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2023/0307 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending and correcting Directive 2005/36/EC as regards the recognition of professional qualifications of nurses responsible for general care trained in Romania

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Fast and efficient recognition of professional qualifications for access to regulated professions is key to making the fundamental internal market freedoms work for EU citizens. Directive 2005/36/EC of the European Parliament and of the Council¹ ('the Professional Qualifications Directive') sets out the rules on cross-border recognition of qualifications for access to regulated professions, as well as minimum training requirements for several professions, including nurses responsible for general care.

Under the Professional Qualifications Directive, Member States are obliged, upon application by the holder and without additional conditions, to recognise the qualifications of nurses responsible for general care held by EU citizens that meet the minimum requirements under the Directive if the evidence of those qualifications is listed under the relevant annex. This evidence relates to training that started after the reference date, which usually corresponds to the EU accession date of the country in which the qualification was obtained. Furthermore, Member States are bound to recognise certain qualifications that do not meet the minimum requirements if the applicant can prove a specific number of years of professional experience, as set out under the acquired rights provisions. Lastly, for those who cannot benefit from either of these two possibilities, the general system of recognition will, in principle, apply. Under this system, if there are substantial differences between the applicant's qualifications and those required in the host Member State that cannot be covered by knowledge and skills and competences acquired by the applicant in the course of their professional experience or through lifelong learning, the host Member State can require compensatory measures in the form of an aptitude test or an adaptation period from the applicant before granting access to the regulated profession. If the EU citizen cannot benefit from any recognition regime under Directive 2005/36/EC, the application must in principle be assessed by the host Member State under the rules of the Treaty on the Functioning of the European Union (TFEU) and relevant case law of the Court of Justice of the EU (CJEU).

Organising the recognition of qualifications of nurses responsible for general care during EU accession is a complex process. It involves adapting existing training programmes to ensure that, as of the accession date, students can only enrol in compliant training courses. Additionally, individuals who started non-compliant training before the reference date will need to meet additional requirements before they can benefit from cross-border recognition.

To facilitate the recognition of qualifications of nurses responsible for general care whose qualifications did not meet the minimum training requirements upon accession, Romania has set up an upgrading programme following a recommendation introduced in recital 36 of Directive 2013/55/EU that amended Directive 2005/36/EC.

Romania introduced the programme via Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014². It was endorsed by the Romanian Order of

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

² Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014 of 11 August 2014 on the approval of the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education and higher education (Official Journal of Romania No 624 of 26 August 2014).

Nurses, Midwives and Medical Assistants and by Order of the Minister of National Education No 5114/2014³.

Before its launch, the content of the programme was discussed with the Commission and Member State experts. The experts analysed the training that Romania had delivered in the past at post-secondary and higher education levels to determine the extent to which they met the minimum requirements under the Professional Qualifications Directive. The upgrading courses were subsequently designed to bridge the identified gaps. To implement the upgrading programme at post-secondary level, eight ‘train the trainer’ sessions with experts from several Member States were organised between 2013 and 2014 by the Romanian Ministry of National Education, the Ministry of Health, the Romanian Order of Nurses, Midwives and Medical Assistants, and the National Commission of Hospitals Accreditation.

The upgrading programme started in the 2014/2015 academic year. According to the Romanian Ministry of Education and Research, by the end of the 2018/2019 academic year, it had been completed by 23 higher education graduates and more than 3 000 post-secondary graduates.

Romania presented the implementation of the upgrading programme to Member States in the Group of Coordinators for the Recognition of Professional Qualifications in March and May 2018.

The Professional Qualifications Directive, as currently applicable, does not oblige host Member States to automatically recognise the qualifications of nurses who have successfully completed the upgrading programme. The current rules merely oblige the host Member State to consider the upgrading programme as evidence of additional skills and knowledge acquired on a case-by-case basis as part of the process of recognition under the general system. However, the Commission envisages a revision of the Directive’s acquired rights provisions for Romanian nurses following the assessment of the upgrading programme’s results. This assessment was published in a Commission report on 11 May 2020⁴.

