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NOTE

from:	Presidency/General Secretariat of the Council
to	Permanent Representatives Committee -Part I
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Subject:	Proposal for a Directive of The European Parliament and of The Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System - Preparation for the informal trilogue

I. Introduction

The Commission published a proposal for a new Directive to amend Directive 2005/36 on the Recognition of Professional Qualifications in December 2011. The Committee on the Internal Market and Consumer Protection (IMCO) of the European Parliament gave their Rapporteur (Madame Vergnaud) a mandate on 21 February to enter trilogue. On Friday 1 March COREPER gave a mandate to the Presidency to open discussions with the European Parliament. The first trilogue was held on 20th. March. The second trilogue is scheduled for 24th. April.

The Permanent Representatives Committee is now invited to confirm those elements of the Presidency mandate which were unresolved at its meeting on 1 March (outlined in Section III below) and to agree the text contained in document 8145/13 relating to the modernisation of Directive 2005/36. Member States will also be invited to lift remaining reservations. The Permanent Representatives Committee will also be updated on the engagement with the European Parliament to date, including an outline of the issues that will be discussed at the second trilogue on 24th. April (Section IV below).

II. Background

The modernisation of Directive 2005/36 was discussed at the Permanent Representatives Committee on 1 March. At that point, the Presidency received a mandate to enter negotiations with Parliament. The Permanent Representatives Committee also approved the course of action proposed by the Presidency in relation to three specific issues (delegated and implementing acts; transparency provisions; and notaries) and the text has been updated accordingly. The Internal Market and Consumer Protection Committee of the European Parliament had given a mandate for trilogues to their Rapporteur on 21 February, at which point there were still a number of issues at Council where consensus had not been reached. It was indicated at the meeting of the Permanent Representatives Committee on 1 March that the Presidency would endeavour to resolve any remaining issues at Working Party level but that it may be necessary to return to the Committee at a later stage to discuss a small number of issues where full agreement had not been reached.

The Presidency is now seeking agreement from the Permanent Representatives Committee to a revised Council text that was circulated to Member States on 16 April (document 8145/13). For this purpose, a summary of the limited number of outstanding issues is set out immediately below along with a justification supporting the existing Council text. Agreement on these issues by the Permanent Representatives Committee, and the lifting of remaining footnotes, will effectively result in a final Council text being agreed. This will strengthen the Council's position in its final negotiations with Parliament.

III. Outstanding issues at Working Party level

There have been seventeen meetings of the Working Party on Establishment and Services to date. Due to the active engagement by Member States and the flexibility they have shown in relation to some difficult issues, these meetings have succeeded in progressing the file to a point where only a few issues remain to be resolved, as outlined below.

Tacit recognition (Article 4d)

The European Professional Card provides for ‘tacit recognition’ of a professional’s qualifications. This will apply in circumstances where a professional is seeking recognition of their qualifications, for establishment purposes, but where the host Member State does not adopt a decision on the application within the prescribed deadlines associated with the Card. A small number of Member States have opposed the principle of tacit recognition, particularly in relation to the health sector. Tacit recognition was proposed as a central element of the European Professional Card as it motivates Member States to take a decision on Card applications within the prescribed deadlines. It is also the case that Recital 3 makes clear that the grant of a European Professional Card does not pre-empt existing national registration requirements. It is considered that the existing text contains sufficient safeguards for Member States.

Partial Access (Article 4f)

The principle of ‘partial access’ to a profession is generally accepted by Member States. This would apply in instances where the gap in knowledge or training between the requirements of a particular profession in the home and host Member State is too large to be compensated for by any other measure than a full programme of education and training. Some Member States have objected to this proposal on the grounds that granting partial access to certain professions in the health sector may result in a risk to public safety. The Working Party has heard the view that partial access cannot be withheld from specific professions (as opposed to being withheld from specific professionals on a case by case basis) as this would contravene the jurisprudence of the European Court of Justice. The current text makes it clear that partial access may be refused to professionals if such rejection is justified by an overriding reason of general interest, and Recital 4 indicates that this is particularly relevant to professions with patient safety concerns. It is now considered that the current Council text contains sufficient safeguards to ensure patient safety while being consistent with jurisprudence.

Conditions for recognition for purposes of establishment (Article 13)

The current Council text provides that access to a profession will be granted by Member States to professionals coming from non-regulating Member States, provided they have pursued the relevant profession on a full-time basis for one year during the previous ten years, and providing they possess one or more attestations of competence or documents providing evidence of formal qualifications. A small number of Member States have requested a return to the provisions of the existing Directive, which requires two years (rather than one) of professional experience. Single Market Act I calls for tangible progress on mobility rules and this objective is better fulfilled through the reduction to one year.

Reports on Continuing Professional Development (Article 22)

The current Council text provides that the relevant Competent Authorities in Member States submit reports to the Commission and to other Member States on the main objective and the effects of the continuing education and training procedures related to doctors of medicine, medical specialists, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives and pharmacists. A small minority of delegations have expressed concern over the potential administrative burden of this reporting obligation. It is considered that the reporting requirement is not unreasonable. It should be noted that Parliament are expected to strongly argue for a more extensive regime.

Doctors (Article 24)

The current Council text proposes that basic medical training for doctors should comprise five years **and** 5,500 hours. Some Member States favour a requirement of six years **and** 5,500 hours. The current Council text provides a clearer basis for enforcement in Member States as compared to the situation existing under the current Directive (six years **or** 5,500 hours), which allows for compliance on years **or** hours. The current Council text represents a strengthening of the provisions in this area, as the status quo does not prohibit a four year training course.

