

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 29 January 1981

Proposal for a COUNCIL DIRECTIVE

amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUMI. ORIGIN AND AIMS OF THE PROPOSAL

1. On 16 June 1975 the Council adopted Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, together with Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors*.

2. The aim of this proposal is to amend these two Directives. The main amendment proposed concerns Directive 75/363/EEC and relates to part-time specialist training, together with proposals for certain technical amendments to the two Directives which it seemed advisable as a result of experience acquired since the entry into force of the Directives and changes in national legislation.

3. The legal basis for the proposal is found in the Treaty establishing the European Economic Community, in particular Articles 49, 57 and 66.

II. PART-TIME SPECIALIST TRAININGArticle 2(1), (2) and (3) of the proposal

1. Article 2 of Directive 75/363/EEC lays down the requirements for training in specialized medicine. Paragraph 1(c) of this Article particularly states that such training shall be given in a full-time course. Article 3 paragraph 1, on the other hand, although it confirms this principle, authorizes part-time specialist training under certain conditions. Moreover, paragraph 3 provides for a review of the situation to enable the Council to decide whether, on a proposal from the Commission, the provisions of paragraphs 1 and 2 should be retained or amended.

* Official Journal of the European Communities, No L 167 of 30 June 1975.

2. In this context the Commission consulted the Advisory Committee on Medical Training set up by the Council Decision of 16 June 1975*. Having examined the question, the Committee delivered an opinion on the part-time training of specialists at its meeting on 28 and 29 November 1978.

The main conclusion in the opinion is that full-time training, as prescribed in Article 2(1)(c) of Directive 75/363/EEC, should be the norm and any derogation therefrom should be granted by the national authorities only in the case of doctors whose personal circumstances, such as family obligations, prevent their attendance at full-time courses throughout the training period.

The Committee also considered that to avoid the possibility of different interpretations of the meaning of full-time and part-time training, and to ensure, that regardless of the method of training followed, it should be of a comparable high standard, the characteristics of full-time and part-time training for specialists should be defined. Accordingly, it attached a definition of these concepts to its opinion.

Lastly, the Committee did not believe it was possible for the time being to single out from among the specialized fields under consideration those where only full-time training would be practicable. In certain Member States where part-time training is recognized, it is permissible in all specialized fields, even though in certain cases the entire curriculum cannot be covered. Accordingly it recommended that the question should be reviewed in some years' time after a more thorough study had been made of the content and organization of specialist medical training.

* Official Journal of the European Communities, No L 167 of 30 June 1975.

3. The Commission supported the opinion of the Advisory Committee on Medical Training: its substance is set out in Article 2(1), (2) and (3) of the proposal.

Article 3 of the proposal

4. Provision had to be made to enable any beneficiaries of the existing Article 3 of Directive 75/363/EEC to complete their specialized training after the entry into effect of the new Article 3. A transitional provision to this effect is laid down in Article 3 of the present proposal.

Article 2(6) of the proposal

5. Article 3 in Directive 75/363/EEC is not the only Article in this Directive that provides for a derogation from the criteria governing specialist training set out in Article 2. Article 7 provides for an additional derogation enabling the Member States providing for a method of part-time specialist training at the time of notification of the Directive to maintain it for candidates who began such training no later than four years preceding the said notification.

The scope of the derogation laid down in Article 7 is therefore broader than that laid down in Article 3 and relates to training which does not even meet all the requirements set out in Article 3. For example, it does not require the part-time nature of the training to be offset by an extension (see the first sentence of Article 3(2)). On the other hand, the Council set a deadline for this derogation which expired on 20 June 1979.

The French Government, however, by a letter of 14 March 1980, requested the Commission to propose to the Council that this derogation be extended until the end of 1982. In view of the considerable reorganization involved and the need to respect the rights of students engaged in training, the reform of medical training implemented in France pursuant to Law No 79-565 of 6 July 1979 concerning medicine and pharmacy would necessitate retention of the derogation laid down in Article 7 until end 1982.