The Commission is therefore proposing a targeted amendment of the rules of special acquired rights laid down in Article 33(a) of Directive 2005/36/EC to facilitate the recognition process for nurses responsible for general care who have completed the Romanian upgrading programme. Namely, the Commission proposes that these nurses should benefit from recognition under special acquired rights without the need to prove professional experience.

- **Consistency with existing policy provisions in the policy area**

Special acquired rights, including the possibility to follow an upgrading programme, were introduced for Polish nurses and midwives that started or completed their training before the accession of Poland to the EU. The current proposal is consistent with the approach taken in the past.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal is based on Articles 46, 53(1) and 62 of the TFEU.

³ Order of the Minister of National Education No 5114/2014 on the approval of the methodology for organising, conducting and completing the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education (Official Journal of Romania No 5 of 6 January 2015).

⁴ COM/2020/191 final and SWD/2020/79 final.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The aim of the Directive could not be sufficiently achieved through action by Member States as this would inevitably result in divergent requirements creating obstacles to the cross-border mobility of the professionals in question and unequal treatment. Changes to the current legal regime means amending an existing Directive, which can only be achieved by EU law. The proposal therefore complies with the subsidiarity principle.

- **Proportionality**

The principle of proportionality requires that any action is targeted and does not go beyond what is necessary to achieve the objectives. The proposed amendments comply with this principle because they are limited to what is necessary to facilitate the recognition of qualifications of nurses responsible for general care who have successfully completed the Romanian upgrading programme.

3. RESULTS OF STAKEHOLDER CONSULTATIONS

Member States were consulted in 2018 through the Commission expert group, the Group of Coordinators for the Recognition of Professional Qualifications⁵. Member State experts analysed the information and documents provided by Romania on implementation of the programme and sent feedback on the programme's results to the Commission. Romania satisfactorily replied to all the questions and comments from Member States. No Member State objected to the proposal that the graduates should benefit from a more favourable recognition regime than is currently provided for in the acquired right provision, i.e., without the need to meet the requirement of specific professional experience.

4. BUDGETARY IMPLICATIONS

This initiative has no major budgetary implications. In terms of administrative resources required in Member States for processing recognition requests, this initiative will help reduce the current administrative burden. Instead of the more time-consuming general system of recognition, the amended provisions on acquired rights will apply to the graduates of the upgrading programme, enabling an automatic recognition process.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

5.1. Provisions of the Professional Qualifications Directive that currently apply to the Romanian evidence of qualifications as nurse responsible for general care

Under Article 21(1) of the Professional Qualifications Directive, EU citizens benefit from automatic recognition if: (i) they have Romanian evidence of qualifications as nurse responsible for general care as listed under point 5.2.2 of Annex V to the Directive; and (ii) their training started after the accession date of 1 January 2007 and meets the minimum requirements under the Directive.

EU citizens with evidence of Romanian qualifications as a nurse responsible for general care whose training does not meet the minimum requirements are eligible for recognition under the

⁵ OJ L 79, 20.3.2007, p. 38-39.

acquired rights provisions laid down in Article 33(a) of the Directive if they meet the requirements under this article. Namely, their evidence of qualifications is one of those listed in this Article: (a) *Certificat de competențe profesionale de asistent medical generalist* with post-secondary education obtained from a *școală postliceală*, attesting to training started before 1 January 2007; or (b) *Diplomă de absolvire de asistent medical generalist* with short-time higher education studies, attesting to training started before 1 October 2003; or (c) *Diplomă de licență de asistent medical generalist* with long-time higher education studies, attesting to training started before 1 October 2003. Additionally, they must demonstrate professional experience as specified in the same article, i.e., by providing a certificate stating that they have effectively and lawfully been engaged in the activities of a nurse responsible for general care in Romania, including taking full responsibility for the planning, organization, and carrying out of the nursing care of patients, for a period of at least three consecutive years during the five years prior to the date of issue of the certificate.

