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Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration

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COUNCIL DIRECTIVE

of 21 December 1988

on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration

(89/48/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 49, 57 (1) and 66 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, pursuant to Article 3 (c) of the Treaty the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; whereas, for nationals of the Member States, this means in particular the possibility of pursuing a profession, whether in a self-employed or employed capacity, in a Member State other than that in which they acquired their professional qualifications;

Whereas the provisions so far adopted by the Council, and pursuant to which Member States recognize mutually and for professional purposes higher-education diplomas issued within their territory, concern only a few professions; whereas the level and duration of the education and training governing access to those professions have been regulated in a similar fashion in all the Member States or have been the subject of the minimal harmonization needed to establish sectoral systems for the mutual recognition of diplomas;

Whereas, in order to provide a rapid response to the expectations of nationals of Community countries who hold higher-education diplomas awarded on completion of professional education and training issued in a Member State other than that in which they wish to pursue their profession, another method of recognition of such diplomas should also be put in place such as to enable those concerned to pursue all those professional activities which in a host Member State are dependent on the completion of post-secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State;

Whereas this objective can be achieved by the introduction of a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

Whereas, for those professions for the pursuit of which the Community has not laid down the necessary minimum level of qualification, Member States reserve the option of fixing such a level with a view to guaranteeing the quality of services provided in their territory; whereas, however, they may not, without infringing their obligations laid down in Article 5 of the Treaty, require a national of a Member State to obtain those qualifications which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State; whereas, as a result, any host Member State in

which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires;

Whereas collaboration between the Member States is appropriate in order to facilitate their compliance with those obligations; whereas, therefore, the means of organizing such collaboration should be established;

Whereas the term 'regulated professional activity' should be defined so as to take account of differing national sociological situations; whereas the term should cover not only professional activities access to which is subject, in a Member State, to the possession of a diploma, but also professional activities, access to which is unrestricted when they are practised under a professional title reserved for the holders of certain qualifications; whereas the professional associations and organizations which confer such titles on their members and are recognized by the public authorities cannot invoke their private status to avoid application of the system provided for by this Directive;

Whereas it is also necessary to determine the characteristics of the professional experience or adaptation period which the host Member State may require of the person concerned in addition to the higher-education diploma, where the person's qualifications do not correspond to those laid down by national provisions;

Whereas an aptitude test may also be introduced in place of the adaptation period; whereas the effect of both will be to improve the existing situation with regard to the mutual recognition of diplomas between Member States and therefore to facilitate the free movement of persons within the Community; whereas their function is to assess the ability of the migrant, who is a person who has already received his professional training in another Member State, to adapt to this new professional environment; whereas, from the migrant's point of view, an aptitude test will have the advantage of reducing the length of the practice period; whereas, in principle, the choice between the adaptation period and the aptitude test should be made by the migrant; whereas, however, the nature of certain professions is such that Member States must be allowed to prescribe, under certain conditions, either the adaptation period or the test; whereas, in particular, the differences between the legal systems of the Member States, whilst they may vary in extent from one Member State to another, warrant special provisions since, as a rule, the education or training attested by the diploma, certificate or other evidence of formal qualifications in a field of law in the Member State of origin does not cover the legal knowledge required in the host Member State with respect to the corresponding legal field;

Whereas, moreover, the general system for the recognition of higher-education diplomas is intended neither to amend the rules, including those relating to professional ethics, applicable to any person pursuing a profession in the territory of a Member State nor to exclude migrants from the application of those rules; whereas that system is confined to laying down appropriate arrangements to ensure that migrants comply with the professional rules of the host Member State;

Whereas Articles 49, 57 (1) and 66 of the Treaty empower the Community to adopt provisions necessary for the introduction and operation of such a system;

Whereas the general system for the recognition of higher-education diplomas is entirely without prejudice to the application of Article 48 (4) and Article 55 of the Treaty;

Whereas such a system, by strengthening the right of a Community national to use his professional skills in any Member State, supplements and reinforces his right to acquire such skills wherever he wishes;

Whereas this system should be evaluated, after being in force for a certain time, to determine how efficiently it operates and in particular how it can be improved or its field of application extended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence:

- which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;

- which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course, and

- which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State,

provided that the education and training attested by the diploma, certificate or other evidence of formal qualifications were received mainly in the Community, or the holder thereof has three years' professional experience certified by the Member State which recognized a third-country diploma, certificate or other evidence of formal qualifications.

