

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance)

TITLE II

**FREE PROVISION OF SERVICES**

*Article 5*

**Principle of the free provision of services**

1 Without prejudice to specific provisions of Community law, as well as to Articles 6 and 7 of this Directive, Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State:

a if the service provider is legally established in a Member State for the purpose of pursuing the same profession there (hereinafter referred to as the Member State of establishment), and

[<sup>F1</sup>b where the service provider moves, if he has pursued that profession in one or several Member States for at least one year during the last 10 years preceding the provision of services when the profession is not regulated in the Member State of establishment. The condition of one year's pursuit shall not apply if the profession or the education and training leading to the profession is regulated.]

2 The provisions of this title shall only apply where the service provider moves to the territory of the host Member State to pursue, on a temporary and occasional basis, the profession referred to in paragraph 1.

The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.

3 Where a service provider moves, he shall be subject to professional rules of a professional, statutory or administrative nature which are directly linked to professional qualifications, such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host Member State to professionals who pursue the same profession in that Member State.

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**Textual Amendments**

- F1** Substituted by [Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation \(EU\) No 1024/2012 on administrative cooperation through the Internal Market Information System \('the IMI Regulation'\)](#) (Text with EEA relevance).

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## Article 6

### Exemptions

Pursuant to Article 5(1), the host Member State shall exempt service providers established in another Member State from the requirements which it places on professionals established in its territory relating to:

- (a) authorisation by, registration with or membership of a professional organisation or body. In order to facilitate the application of disciplinary provisions in force on their territory according to Article 5(3), Member States may provide either for automatic temporary registration with or for pro forma membership of such a professional organisation or body, provided that such registration or membership does not delay or complicate in any way the provision of services and does not entail any additional costs for the service provider. A copy of the declaration and, where applicable, of the renewal referred to in Article 7(1), accompanied, for professions which have implications for public health and safety referred to in Article 7(4) or which benefit from automatic recognition under Title III Chapter III, by a copy of the documents referred to in Article 7(2) shall be sent by the competent authority to the relevant professional organisation or body, and this shall constitute automatic temporary registration or pro forma membership for this purpose;
- (b) registration with a public social security body for the purpose of settling accounts with an insurer relating to activities pursued for the benefit of insured persons.

The service provider shall, however, inform in advance or, in an urgent case, afterwards, the body referred to in point (b) of the services which he has provided.

## Article 7

### Declaration to be made in advance, if the service provider moves

1 Member States may require that, where the service provider first moves from one Member State to another in order to provide services, he shall inform the competent authority in the host Member State in a written declaration to be made in advance including the details of any insurance cover or other means of personal or collective protection with regard to professional liability. Such declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services in that Member State during that year. The service provider may supply the declaration by any means.

2 Moreover, for the first provision of services or if there is a material change in the situation substantiated by the documents, Member States may require that the declaration be accompanied by the following documents:

- a proof of the nationality of the service provider;
- b an attestation certifying that the holder is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation;
- c evidence of professional qualifications;
- <sup>[F]</sup>d for cases referred to in point (b) of Article 5(1), any means of proof that the service provider has pursued the activity concerned for at least one year during the previous 10 years;

e for professions in the security sector, in the health sector and professions related to the education of minors, including in childcare and early childhood education, where the Member State so requires for its own nationals, an attestation confirming the absence of temporary or final suspensions from exercising the profession or of criminal convictions;]

[<sup>F2f</sup> for professions that have patient safety implications, a declaration about the applicant's knowledge of the language necessary for practising the profession in the host Member State;

g for professions covering the activities referred to in Article 16 and which were notified by a Member State in accordance with Article 59(2), a certificate concerning the nature and duration of the activity issued by the competent authority or body of the Member State where the service provider is established.]

[<sup>F2a</sup> Submission of a required declaration by the service provider in accordance with paragraph 1 shall entitle that service provider to have access to the service activity or to exercise that activity in the entire territory of the Member State concerned. A Member State may require additional information listed in paragraph 2 concerning the professional qualifications of the service provider if:

- a the profession is regulated in parts of that Member State's territory in a different manner;
- b such regulation is applicable also to all nationals of that Member State;
- c the differences in such regulation are justified by overriding reasons of general interest relating to public health or safety of service recipients; and
- d the Member State has no other means of obtaining such information.]

