiently clear and would welcome greater clarity for competent authorities who wish to assess a professional's language skills before registration, if doubts arise.

20. Article 53, as drafted, would not be consistent with the interpretation of European court cases², including a recent opinion from the European Free Trade Association (EFTA) court³, which confirm that under the provisions of

² Cases C-443/03: [Stix-Hackl](#) (2005), [C-424/97: Haim II](#) (2000), [C-238/98 Hoczman](#) (2000).

³ [EFTA, Court Judgment in Case E-1/11 \(15 December 2011\)](#).



the existing Directive 2005/36/EC, competent authorities are entitled to make registration conditional upon professionals having the necessary linguistic knowledge.

21. We agree that employers play an important role in ensuring that the individuals they employ are fit for a particular position. However, we would also like to highlight that a significant amount of the professionals we regulate carry out work in a self-employed capacity and, at the point of registration, the nature of a professional's work in the host member state is often not known.

22. We believe that all health and social care competent authorities should be able to request evidence of language knowledge before granting access to the profession, in line with the requirement outlined in article 7.2.f, and we call on the EU institutions to clarify article 53.

Updating the minimum training requirements (Articles 24-45)

23. AURE members responsible for the sectoral professions welcome the proposal to update the minimum training requirements.

24. However, we would like to ensure that any process to develop competences is transparent, objective and inclusive, formally involving competent authorities and member states. In this context, the Directive must state that the Commission will work closely with member states and competent authorities in the development of delegated acts (recital 24 and articles 24.4, 31.7, 34.4, 40.4, 44.2).

General systems - compensation measures (article 14)

25. We support the proposal for competent authorities to justify their decisions to apply compensation measures to requests for recognition from migrating professionals. However, the requirements outlined in article 14.7 would affect the ability of competent authorities to devise compensation measures appropriate for a particular professional. It is important that member states retain flexibility and that compensation measures address any deficiencies in a professional's training in a targeted way.

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Partial access (article 4.f)

26. We support the proposal that partial access should be rejected for all professions with an overriding reason of general interest, such as health and social care professionals. To clarify the proposal, we call on the Commission to 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).

Continuous competence of professionals (article 22)

27. We agree with the Commission that the inclusion of continuous professional development (CPD) 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.

28. 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 for many years.

29. We believe that automatic recognition must be linked with a requirement on professionals to demonstrate that they have been effectively and lawfully engaged in professional activities for at least 3 years during the 5 years preceding the request for recognition. This would be in line with the existing requirement for acquired rights (article 23 of Directive 2005/36/EC). Where professionals cannot provide this information, competent authorities should have the discretion to assess applicants under the general system and, if appropriate, apply compensation measures to ensure public protection.

Access to information (articles 57 to articles 57b)

30. We agree that information on the recognition process should be freely and openly available to professionals wishing to move. However, we do not support the suggestion that a “central online access point” in each member state should act as an intermediary and become responsible for processing



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requests for recognition. AURE members believe that the host competent authority must keep ownership of the recognition process.

31. Instead we suggest improving the visibility and accessibility of *National Contact Points* to professionals wishing to move. These should clearly signpost applicants to the relevant competent authority and include links to their online resources.

32. The majority of AURE members already make online applications for registration available to professions and we support this proposal in the draft Directive. However, we do not believe health and social care professionals should be required to fully complete the recognition process online. Where necessary, competent authorities must be able to request additional information and to satisfy themselves of a migrant's identity and fitness to practise, which might not always be possible through remote means.

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