

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance)

TITLE I

**GENERAL PROVISIONS**

*Article 3*

**Definitions**

- 1 For the purposes of this Directive, the following definitions apply:
- a ‘regulated profession’: a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;
  - b ‘professional qualifications’: qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience;
  - c ‘evidence of formal qualifications’: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Where the first sentence of this definition does not apply, evidence of formal qualifications referred to in paragraph 3 shall be treated as evidence of formal qualifications;
  - d ‘competent authority’: any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the applications, and take the decisions, referred to in this Directive;
  - e ‘regulated education and training’: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice.
- The structure and level of the professional training, probationary or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose;
- [<sup>F1f</sup> ‘professional experience’: the actual and lawful full-time or equivalent part-time pursuit of the profession concerned in a Member State;]
  - g ‘adaptation period’: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State.

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The status enjoyed in the host Member State by the person undergoing the period of supervised practice, in particular in the matter of right of residence as well as obligations, social rights and benefits, allowances and remuneration, shall be established by the competent authorities in that Member State in accordance with applicable Community law;

[<sup>F1</sup>h] ‘aptitude test’: a test of the professional knowledge, skills and competences of the applicant, carried out or recognised by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State.

In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the host Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.

The aptitude test must take account of the fact that the applicant is a qualified professional in the home Member State or the Member State from which the applicant comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to pursue the profession in question in the host Member State. The test may also cover knowledge of the professional rules applicable to the activities in question in the host Member State.

The detailed application of the aptitude test and the status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that Member State shall be determined by the competent authorities in that Member State;]

- i ‘manager of an undertaking’: any person who in an undertaking in the occupational field in question has pursued an activity:
- (i) as a manager of an undertaking or a manager of a branch of an undertaking; or
  - (ii) as a deputy to the proprietor or the manager of an undertaking where that post involves responsibility equivalent to that of the proprietor or manager represented; or
  - (iii) in a managerial post with duties of a commercial and/or technical nature and with responsibility for one or more departments of the undertaking.

[<sup>F2</sup>] ‘professional traineeship’: without prejudice to Article 46(4), a period of professional practice carried out under supervision provided it constitutes a condition for access to a regulated profession, and which can take place either during or after completion of an education leading to a diploma;

k ‘European Professional Card’: an electronic certificate proving either that the professional has met all the necessary conditions to provide services in a host Member State on a temporary and occasional basis or the recognition of professional qualifications for establishment in a host Member State;

l ‘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, which may include professional ethics;

m ‘overriding reasons of general interest’: reasons recognised as such in the case-law of the Court of Justice of the European Union;

n ‘European Credit Transfer and Accumulation System or ECTS credits’: the credit system for higher education used in the European Higher Education Area.]

2 A profession practised by the members of an association or organisation listed in Annex I shall be treated as a regulated profession.

The purpose of the associations or organisations referred to in the first subparagraph is, in particular, to promote and maintain a high standard in the professional field concerned. To that end they are recognised in a special form by a Member State and award evidence of formal qualifications to their members, ensure that their members respect the rules of professional conduct which they prescribe, and confer on them the right to use a title or designatory letters or to benefit from a status corresponding to those formal qualifications.

[<sup>F1</sup>On each occasion that a Member State grants recognition to an association or organisation referred to in the first subparagraph, it shall inform the Commission. The Commission shall examine whether that association or organisation fulfils the conditions provided for in the second subparagraph. In order to take due account of regulatory developments in Member States, the Commission shall be empowered to adopt delegated acts in accordance with Article 57c in order to update Annex I where the conditions provided for in the second subparagraph are satisfied.

Where the conditions provided for in the second subparagraph are not satisfied, the Commission shall adopt an implementing act in order to reject the requested update of Annex I.]

3 Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years' professional experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualifications in accordance with Article 2(2), certified by that Member State.

#### **Textual Amendments**

- F1** Substituted by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Text with EEA relevance).
- F2** Inserted by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Text with EEA relevance).