The following shall be treated in the same way as a diploma, within the meaning of the first subparagraph: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence awarded by a competent authority in a Member State if it is

awarded on the successful completion of education and training received in the Community and recognized by a competent authority in that Member State as being of an equivalent level and if it confers the same rights in respect of the taking up and pursuit of a regulated profession in that Member State;

(b) host Member State: any Member State in which a national of a Member State applies to pursue a profession subject to regulation in that Member State, other than the State in which he obtained his diploma or first pursued the profession in question;

(c) a regulated profession: the regulated professional activity or range of activities which constitute this profession in a Member State;

(d) regulated professional activity: a professional activity, in so far as the taking up or pursuit of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws, regulations or administrative provisions, to the possession of a diploma. The following in particular shall constitute a mode of pursuit of a regulated professional activity:

- pursuit of an activity under a professional title, in so far as the use of such a title is reserved to the holders of a diploma governed by laws, regulations or administrative provisions,
- pursuit of a professional activity relating to health, in so far as remuneration and/or reimbursement for such an activity is subject by virtue of national social security arrangements to the possession of a diploma.

Where the first subparagraph does not apply, a professional activity shall be deemed to be a regulated professional activity if it is pursued by the members of an association or organization the purpose of which is, in particular, to promote and maintain a high standard in the professional field concerned and which, to achieve that purpose, is recognized in a special form by a Member State and:

- awards a diploma to its members,
- ensures that its members respect the rules of professional conduct which it prescribes, and
- confers on them the right to use a title or designatory letters, or to benefit from a status corresponding to that diploma.

A non-exhaustive list of associations or organizations which, when this Directive is adopted, satisfy the conditions of the second subparagraph is contained in the Annex. Whenever a Member State grants the recognition referred to in the second subparagraph to an association or organization, it shall inform the Commission thereof, which shall publish this information in the Official Journal of the European Communities.

(e) professional experience: the actual and lawful pursuit of the profession concerned in a Member State;

(f) 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 person under supervision shall be laid down by the competent authority in the host Member States;

(g) aptitude test: a test limited to the professional knowledge of the applicant, made 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 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 Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State with due regard to the rules of Community law.

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

Article 2

This Directive shall apply to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

This Directive shall not apply to professions which are the subject of a separate Directive establishing arrangements for the mutual recognition of diplomas by Member States.

(1) OJ No C 217, 28. 8. 1985, p. 3, and

OJ No C 143, 10. 6. 1986, p. 7.

(2) OJ No C 345, 31. 12. 1985, p. 80, and

OJ No C 309, 5. 12. 1988.

(3) OJ No C 75, 3. 4. 1986, p. 5.

Article 3

Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1 (c) and the first subparagraph of Article 1 (d), and possesses evidence of one or more formal qualifications:

- which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of such State,
- which show that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level of a Member State and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course and
- which have prepared the holder for the pursuit of his profession.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of training received in the Community and is recognized by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.

Article 4

1. Notwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in Article 3 (a) and (b), is at least one year less than that required in the host Member State. In this event, the period of professional experience required:

- may not exceed twice the shortfall in duration of education and training where the shortfall relates to post-secondary studies and/or to a period of probationary practice carried out under the control of a supervising professional person and ending with an examination,
- may not exceed the shortfall where the shortfall relates to professional practice acquired with the assistance of a qualified member of the profession.

In the case of diplomas within the meaning of the last subparagraph of Article 1 (a), the duration of education and training recognized as being of an equivalent level shall be determined as for the education and training defined in the first subparagraph of Article 1 (a).

When applying these provisions, account must be taken of the professional experience referred to in Article 3 (b).

At all events, the professional experience required may not exceed four years;

(b) to complete an adaptation period not exceeding three years or take an aptitude test:

- where the matters covered by the education and training he has received as laid down in Article 3 (a) and (b), differ substantially from those covered by the diploma required in the host Member State, or
- where, in the case referred to in Article 3 (a), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession regulated in the Member State from which the applicant originates or comes and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the diploma adduced by the applicant, or
- where, in the case referred to in Article 3 (b), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession pursued by the applicant in the Member State from which he originates or comes, and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the evidence of formal qualifications adduced by the applicant.

Should the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test. By way of derogation from this principle, for

professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test. Where the host Member State intends to introduce derogations for other professions as regards an applicant's right to choose, the procedure laid down in Article 10 shall apply.