6. It should be pointed out that the types of training covered by Article 7 are not covered by the provisions on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialized medicine set out in Articles 4 and 6 of Directive 75/362/EEC. Strictly speaking, therefore, the beneficiaries of Article 7 of Directive 75/363/EEC would be entitled to use the title of specialist in the country in which they were trained and to practise specialized medicine under that title, but would not be entitled to freedom of movement in the Community as a medical specialist.

There would appear to be a contradiction here between the spirit and letter of the Directives.

7. The Commission consulted the Committee of Senior Public Health Officials, set up by Council Decision of 16 June 1975, on the questions raised in paragraphs 5 and 6 above.

At its meetings on 17 and 18 June 1980, the Committee was in favour of extending the derogation. The majority of the Committee also considered that the medical specialists to whom it applied should also benefit from freedom of movement, provided it was subject to special conditions similar to those set out in Article 9 of Directive 75/362/EEC, while a minority held that the conditions set out in Article 8 of that Directive should apply.

The Commission has adopted this opinion and followed the views of the majority of the Committee because they appear to be more in line with the spirit of the Directive.

The Commission's proposal on this question is set out in Article 2(6) of the present proposal.

8. Clearly there is a contradiction between the provisions of Article 2(1), (2) and (3) of this proposal and those in paragraph 6 of the same Article: the former seek to reduce the possibilities for part-time training while the other seeks to extend an additional derogation which expired in June 1979.

* Official Journal of the European Communities, No L 167 of 30 June 1975.

This, however, is no more than an apparent contradiction. The derogation covering training referred to in Article 2(6) of the proposal is intended to expire shortly (and of 1982). Its sole aim is to enable a Member State, where there are two possibilities for specialist training, to eliminate the one that does not comply with the Directives, pursuant to a law that has already been adopted, while allowing for a certain lapse of time to protect students at present engaged in training.

III. TECHNICAL AMENDMENTS TO DIRECTIVES 75/362/EEC AND 75/363/EEC

1. Articles 1(1) and (2) and 2(4) and (5) of the proposal

The first set of amendments applies to the denominations of specializations in one language or all the Community languages set out in Articles 5(3) and 7(2) of Directive 75/362/EEC and in Articles 4 and 5 of Directive 75/363/EEC. They are contained in Article 1(1) and (2) of this proposal in the case of Directive 75/362/EEC, and in Article 2(4) and (5) of this proposal in the case of Directive 75/363/EEC. They concern either specializations whose denomination has been changed in a Member State (for example, in Belgium where the term "physiotherapy" has been replaced by "médecine physique"), or specializations incorrectly set down in the Directives (for example, in France "obstétrique et gynécologie médicale" is replaced by "gynécologie obstétrique), or incorrect translations into German (for example, "ophthalmologie" is replaced by "Augenheilkunde").

2. Article 1(3) to (7) of the proposal

Article 1(3) to (7) contains amendments to certain provisions of Directive 75/362/EEC to bring them into line with similar provisions subsequently adopted by the Council in Directive 78/1026/EEC concerning the free movement of veterinary surgeons.

Here the intention is simply to harmonize the provisions dealing with the same subject in the various Directives on freedom of movement for the liberal professions.

Article 4 of the proposal

3. Article 4 of the proposal for a Directive is intended to ensure the recognition of any rights acquired in a Member State - in this case Luxembourg - by migrant doctors in a similar situation to national beneficiaries of such rights. It was included in the proposal following the elimination in Luxembourg in December 1978 of the titles of specialist in neuro-psychiatry and radiology. Its wording is based on Article 9(4) of Directive 75/362/EEC which covered a similar situation in 1975.

IV. DATE OF ENTRY INTO FORCE AND DESTINATION

Articles 5 and 6 of the proposal

The provisions regarding the date of entry into force and destination of the proposal are set out in Articles 5 and 6. With respect to the date of entry into force, it is proposed that the Member States adopt the necessary measures for incorporation into national law within a period of one year following notification of the Directive since these measures should not give rise to any particular problems.