Partial exemptions from Specialist Medical Training (Article 25)

The current text of the Council text allows Member States to facilitate partial exemptions from specific specialist medical training of up to one half of the minimum duration, where a medical professional has already completed another specialist training programme in any Member State. The one half threshold represents a sensible approach that provides sufficient flexibility for Member States.

Training of Architects (Article 46)

There are two issues relating to the training of architects. In the first instance, the current Council text provides for the minimum training of architects to be at least five years of full-time study at a university or a comparable teaching institution, or not less than four years of full-time study accompanied by a certificate attesting to the completion of two years of professional traineeship. A small number of Member States have expressed a preference for five years of full-time study plus one year's professional experience, or four years of full-time study plus two years of professional experience. It is considered that introducing a mandatory requirement on professional experience is not necessary where five years academic training is in place.

The current Council text relating to architects also provides that the professional traineeship element may only take place after the completion of the first three years of study. This is considered a reasonable provision as it ensures that trainees have acquired sufficient knowledge and skills during their three years of study to maximise the benefit from their professional traineeship. It should be noted that this is only relevant in Member States which intend to use the option of applying four years academic study.

Notaries

A number of Member States have reopened the discussion on the profession of notary in recent Working Party meetings. This issue was discussed by the Permanent Representatives Committee at its meeting of 1 March. It was agreed at that meeting that the profession of notary should be excluded from the Directive but that a review clause would be included so that this issue would be revisited in the future. The Council text was amended on that basis.

Since the decision by the Permanent Representatives Committee, some Member States have indicated a preference at Working Party level for an exclusion of notaries from the Directive without a review clause. Some other Member States have expressed support for the amendment proposed by the European Parliament in this area, while many Member States are satisfied with the current text. The Presidency will listen to the views of Member States should they wish to raise this issue at the Permanent Representatives Committee on 19 April. The issue will be discussed with Parliament at the second trilogue on 24 April.

IV. Update on engagement with Parliament

There have been four technical meetings with Parliament and the Commission (7th 18, 27 March, and 9 April). Further technical meetings are scheduled for 16 and 24 April. The first trilogue was held on 20 March and the second trilogue is scheduled for 24 April.

A debrief on the outcome of the first trilogue was provided to Coreper on 22 March while a more detailed debriefing took place at the Working Party on 27 March.

The issues discussed to date at the four technical meetings are as follows:

- European Professional Card.
- Partial access.
- Language controls.
- The alert mechanism.
- Temporary provision of services.
- Recognition for purposes of establishment.
- Sectoral professions (doctors, nurses, dentists).

As was previously outlined to the Permanent Representatives Committee at the debriefing on 22 March, the issues discussed at the first trilogue were the European Professional Card (with the exception of Article 4e), partial access and the alert mechanism. The trilogue, as well as the preparatory technical meetings, was conducted in a general spirit of compromise and flexibility from Parliament in relation to the issues discussed and good progress was made.

The main area where it was necessary to compromise with Parliament was in relation to one of the deadlines associated with the European Professional Card. Following a lengthy discussion, the Presidency agreed in principle (subject to discussion with, and agreement by, Member States) to reduce the deadline for the home Member State to process applications for a Card, in cases of temporary provision of services, from 1 month to 3 weeks. In addition, the Presidency agreed that overall processing deadlines would not be suspended while additional information is being sought from applicants. In return, Parliament conceded on all of the other deadlines associated with the processing of applications for the European Professional Card and on deadlines from when tacit recognition applies. This encompasses the deadlines for acknowledging receipt of applications, for processing applications for permanent establishment and for temporary provision under Article 7(4). Parliament also agreed to accept the Council's insistence on having a facility for Member States to extend the deadline for automatically issuing the Card, and for a further two week extension of this deadline.

Another area where significant compromises were necessary was in relation to temporary mobility rules. This relates both to experience requirements for professionals moving from a non regulating Member State to one where their profession is regulated and to the issue of accompanying professionals in cases of consumer mobility.

The Presidency reported on proposed new text in these areas to Member States at the Working Party of 15 April. There were some concerns expressed by Member States but the Presidency is confident that an agreed text can be reached with Member States and Parliament.

In relation to all of the areas of the Council text where compromises are proposed arising from discussions with Parliament, the Presidency will revert to the Permanent Representatives Committee at a later stage with a view to revising its mandate to agree the revised text.

The next trilogue is scheduled for 24 April. It is intended to focus on the sectoral professions and any remaining horizontal issues that cannot be resolved at technical level. It is intended that the discussion of the sectoral professions will include the delegated and implementing acts associated with those articles. The issue of notaries will also be discussed at the trilogue. The negotiations with Parliament on 24 April will be conducted on the basis of the existing mandate that was granted to the Presidency on 1 March.

While good progress has been made in the discussions with Parliament to date, it is clear that compromises will have to be made in some areas in order to reach an overall agreement. While the Presidency will continue to advocate strongly on key issues of concern to Member States, some concessions will be necessary in order to maintain the positive engagement that will deliver results for Council. From technical discussions, it should be noted that the issue of delegated acts in the sectoral professions will be a key point for Parliament in the second trilogue, with a strong expectation on their part of progress being achieved. The Presidency will continue to keep Member States informed of progress through debriefings at the Permanent Representatives Committee and at Working Party level.

V. Conclusion

The negotiations with Parliament at the second trilogue on 24 April will be conducted on the basis of the mandate granted to the Presidency on 1st March. The Presidency will revert to Coreper at a later date to renew its mandate to agree new text on specific issues arising from the discussions with Parliament.

The Permanent Representatives Committee is invited to confirm those elements of the Presidency mandate which were unresolved at its meeting on 1 March and which outlined in Section III above and agree the attached text relating to the modernisation of Directive 2005/36. Member States are also invited to lift remaining reservations.