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Report of the CEPLIS Permanent Committee Meeting

Held on 2nd December 2004 in the premises of the European Economic and Social Committee (Brussels)

Ms Pamela Brumter – Head of Unit "Regulated Professions", DG Markt

Ms Brumter-Coret gave an updated overview of the state of the negotiations on the Draft Directive on the recognition of professional qualifications:

- The Council (CL) reached a political agreement in May 2004 and ended the first reading procedure. The position of the European Commission (CM) on the CL's position would be issued at the end of the month.
- The proposal would then go back to the European Parliament (EP). This would open the second reading procedure. Accordingly, the EP would have 3 months to reach agreement (thus April 2005) and afterwards the CL would also have 3 months to decide. In case of agreement between EP and CL, a final text would be adopted in July 2005. If not, a consultation procedure would be opened and should be closed in October 2005.

Ms Brumter-Coret also highlighted the main items of the CL's political agreement:

- Disposals of the "Acquis communautaire" were reintroduced in the text. New statements were also added notably on the origin of the free provision of services (see below) and common platforms which were considered to be "tools to facilitate automatic recognition".
- With regard to medical and dental specialisations, the threshold of 10 Member States (MS) was agreed on for automatic recognition. For the others, the general system would be applied. 51 specialities were recognised among which 42 reached the 10 MS threshold.
- Derogations concerning pharmacists and legal professions were reintroduced.
- With respect to the free provision of services (original title without control of the host MS), the CL modified the initial proposal and retained a case-by-case approach based on certain criteria (periodicity, etc.). According to the political agreement, MS would be able to require the provider, before his first activity in the host MS, to inform its authorities via the production of a declaration and documents attesting his qualifications, the legal practice of the profession or his insurance against professional risk. The declaration (without all the documents) would have to be renewed each year. The practice would start after the declaration has been introduced.

No prior control on qualifications would be allowed. Controls will not aim qualification and can be made only a posteriori in case of doubts. For professions related to the health and safety of purchasers, prior controls would be allowed following the migrant's declaration.

With regard to automatic registration, the declarations would be transmitted to registration bodies without any charge for the migrant.

Concerning disciplinary measures in the host MS, it was agreed that these would apply in the same way as for nationals and should not aim professional qualifications but rather professional mistakes putting the safety and protection of patients into danger.

This procedure would be made in written (to avoid partiality) and within strict deadlines.

In case of inappropriate qualifications in the host MS, controls can lead to compensatory measures.

The text also includes provisions guaranteeing better information for purchasers (on registration, surveillance authorities, title or professional organisation, insurance taken in the home MS, etc.). Despite the important change compared with the initial proposal, the CM accepted the compromise to add a declaration to the minutes of the CL in which it insists on the lack of developed cooperation between MS and it will watch the evolutions of cooperation.

- The CM had proposed common platforms as tools to facilitate automatic recognition via the anticipation of compensatory measures. The CL fixed the criteria for the platform to function. The CM is currently examining the lengths and contents of educations and trainings in MS in order to anticipate their demands. If a qualified majority is reached, common platforms would become compulsory (even if it remains an opportunity for the migrant) and recognised by MS. Negotiations in the CL were rather tense: therefore the non-liability of MS to change their educational system was added, the only constraint remaining the recognition of migrants. A review clause was also introduced: after 5 years the CM would give a report on the implementation of common platforms.
- With respect to the inclusion of professional organisations in the process, the EP had proposed the creation of an expert group notably made up of representatives of professionals. However, it is impossible to include the creation of such a group within a legislative text but the CM is committed to setting up this group in another text.

Q&A

The matter of linguistic capacities was considered to be included in professional qualifications for particular professions but the text also provides for requests of linguistic competencies for professions where it is a constitutive criterion of the practice. This was dealt with in an answer to a parliamentary question.

Regarding registration, it would be automatically "triggered" by the declaration and the practice can only occur afterwards.

Two additional statements were published on (1) the provision of services and administrative cooperation and (2) the role of experts and platforms.