PROPOSAL
FOR A
COUNCIL DIRECTIVE

AMENDING DIRECTIVE 75/362/EEC
CONCERNING THE MUTUAL RECOGNITION OF DIPLOMAS, CERTIFICATES AND OTHER
EVIDENCE OF FORMAL QUALIFICATIONS IN MEDICINE, INCLUDING MEASURES TO
FACILITATE EFFECTIVE EXERCISE OF THE RIGHT OF ESTABLISHMENT AND FREEDOM
TO PROVIDE SERVICES AND DIRECTIVE 75/363/EEC CONCERNING
THE COORDINATION OF PROVISIONS LAID DOWN BY LAW, REGULATION OR
ADMINISTRATIVE ACTION IN RESPECT OF ACTIVITIES OF DOCTORS

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas changes in the legislation of the Member States and experience gained from the application of Council Directives 75/362/EEC¹ and 75/363/EEC² have made certain technical amendments necessary,

Whereas Article 3(3) of Directive 75/363/EEC provides that "Four years at the latest after notification of this Directive in the light of a review of the situation, acting on a proposal from the Commission, and bearing in mind that the possibility of part-time training should continue to exist in certain circumstances to be examined separately for each specialty, the Council shall decide whether the provisions of paragraphs 1 and 2 should be retained or amended",

Whereas pursuant to the principle of full-time training for medical specialists, the derogation in favour of part-time training should be limited still further,

Whereas the validity of the provisions of Article 7 of Directive 75/363/EEC should be extended until 31 December 1982 to enable those Member States where part-time training for medical specialists does not comply with the provisions of Articles 2 and 3 of that Directive to complete the process of reform introduced in order to end this type of training,

¹ OJ No L 167, 30.6.1975, p.1

² OJ No L 167, 30.6.1975, p.14

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 75/363/EEC is hereby amended as follows:

1. In Article 5(3)

(a) in the German version, the undermentioned titles are replaced as follows:

- (1) " - Anästhesie-Wiederbelebung" by
" - Anästhesiologie-Wiederbelebung"
- (2) " - Ophthalmologie" by " - Augenheilkunde"
- (3) " - Otorhinolaryngologie" by " - Hals-Nasen-Ohrenheilkunde"
- (4) " - Pädiatrie" by " - Kinderheilkunde"

(b) in all versions

- (1) under "anaesthetics", in the case of:
 - Germany, "Anästhesie" is replaced by "Anästhesiologie"
 - Belgium, "anesthésiologie/anesthésie" is replaced by
"anesthésiologie/anesthesiologie"
- (2) under "obstetrics and gynaecology", in the case of:
 - Belgium, "gynécologie-obstétrique gynaecologie-verloskunde"
is replaced by
"gynécologie-obstétrique /gynecologie -verloskunde"
 - France, "obstétrique et gynécologie médicale" is replaced by
"gynécologie /obstétrique"
- (3) under " - oto-rhino-laryngology", in the case of
 - Germany, "Hals-, Nasen-, Ohrenheilkunde" is replaced by
"Hals-Nasen-Ohrenheilkunde"
- (4) under "paediatrics", in the case of
 - Belgium, "pédiatrie /pediatrie" is replaced by
"pédiatrie/ kindergeneeskunde"

2. In Article 7(2)

(a) in the German version, the following headings should be amended:

- (1) "Mikrobiologie-Bakteriologie" is replaced by "Mikrobiologie und Infektionsepidemiologie"
- (2) "Neuro-Psychiatrie" is replaced by "Nervenheilkunde (Neurologie und Psychiatrie)"
- (3) "Kinderpsychiatrie" is replaced by "Kinder und Jugendlichen-psychiatrie"