EU citizens with evidence of professional qualifications as nurse responsible for general care who were trained in Romania but do not meet the requirements for recognition under Article 21(1) or Article 33(a) of the Directive have their qualifications assessed by host Member States under the general system of recognition. This assessment is conducted in line with Articles 10 to 14 of the Directive. Under the general system, if there are substantial differences in training between the applicant's qualifications and those required in the host Member State, and such gaps cannot be filled by professional experience or lifelong learning, the host Member State can impose compensatory measures in the form of an aptitude test or an adaptation period.

If the EU citizen that holds Romanian qualifications cannot benefit from any recognition regime under the Directive, the application must be assessed by the host Member State under the rules of the TFEU and the relevant CJEU case law.

5.2. Specific provisions of the proposal

5.2.1. Facilitated recognition under acquired rights specific to graduates of the Romanian upgrading programme

The Commission proposes to revise the acquired rights provisions applicable to Romanian qualifications as nurse responsible for general care (Article 33(a) of the Professional Qualifications Directive). The revision takes account of the results of the upgrading programmes provided at post-secondary and higher education levels and ensures that graduates can benefit from acquired rights without the need to prove professional experience. To this end, it is proposed to add a new paragraph to Article 33(a) of the Directive.

The proposed new paragraph (paragraph 3) refers in point (a) to the evidence of qualifications based on which nurses were allowed to attend the upgrading programmes, namely the evidence listed in Article 33(a) of the Directive, as well as evidence of post-secondary level referred to in Article 4 of Romanian Order No 5114 of 15 December 2014: ((a) *Diplomă de absolvire a Școlii Tehnice Sanitare (1978)*; b) *Diplomă/Certificat de absolvire a Școlii Postliceale/Certificat de competențe profesionale (liceu sanitar plus curs de echivalare școală postliceală cu durata de 1 an)*; c) *Diplomă de absolvire a Școlii Postliceale Sanitare (1991 - 1994)*; d) *Certificat de absolvire a Școlii Postliceale Sanitare (1992 - 1995)*; e) *Certificat de competențe profesionale (2006 - 2009)*).

For graduates of post-secondary education, the programme was offered by accredited public and private vocational post-secondary schools. Regarding the actual training, Annex I to Joint Order No 4317/943/2014 contains five distinct tailor-made upgrading curricula for holders of

each post-secondary qualification listed as evidence in Article 4 of Order No 5114 of 15 December 2014.

For graduates of higher education, the programme was offered by accredited higher education institutions. Annex II to Joint Order No 4317/943/2014 contains one tailor-made curriculum for these graduates.

The proposed new paragraph 3 of Article 33(a) refers in point (b) to two types of evidence of qualifications issued to graduates of the upgrading programme, depending on which of the above categories they belong to: a certificate for upgrading professional skills (*certificatul de revalorizare a competențelor profesionale*) for graduates of post-secondary education and a Bachelor's degree (*diplomă de licență*) for graduates of higher education.

5.2.2. Recognition under acquired rights specific to Romanian nurses who have not followed the upgrading programme

The current applicable special acquired rights, laid down in Article 33(a) of Directive 2005/36/EC, allow Member State nationals who have evidence of qualifications set out in this Article to obtain recognition of their Romanian qualifications in another Member State if they provide a certificate of professional experience that meets the specified criteria. These acquired rights should continue to apply to nurses in the situation described in Article 33(a) who have not followed the upgrading programme.