3 The service shall be provided under the professional title of the Member State of establishment, in so far as such a title exists in that Member State for the professional activity in question. That title shall be indicated in the official language or one of the official languages of the Member State of establishment in such a way as to avoid any confusion with the professional title of the host Member State. Where no such professional title exists in the Member State of establishment, the service provider shall indicate his formal qualification in the official language or one of the official languages of that Member State. By way of exception, the service shall be provided under the professional title of the host Member State for cases referred to in Title III Chapter III.

[<sup>F14</sup> For the first provision of services, in the case of regulated professions that have public health or safety implications which do not benefit from automatic recognition under Chapter II, III or IIIa of Title III, the competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services. Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and where the check does not go beyond what is necessary for that purpose.

No later than one month after receipt of the declaration and accompanying documents, referred to in paragraphs 1 and 2, the competent authority shall inform the service provider of its decision:

- a not to check his professional qualifications;
- b having checked his professional qualifications:
  - (i) to require the service provider to take an aptitude test; or
  - (ii) to allow the provision of services.

Where there is a difficulty which would result in delay in taking a decision under the second subparagraph, the competent authority shall notify the service provider of the

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reason for the delay within the same deadline. The difficulty shall be solved within one month of that notification and the decision finalised within two months of resolution of the difficulty.

Where there is a substantial difference between the professional qualifications of the service provider and the training required in the host Member State, to the extent that that difference is such as to be harmful to public health or safety, and that it cannot be compensated by the service provider's professional experience or by knowledge, skills and competences acquired through lifelong learning formally validated to that end by a relevant body, the host Member State shall give that service provider the opportunity to show, by means of an aptitude test, as referred to in point (b) of the second subparagraph, that they have acquired the knowledge, skills or competence that were lacking. The host Member State shall take a decision on that basis on whether to allow the provision of services. In any case, it must be possible to provide the service within one month of the decision taken in accordance with the second subparagraph.

In the absence of a reaction of the competent authority within the deadlines set out in the second and third subparagraphs, the service may be provided.

In cases where professional qualifications have been verified under this paragraph, the service shall be provided under the professional title of the host Member State.]

#### **Textual Amendments**

- F1** Substituted by [Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation \(EU\) No 1024/2012 on administrative cooperation through the Internal Market Information System \('the IMI Regulation'\)](#) (Text with EEA relevance).
- F2** Inserted by [Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation \(EU\) No 1024/2012 on administrative cooperation through the Internal Market Information System \('the IMI Regulation'\)](#) (Text with EEA relevance).

### *Article 8*

#### **Administrative cooperation**

[<sup>F1</sup> The competent authorities of the host Member State may ask the competent authorities of the Member State of establishment, in the event of justified doubts, to provide any information relevant to the legality of the service provider's establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature. In the event that the competent authorities of the host Member State decide to check the service provider's professional qualifications, they may ask the competent authorities of the Member State of establishment for information about the service provider's training courses to the extent necessary to assess substantial differences likely to be harmful to public health or safety. The competent authorities of the Member State of establishment shall provide that information in accordance with Article 56. In the case of non-regulated professions in the home Member State, the assistance centres referred to in Article 57b may also provide such information.]

2 The competent authorities shall ensure the exchange of all information necessary for complaints by a recipient of a service against a service provider to be correctly pursued. Recipients shall be informed of the outcome of the complaint.

### Textual Amendments

- F1** Substituted by [Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation \(EU\) No 1024/2012 on administrative cooperation through the Internal Market Information System \('the IMI Regulation'\)](#) (Text with EEA relevance).

## Article 9

### Information to be given to the recipients of the service

In cases where the service is provided under the professional title of the Member State of establishment or under the formal qualification of the service provider, in addition to the other requirements relating to information contained in Community law, the competent authorities of the host Member State may require the service provider to furnish the recipient of the service with any or all of the following information:

- (a) if the service provider is registered in a commercial register or similar public register, the register in which he is registered, his registration number, or equivalent means of identification contained in that register;
- (b) if the activity is subject to authorisation in the Member State of establishment, the name and address of the competent supervisory authority;
- (c) any professional association or similar body with which the service provider is registered;
- (d) the professional title or, where no such title exists, the formal qualification of the service provider and the Member State in which it was awarded;
- (e) if the service provider performs an activity which is subject to VAT, the VAT identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment<sup>(1)</sup>;
- (f) details of any insurance cover or other means of personal or collective protection with regard to professional liability.

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- (1) [OJ L 145, 13.6.1977, p. 1](#). Directive as last amended by Directive 2004/66/EC ([OJ L 168, 1.5.2004, p. 35](#)).