Recognition of Professional Qualifications - compensation measures

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Recognition of professional qualifications under the general system of the PQD

General system recognition

- The same profession – Article 4 PQD
- Home/host MS - regulated/non-regulated – Article 13 PQD
- Substantial differences – Article 14 PQD
- Application of compensation measures – Article 14 PQD
- For services provision – Article 7(4) PQD

Sectoral system recognition

- Automatic recognition – Article 21 PQD
- Subsidiary application of general system - Article 10 PQD

The same profession

Rec 3, Articles 1 and 4 PQD

Definition in Article 4(2): "comparable activities"

- No formalistic criteria (name, national categorisation, …)
- Possibility of more professions being the "same"
- Core skills/activities essential to the profession
  - If differences – recognition without compensation measures
  - If substantial differences - compensation measures
  - If differences cannot be compensated – ev partial access

Scope of the general system

Host MS: profession regulated

Home MS: profession regulated – Art 13(1) PQD

Home MS: profession not regulated – Art 13(2) PQD: 1 year of practise during last 10 years + evidence of formal qualification

Home MS: profession not regulated, but training regulated – Art 13(2) subpara 2 – evidence of formal qualification without 1 year of practise

Mechanism of recongition

- Access to be granted to the same profession in host MS, if professional is fully authorised in home MS (Art 13(1) PQD)

- Qualification does not need to be **identical**

[Recognition of same professions on same level or one level above (Article 11 PQD) – old text]

- Qualification levels of Article 11 for orientation and application of compensation measures

  - Article 12 essential for alternative pathways

- If **substantial differences** – compensation measures

(ECJ C-102/02 *Beuttenmüller*, C-330/03 *Colegio* and C-274/05 *COM/GR*)

Substantial differences (1)

- No formalistic criteria: former Article 14(a) PQD of one year difference in lengths dropped with Directive 2013/55

- Training is substantially different in matters covered by the host MS (essential skills?)

- More activities in host MS and education in home MS covers substantially different matters

(ECJ: C-39/07 *COM/ES* and C-136/07 *COM/ES*)

Substantial differences (2)

Compensation possible with work experience or LLL (Article 14(5) PQD)

Choice of compensation measure: adaptation period or aptitude test, ***except:***

- MS has notified derogation to COM (Article 14(2) – decisions published on website)

- Legal professions (Article 14(3) subpara 1)

- In Article 10 cases (Article 14(3) subparas 2+3)

- Applicant jumps over more than one level (Art 13(3) subpara 4 lit (a) and (b)): host MS may impose test or adaptation period

- Applicant jumps from level (a) to (d) (Art 13(3) subpara 5): combination of compensation measures possible (not from level (b)-(e)!)

- No recognition under PQD, if applicant jumps from level (a) to (e) (Article 13(4))

Compensation measures (1)

Adaptation period:

- Mandatory supervision
- Option to choose freely training supervisor
- Competent authorities to assist migrant to find place
- No right to payment during adaptation period: national legislation – no discrimination
- May incur even costs to applicant
- Status of applicant to be clarified (Article 3(1) lit(g) PQD)
- Applicant should know what needs to be achieved
- Report written by supervisor at the end

Compensation measures (2)

Adaptation test:

- At least 2 times a year offered
- Applicant to be informed in decision about details of test:
    - where to take test
    - what is substance of test? (may include professional rules; references of books/literature to prepare)
- Tailormade, incl. professional experience
- Test may take longer than 1 day
- Test may be more practical than theoretical
- Possibility to repeat test

Service provision

- No prior check of qualification except in case of Article 7(4) – professions with public health and safety implications

- Aptitude test possible (Article 7(4) subpara 2 lit (b)(i))

- Decision within one month whether to apply test (Article 7(4) subpara 4 - ev longer under Article 7(4) subpara 3)

- Service must be possible within one month of that decision (Article 7(4) subpara 4, last sentence)

- Same conditions for test as for establishment (code of conduct, pt 8)

- If deadline passes, service may be provided Article 7(4) subpara 5)

- Lack of knowledge does not exempt service provider from professional rules!

Article 10 PQD

- Bridge between sectoral and general system

- Medical professions: Article 10 lit (b), (d), (e), (f)

- No choice of compensation measure (Article 14(3)(2) PQD)

- 10(b): not fulfil minimum requirements and no acquired rights (essential for new MS)

- 10(d): Basic medical diploma automatically recognised, not specialisation (no entry in Annex 5.1.3) – only for doctors and dentists, not nurses

- 10(e): recognition of general or post-basic specialist nurses in MS with direct entry specialist nurses (choice of compensation measure)

- 10(f): recognition of direct entry specialist nurses in MS with general or post-basic specialist nurses

"Bad" practises

- If name/education/activities are not identical – different professions

- Count minutes/hours to establish substantial differences

- Not duly justified decision: what are the differences, what will be substance of testing, etc?

- Request applicant to register at insitution for specific course as aptitude test and to pay for full semester inscription fee

- Test contains questions on general knowledge about host MS or knowledge covered already by home State education

- Person given "yellow pages" of host state to find training supervisor for adaptation period

- Test/adaptation period postponed for long period – queues or waiting for more applicants



Thank you !