2. However, the host Member State may not apply the provisions of paragraph 1 (a) and (b) cumulatively. Article 5

Without prejudice to Articles 3 and 4, a host Member State may allow the applicant, with a view to improving his possibilities of adapting to the professional environment in that State, to undergo there, on the basis of equivalence, that part of his professional education and training represented by professional practice, acquired with the assistance of a qualified member of the profession, which he has not undergone in his Member State of origin or the Member State from which he has come.

Article 6

1. Where the competent authority of a host Member State requires of persons wishing to take up a regulated profession proof that they are of good character or repute or that they have not been declared bankrupt, or suspends or prohibits the pursuit of that profession in the event of serious professional misconduct or a criminal offence, that State shall accept as sufficient evidence, in respect of nationals of Member States wishing to pursue that profession in its territory, the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath - or, in States where there is no provision for declaration on oath, by a solemn declaration - made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

2. Where the competent authority of a host Member State requires of nationals of that Member State wishing to take up or pursue a regulated profession a certificate of physical or mental health, that authority shall accept as sufficient evidence in this respect the production of the document required in the Member State of origin or the Member State from which the foreign national comes.

Where the Member State of origin or the Member State from which the foreign national comes does not impose any requirements of this nature on those wishing to take up or pursue the profession in question, the host Member State shall accept from such nationals a certificate issued by a competent authority in that State corresponding to the certificates issued in the host Member State.

3. The competent authorities of host Member States may require that the documents and certificates referred to in paragraphs 1 and 2 are presented no more than three months after their date of issue.

4. Where the competent authority of a host Member State requires nationals of that Member State wishing to take up or pursue a regulated profession to take an oath or make a solemn declaration and where the form of such oath or declaration cannot be used by nationals of other Member States, that authority shall ensure that an appropriate and equivalent form of oath or declaration is offered to the person concerned.

Article 7

1. The competent authorities of host Member States shall recognize the right of nationals of Member States who fulfil the conditions for the taking up and pursuit of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession.

2. The competent authorities of host Member States shall recognize the right of nationals of Member States who fulfil the conditions for the taking up and pursuit of a regulated profession in their territory to use their lawful academic title and, where appropriate, the abbreviation thereof deriving from their Member State of origin or the Member State from which they come, in the language of that State. Host Member State may require this title to be followed by the name and location of the establishment or examining board which awarded it.

3. Where a profession is regulated in the host Member State by an association or organization referred to in Article 1 (d), nationals of Member States shall only be entitled to use the professional title or designatory letters conferred by that organization or association on proof of membership.

Where the association or organization makes membership subject to certain qualification requirements, it may apply these to nationals of other Member States who are in possession of a diploma within the meaning of Article 1 (a) or a formal qualification within the meaning of Article 3 (b) only in accordance with this Directive, in particular Articles 3 and 4.

Article 8

1. The host Member State shall accept as proof that the conditions laid down in Articles 3 and 4 are

satisfied the certificates and documents issued by the competent authorities in the Member States, which the person concerned shall submit in support of his application to pursue the profession concerned.

2. The procedure for examining an application to pursue a regulated profession shall be completed as soon as possible and the outcome communicated in a reasoned decision of the competent authority in the host Member State not later than four months after presentation of all the documents relating to the person concerned. A remedy shall be available against this decision, or the absence thereof, before a court or tribunal in accordance with the provisions of national law.

Article 9

1. Member States shall designate, within the period provided for in Article 12, the competent authorities empowered to receive the applications and take the decisions referred to in this Directive. They shall communicate this information to the other Member States and to the Commission.

2. Each Member State shall designate a person responsible for coordinating the activities of the authorities referred to in paragraph 1 and shall inform the other Member States and the Commission to that effect. His role shall be to promote uniform application of this Directive to all the professions concerned. A coordinating group shall be set up under the aegis of the Commission, composed of the coordinators appointed by each Member State or their deputies and chaired by a representative of the Commission.

The task of this group shall be:

- to facilitate the implementation of this Directive,
- to collect all useful information for its application in the Member States.

The group may be consulted by the Commission on any changes to the existing system that may be contemplated.

3. Member States shall take measures to provide the necessary information on the recognition of diplomas within the framework of this Directive. They may be assisted in this task by the information centre on the academic recognition of diplomas and periods of study established by the Member States within the framework of the Resolution of the Council and the Ministers of Education meeting within the Council of 9 February 1976 (1), and, where appropriate, the relevant professional associations or organizations. The Commission shall take the necessary initiatives to ensure the development and coordination of the communication of the necessary information.