(b) in all versions

- (1) under "microbiology-bacteriology", the following is added:
 - Germany: Mikrobiologie und Infektionsepidemiologie"
 - in the case of the Netherlands, "bacteriologie" is replaced by "medische microbiologie"
- (2) under "biological chemistry", in the case of
 - Luxembourg, "biochimie" is replaced by "chimie biologique"
- (3) under "paediatric surgery", in the case of
 - Luxembourg, "chirurgie infantile" is replaced by "chirurgie pédiatrique"
- (4) under "physiotherapy", in the case of
 - Belgium, "physiothérapie/fysiotherapie" is replaced by "médecine physique/fysische geneeskunde"and the following is added: "Luxembourg - rééducation et réadaptation fonctionnelles"
- (5) under "neuropsychiatry", in the case of
 - Germany, "Neurologie und Psychiatrie" is replaced by "Nervenheilkunde (Neurologie und Psychiatrie)"
- (6) under "dermato-venereology", in the case of
 - Germany, "Dermatologie und Venerologie" is replaced by "Dermatologie und Venerologie/Haut- und Geschlechtskrankheiten"
- (7) under "diagnostic radiology" the following is added:
 - "Luxembourg: radiodiagnostic"
- (8) under "radiotherapy", the following is added:
 - "Luxembourg: radiothérapie"
- (9) under "child psychiatry" the following is added:
 - "Luxembourg: psychiatrie infantile"
 - "United Kingdom: child and adolescent psychiatry"

3. Article 11(3) is replaced by the following:

"If the host Member State has detailed knowledge of a serious matter which has occurred outside its territory and which is likely to affect the taking up of the activities concerned within its territory, it may inform the Member State of origin or the Member State from which the foreign national comes.

The Member State of origin or the Member State from which the foreign national comes shall verify the accuracy of the facts. The authorities in that State shall themselves decide on the nature and extent of the investigation to be made and shall inform the host Member State of any consequential action which they take with regard to the certificates or documents they have issued.

Member States shall ensure the confidentiality of the information which is forwarded."

4. Article 12(2) of the Directive is replaced by the following text:

"2. If the host Member State has detailed knowledge of a serious matter which has occurred outside its territory and which is likely to affect the pursuit of the activities concerned within its territory, it may inform the Member State of origin or the Member State from which the foreign national comes.

The Member State of origin or the Member State from which the foreign national comes shall verify the accuracy of the facts. The authorities in that State shall themselves decide on the nature and extent of the investigation to be made and shall inform the host Member State of any consequential action which they take with regard to the information which they have forwarded in accordance with paragraph 1."

5. After Article 15 the following new Article, 15a, is added:

Article 15a

"Where a host Member State requires its own nationals wishing to take up or pursue one of the activities referred to in Article 1 to take an oath

or make a solemn declaration and where the form of such an oath or declaration cannot be used by nationals of other Member States, that Member State shall ensure that an appropriate and equivalent form of oath or declaration is offered to the person concerned."

6. The following provisions shall be inserted between the second and third subparagraphs of Article 16(1):

"For this purpose and in addition to the declaration provided for in paragraph 2 relating to the services to be provided, Member States may, so as to permit the implementation of the provisions relating to professional conduct in force in their territory, require either automatic temporary registration or pro forma membership of a professional organization or body or, as an alternative, registration, provided that such registration or membership does not delay or in any way complicate the provision of services or impose any additional costs on the person providing the services."

7. Article 19 is deleted.

Article 2

Directive 75/363/EEC is hereby amended as follows:

1. Article 2(1)(c) is replaced by the following:

"c) it shall be a full-time course supervised by the competent authorities or bodies pursuant to paragraph 1 of the Annex hereto;"

2. Article 3 is replaced by the following:

"Article 3

"1. Without prejudice to the principle of full-time training as set out in Article 2(1)(c), and until such time as the Council takes decisions

in accordance with paragraph 3, Member States may permit part-time specialist training, under conditions approved by the competent national authorities, when training on a full-time basis would not be practicable for well-founded individual reasons.

