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COMMUNICATION FROM THE COMMISSION

Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures – recommendations regarding Directive 2005/36/EC

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The COVID-19 crisis requires immediate and exceptional measures in the field of public health. Member States are struggling to provide enough medical staff to fight the crisis and still be able to diagnose, treat and care for patients. The situation in healthcare facilities and training institutions may have an impact on the possibility to provide full training to health professions, in particular practical training.

While reacting swiftly to the crisis is of paramount importance, there is also a need to keep in mind the more medium- or long-term effects that any emergency measures might have and to mitigate the negative impacts as far as possible by being resourceful and flexible. The Commission wishes to support the Member States by providing assistance and information, and in particular by highlighting certain aspects of Directive 2005/36/EC that are important when considering how to minimize the consequences of the crisis' impact on healthcare professionals. This includes impacts on harmonised training requirements and safeguarding the full rights of health professionals, including the facilitation of the recognition of qualifications for cross-border movement and ensuring a high level of health and safety for the patients.

The aim of this guidance is to ensure the free movement of health professionals to the largest extent possible, given the extraordinary circumstances they are currently facing. This guidance complements the information provided in the Communication on EU emergency assistance on cross-border cooperation in healthcare related to the COVID-19 crisis¹ and in the Communication on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy².

The Commission wishes to reassure Member States that it will be available to discuss with each and every one of them the particular problems encountered during the crisis and to address them, if appropriate and necessary, in a suitable way, using all the administrative and legislative means at its disposal.

The Directive sets out rules on the cross-border recognition of professional qualifications. For certain sectoral professions such as general care nurses, dentists (including specialists), doctors (including a range of specialists) and pharmacists, the Directive also lays down minimum training requirements at EU level. Under Article 21(1) of the Directive, host Member States must automatically recognise the qualifications awarded at the end of such training listed in Annex V of the Directive. The qualifications of other health professionals, such as specialised nurses for whom no minimum training requirements exist at EU level, are not subject to automatic recognition. Host Member States are allowed (but not obliged) to check the qualifications of those professionals and may impose compensation measures where appropriate.

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_111_I_0001

² [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330(02))

The following points should guide Member States when considering measures to address immediate staff shortages or measures for training future health professionals.

1. Recognition and permission to work for health professionals in cross-border situations

- a. The Directive provides professionals requesting recognition of their qualifications in another EU country with rights to ensure that Member State authorities assess their requests properly and within certain procedural safeguards and deadlines. These rules set out the most that can be required of health professionals. They do not oblige the Member States to impose restrictions as regards recognition procedures. As a result:

The Directive does not prevent Member States from taking a more liberal approach to how they treat incoming health professionals, both for temporary service provision or establishment, for instance by dropping the requirement for a prior declaration and prior check of qualifications or by applying shorter deadlines for handling applications, requesting fewer documents than usual, not asking for certified translations or not insisting on a compensation measure when the host Member State considers that there is no major risk to patient safety. The measures in place should be of non-discriminatory nature.

The training of some health professions, such as doctors with basic medical training, a number of medical specialisations such as respiratory medicine or anaesthetics, and general care nurses is based on minimum harmonisation under the Directive.

For the purpose of temporary and occasional service provision, where these health professionals move temporarily to another Member State to strengthen the workforce for a limited period, only a simple prior declaration may be required of them, without any need to wait for a decision from the host Member State authorities. Such declaration obligations can be waived unilaterally by the host Member State, either in general or for particular periods, activities or sectors.

For other health professions, Member States can impose a prior check of the qualifications of professionals whose activities have health and safety implications. This may be the case for specialist nurses (as opposed to general care nurses), certain specialist doctors, for example if the receiving Member State has a regulated specialty that does not exist in the sending Member State, or paramedical professionals such as physiotherapists.

Prior checks are not mandatory under the Directive and Member States remain free to speed up, reduce or dispense with such prior checks.

- b. The Directive does not apply to applicants that are not yet fully qualified in their home Member State. This does not prevent the host Member State from allowing them to provide limited health services in its territory or be employed under its own national law, including via specific procedures put in place to respond to the crisis.