Article 10

1. If, pursuant to the third sentence of the second subparagraph of Article 4 (1) (b), a Member State proposes not to grant applicants the right to choose between an adaptation period and an aptitude test in respect of a profession within the meaning of this Directive, it shall immediately communicate to the Commission the corresponding draft provision. It shall at the same time notify the Commission of the grounds which make the enactment of such a provision necessary.

The Commission shall immediately notify the other Member States of any draft it has received; it may also consult the coordinating group referred to in Article 9 (2) of the draft.

2. Without prejudice to the possibility for the Commission and the other Member States of making comments on the draft, the Member State may adopt the provision only if the Commission has not taken a decision to the contrary within three months.

3. At the request of a Member State or the Commission, Member States shall communicate to them, without delay, the definitive text of a provision arising from the application of this Article.

Article 11

Following the expiry of the period provided for in Article 12, Member States shall communicate to the Commission, every two years, a report on the application of the system introduced.

In addition to general remarks, this report shall contain a statistical summary of the decisions taken and a description of the main problems arising from application of the Directive.

Article 12

Member States shall take the measures necessary to comply with this Directive within two years of its notification (2). They shall forthwith inform the Commission thereof.

Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 13

Five years at the latest following the date specified in Article 12, the Commission shall report to the European Parliament and the Council on the state of application of the general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.

After conducting all necessary consultations, the Commission shall, on this occasion, present its

conclusions as to any changes that need to be made to the system as it stands. At the same time the Commission shall, where appropriate, submit proposals for improvements in the present system in the interest of further facilitating the freedom of movement, right of establishment and freedom to provide services of the persons covered by this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1988.

For the Council

The President

V. PAPANDEOU

(1) OJ No C 38, 19. 2. 1976, p. 1.

(2) This Directive was notified to Member States on 4 January 1989.

ANNEX

List of professional associations or organizations which satisfy the conditions of the second subparagraph of Article 1 (d)

IRELAND (1)

1. The Institute of Chartered Accountants in Ireland (2)
2. The Institute of Certified Public Accountants in Ireland (2)
3. The Association of Certified Accountants (2)
4. Institution of Engineers of Ireland
5. Irish Planning Institute

UNITED KINGDOM

1. Institute of Chartered Accountants in England and Wales
2. Institute of Chartered Accountants of Scotland
3. Institute of Chartered Accountants in Ireland
4. Chartered Association of Certified Accountants
5. Chartered Institute of Loss Adjusters
6. Chartered Institute of Management Accountants
7. Institute of Chartered Secretaries and Administrators
8. Chartered Insurance Institute
9. Institute of Actuaries
10. Faculty of Actuaries
11. Chartered Institute of Bankers
12. Institute of Bankers in Scotland
13. Royal Institution of Chartered Surveyors
14. Royal Town Planning Institute
15. Chartered Society of Physiotherapy
16. Royal Society of Chemistry
17. British Psychological Society
18. Library Association
19. Institute of Chartered Foresters
20. Chartered Institute of Building
21. Engineering Council
22. Institute of Energy
23. Institution of Structural Engineers
24. Institution of Civil Engineers
25. Institution of Mining Engineers
26. Institution of Mining and Metallurgy

(1) Irish nationals are also members of the following United Kingdom chartered bodies:

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Scotland

Institute of Actuaries
Faculty of Actuaries
The Chartered Institute of Management Accountants
Institute of Chartered Secretaries and Administrators
Royal Town Planning Institute
Royal Institution of Chartered Surveyors
Chartered Institute of Building.

(2) For the purposes of the activity of auditing only.

STATEMENT BY THE COUNCIL AND THE COMMISSION

Re Article 9 (1)

'The Council and the Commission agree that professional bodies and higher-education establishments should be consulted or be involved in an appropriate way in the decision-making process.'

27. Institution of Electrical Engineers
28. Institution of Gas Engineers
29. Institution of Mechanical Engineers
30. Institution of Chemical Engineers
31. Institution of Production Engineers
32. Institution of Marine Engineers
33. Royal Institution of Naval Architects
34. Royal Aeronautical Society
35. Institute of Metals
36. Chartered Institution of Building Services Engineers
37. Institute of Measurement and Control
38. British Computer Society