The platforms would be proposed by professional organisations and MS (even if this is rather a question of principle). Work would be assured by a group of experts.

In the case of non-regulated professions, no obstacles were said to prevent the practice. The creation of platforms was therefore considered useless.

Once the Directive would come into force, it would be possible to introduce a project of platform to the CM and criteria would be fixed bilaterally.

Dr. Margot Froehlinger – Head of Unit "Regulated Professions", DG Markt

The Draft Directive on Services was said to be far from adoption.

In the CL, the work has known much progress. Firstly within the working group of the Competitiveness Council, clarifications to the text were agreed on by MS and endorsed by the CM. These clarifications notably included

the services covered,

the scope of derogations to the country of origin principle especially regarding the Draft Directive on recognition: questions related to professional qualifications for the provision of services will not be subject to the country of origin principle,

professional indemnity insurance: health professions would be subject to it preferably by deontological rules and cross-border insurance would only be required for cross-border service providers,

Some provisions such as on the quality of services were not discussed by the CL and will remain as they are.

Secondly, the debates at political level confirmed the earlier debates: the Draft Directive was overall supported (including the country of origin principle) but further work was called especially on derogations related to health care services.

In the EP, the situations seemed more complicated according to Dr. Froehlinger. Not less than 6 committees dealt with this issue and all had comments on different aspects of the text proposed. No quick decision was expected. Ms Gebhardt, EP Rapporteur, believed her report would be voted between spring and summer. A political agreement was expected for the UK presidency.

As this proposal was issued just before the EP elections, the issue became a matter of controversy between political parties. Dr. Froehlinger thought the debate had also been rendered more complex by misunderstandings on the interpretation of the terms. Therefore the EP had requested the inclusion of the services not covered by the proposal but this is likely to render the process much more complicated.

Dr. Froehlinger also indicated her satisfaction on the replies given to the questionnaire on common values to the regulated professions. She found encouraging that the European liberal professions were able to agree on common values. She insisted on the need and the importance to define deontological rules at EU level. Cross-border provision of services appears when providers or purchasers move temporarily. It is thus important that wherever patients would go, they know they would benefit from the same values in the provision of services. For professionals, this would help the competitiveness of services as it would promote the high quality of services. This is particularly the case in health care services.

Q&A

The question of quality standards in clinical laboratories was raised. Dr. Froehlinger mentioned Article 31 which provides for standardisation of quality for specialised services. For intellectual professions, no standards are provided for but rather certification, quality charters or codes of conduct.

With respect to the inclusion of health care services, Dr. Froehlinger recalled the controversy: entire exclusion, inclusion with derogation from the country of origin principle, exclusion only of publicly funded health care services.

Regarding European codes of conduct, they should not be limited to the cross-border provision. These would provide for minimal rules. It remains possible to go beyond at national level.

The single points of contact (Article 6) were considered best entrusted by bodies such as professional organisations or chambers. The CM encourages (cannot compel) MS to give this role to professional organisations. Chambers and professional organisations can then develop other services and become modern service providers. The single points of contact would be addressed applications, forms and relevant documents. If they are not the authority itself, they would deal with the relevant national authorities.

Dr. Froehlinger made clear that the proposal would not be redrafted with clarifications. A modified text will be published after the first reading procedure.

Dr. Froehlinger indicated the ideas among MEPs that the country of origin principle should be limited to certain sectors. However, the proposal does not only provide for the country of origin principle and derogations to it. It also deals with harmonisation and administrative cooperation. The latter would be assured by legally binding obligations for MS to cooperate and strengthened controls and supervision. According to her, requests for harmonisation prior to the application of the country of origin principle would mean the rejection of the internal market of services. She emphasised the need to identify possible additional problems. She considered the country of origin principle to be the starting point of an internal market for services.

Dr. Maillet met both speakers after the meeting in order to discuss the possibility to meet them in the coming weeks. His proposal was well received and Ms Brumter-Coret and Dr. Froehlinger were eager to discuss these issues with representatives of UEMS.

Frédéric Destrebecq