2. Part-time training shall be given in accordance with paragraph 2 of the Annex hereto and at a standard qualitatively equivalent to full-time training. This standard of training shall not be impaired, either by its part-time nature or by the practice of private, remunerated professional activity.

The total duration of specialized training may not be curtailed in those cases where it is organized on a part-time basis.

3. The Council shall decide by simple majority not later than(*) whether the provisions of paragraphs 1 and 2 are to be maintained or amended in the light of a re-examination of the situation and on a proposal by the Commission, with due regard to the fact that the possibility of part-time training should continue to exist in certain circumstances to be examined specialty by specialty."

3. The following Annex is added:

"ANNEX

Characteristics of full-time and part-time
training of specialists

1. Full-time training of specialists

Such training shall be carried out in stipulated posts recognized as qualifying posts by the competent authority.

It shall involve participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical

(*) This date should be calculated to be seven years after the date of the adoption of this Directive by the Council.

training all his professional activity throughout the duration of the standard working week and throughout the year according to provisions agreed by the competent authority.

Training may be interrupted for reasons such as military service, secondment, pregnancy or sickness. The total duration of the training shall not be reduced by reason of any interruption.

Remuneration shall be such that it will not be necessary for trainee specialists to engage in any other paid activity.

2. Part-time training of specialists

This training shall meet the same requirements as full-time training, from which it shall differ only in the possibility of limiting participation in medical activities to a period at least half of that provided for in the second subparagraph of paragraph 1.

The competent authorities shall ensure that the total duration and quality of part-time training of specialists are not less than those of full-time trainees, and shall accordingly take measures to satisfy themselves that proportional remuneration is attached to such part-time training."

4. In Article 4 of the German version

- (1) "Anästhesie-Wiederbelegung" is replaced by "Anästhesiologie-Wiederbelegung"
- (2) "Hals-, Nasen-, Ohrenheilkunde" is replaced by "Hals-Nasen-Ohrenheilkunde".

5. In Article 5 of the German version

- (1) "Neuropsychiatrie" is replaced by "Nervenheilkunde (Neurologie und Psychiatrie)"
- (2) "Mikrobiologie-Bakteriologie" is replaced by "Mikrobiologie-Infektionsepidemiologie".

6. Article 7 is replaced by the following:

"Article 7

As a transitional measure and notwithstanding Articles 2(1)(c) and 3, Member States whose provisions, laid down by law, regulation, or administrative action, provide for part-time specialist training at the time of notification of Directives 75/362/EEC and 75/363/EEC may continue to apply these provisions to candidates who have begun training as specialists not later than 31 December 1982.

Each host Member State shall be authorized to require the beneficiaries of the above paragraph to produce, in addition to their diplomas, certificates and other evidence of formal qualifications, an attestation certifying that for at least three consecutive years out of the five years preceding the issue of the attestation they have in fact been lawfully practising as specialists in the field concerned."

Article 3

Under Article 3 of Directive 75/363/EEC part-time specialist training begun before* may be completed in accordance with these provisions.

Article 4

Member States which, before notification of this Directive, have repealed the provisions laid down by law, regulation or administrative

* Date of entry into force of the amended Directive

action on the award of diplomas, certificates and other evidence of formal qualification in neuropsychiatry or radiology and have, before notification of this Directive, adopted measures relating to acquired rights on behalf of their own nationals to regularize existing circumstances, shall accord the right to benefit from such measures to nationals of the Member States, provided their diplomas, certificates and other evidence of formal qualifications in neuropsychiatry or radiology fulfil the conditions laid down in this respect either in Articles 2, 3 and 5 of Directive 75/363/EEC, or in Article 9(2) of Directive 75/362/EEC.

Article 5

Member States shall take the necessary measures to comply with this Directive by 31 December 1982 at the latest. They shall inform the Commission thereof forthwith.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the Council