2. Early graduation for sectoral health professions or temporary adaptations of the curricula due to the crisis

Some Member States may be considering early graduation for students at an advanced stage of training in order to make medical staff available or because the final months of training cannot be completed due to the crisis (closed training institutions, inability to provide structured practical training in hospitals etc.) Any such consideration needs to take into account the fact that the sectoral health professions are subject to minimum training requirements at EU level.

- a. If the minimum requirements set out in the Directive are met, early graduation in sectoral professions or shortening of training is within the competence of the Member States and is in line with the Directive. The qualifications listed in Annex V can be issued to the professionals in question and they will have full rights to automatic recognition in the future. This may be the case, for example, in countries where training goes beyond the minimum requirements required by the Directive.
- b. If the minimum requirements set out in the Directive cannot be met, a derogation from Article 21(6) of the Directive would need to be requested so that students graduating in 2020 could obtain, under the current exceptional circumstances linked to COVID-19, the diploma listed in Annex V.

Article 61 of the Directive provides the possibility to allow for a derogation from specific provisions of the Directive for a limited period via adoption of an implementing act if a Member State encounters major difficulties in applying a specific provision of the Directive. The implementing act could take the form of a Decision or a Regulation.

The scope and content of any derogation will depend on the specific circumstances in a given Member State. The need for a derogation would have to be determined on the basis of clear and concrete information from the Member States concerned as to which rules they would not be able to follow due to the exceptional circumstances and whether this would apply to all graduates or only to individual ones or to specific institutes, regions etc. Furthermore, the Member State would need to specify the means by which the graduates will be able to complete the missing parts of the minimum training requirements and over which period of time.

The derogation, if considered appropriate, would be contained in an implementing act and would be subject to the condition that the knowledge, skills and competences referred to in the minimum training requirements will be acquired, albeit in part after the diploma has been issued. Completion of the training in line with the Directive could be achieved in different ways, for example by professional experience gained during the emergency situation or afterwards, further specialised training or continuous professional development programmes. It would therefore not be necessary to return to the training programme or to integrate the 2020 graduates into the following year's programme once the emergency is over.

Diplomas that are issued based on the conditions set out in a derogation would not be eligible for automatic recognition by the host Member State until the minimum training requirements have been met. The Commission

considers that such diplomas could be identified by issuing a diploma supplement, detailing the parts of the minimum training requirements that are missing. This would allow for the identification of any shortcomings and facilitate the recognition process for graduates wishing to take advantage of the right to free movement before they have completed the missing parts of their training. The information in the diploma supplement would help the host Member State decide on the recognition and application of possible compensation measures, with full knowledge of the background and exceptional reasons for non-compliance with the minimum requirements.

The possibility to provide for derogations from minimum harmonised training requirements under Article 61 needs to be assessed on the basis of clear and concrete information about the specific difficulties encountered in the specific Member States.

Member States concerned are responsible for providing for possibilities for graduates with shortened training to compensate for the missed parts of the regular training. Such measures could for example consist in taking into account professional experience gained during the emergency or afterwards, on a case by case basis.

3. Recognition of health professionals with qualifications from outside the EU/ European Free Trade Association (EFTA) Member States

The recognition of health professionals with diplomas from outside the EU/EFTA is granted according to national procedures in the Member States. However, for health professions where minimum training requirements are harmonised at EU level, including doctors and nurses responsible for general care, the EU minimum training requirements must be respected (Article 2(2) of the Directive). If professionals have a non-EU/EFTA qualification in one of those professions that does not meet the harmonised requirements, the Member State intending to recognise such a diploma must apply compensation measures. Alternatively, these professionals may be allowed to work in health care, but without being treated as a member of the profession for which they do not meet the qualification standards laid down in the Directive.

For example, a third-country qualified nurse whose training does not meet the minimum harmonisation requirements may be allowed to work as a health care assistant carrying out limited tasks as specified for such activities in national law.

Member States may employ health professionals with diplomas from third countries either by ensuring that their professional qualifications comply with the minimum training requirements at EU level or by granting them a different status than that of a full member of one of the professions for which minimum training requirements are harmonised in the EU.

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