5.2.3. Application of the general system (Chapter I of Title III of the Directive)

In line with Article 10 of the Professional Qualifications Directive, the general system of recognition applies to all professions not covered by Chapters II and III of Title III of the Directive. The system also applies in cases listed in Article 10 where the applicant, due to specific and exceptional reasons, does not meet the conditions laid down in those Chapters. Under Article 10(b), such cases include, for nurses responsible for general care, a situation where the applicant does not meet the requirements for effective and lawful professional practice referred to in Article 33. Article 33 concerns acquired rights specific to nurses responsible for general care while Article 33(a) concerns acquired rights specific to nurses responsible for general care trained in Romania. The latter is not specifically mentioned in Article 10(b). To avoid any doubt as to the applicability of the general system to nurses who cannot benefit from acquired rights under Article 33(a), the Commission proposes to add a reference to Article 33(a) in Article 10(b).

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 46, 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee⁶,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) Under Directive 2005/36/EC of the European Parliament and of the Council⁷, specific acquired rights provisions apply to the recognition of certain professional qualifications as nurse responsible for general care issued in Romania.
- (2) Nurses responsible for general care whose training did not meet the minimum requirements under Directive 2005/36/EC and started before the accession of Romania to the EU, can benefit from recognition under Article 33a of Directive 2005/36/EC if they fulfil the requirements specified therein. If these requirements are not met, the application for recognition is assessed by the host Member State under the general system of recognition in line with Articles 10 to 14 of Directive 2005/36/EC.
- (3) There is no specific reference to Article 33a of Directive 2005/36/EC in its Article 10(b) due to an error. To make it clear that Articles 10 to 14 of Directive 2005/36/EC apply in the situation where the nurse does not meet the requirements under Article 33a, this error should be corrected.
- (4) Romania has set up a special upgrading programme to enable participants to upgrade their professional qualifications to satisfy all the minimum training requirements set out for the profession of nurse responsible for general care in Directive 2005/36/EC. For this purpose, Romania liaised beforehand with other Member States and the Commission.
- (5) Romania introduced the programme via Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014⁸. It was endorsed by the Romanian Order of Nurses, Midwives and Medical Assistants and by Order of the Minister of National Education No 5114/2014⁹.
- (6) That special upgrading programme was set up for holders of the evidence of formal qualifications referred to in Article 33a of Directive 2005/36/EC, as well as for holders of evidence of certain post-secondary qualifications listed in Article 4 of the Order of the Minister of National Education No 5114/2014.
- (7) Romania presented the results of the special upgrading programme in 2018 to the relevant expert group (Group of coordinators for the recognition of professional qualifications) and, following consultations, no Member State objected to the proposal that the graduates should benefit from a more favourable recognition regime.

⁶ OJ C , , p. .

⁷ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255 30.9.2005, p. 22).

⁸ Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014 of 11 August 2014 on the approval of the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education and higher education (Official Journal of Romania No 624 of 26 August 2014).

⁹ Order of the Minister of National Education No 5114/2014 on the approval of the methodology for organising, conducting and completing the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education (Official Journal of Romania No 5 of 6 January 2015).

- (8) On 11 May 2020, the Commission published, under Article 60(2) of Directive 2005/36/EC, a report on the results of the special upgrading programme¹⁰. The report concludes that Romania implemented the upgrading programme negotiated beforehand with the Member States to enable its participants to upgrade their qualifications to meet the minimum requirements set out in Directive 2005/36/EC.
- (9) In order to include the special upgrading programme in the criteria for the recognition under acquired rights specific to nurses responsible for general care trained in Romania, it is appropriate to adapt Article 33a of Directive 2005/36/EC so that nurses with relevant evidence of completing the programme can benefit from recognition without the need to prove professional experience in Romania, as is currently the case.
- (10) Directive 2005/36/EC should therefore be amended and corrected accordingly,
HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2005/36/EC is amended and corrected as follows:

- (1) in Article 10, point (b) is replaced by the following:

‘(b) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the migrant does not meet the requirements of effective and lawful professional practise referred to in Articles 23, 27, 33, 33a, 37, 39, 43 and 49;’

- (2) Article 33(a) is replaced by the following:

‘Article 33a

Acquired rights specific to nurses responsible for general care trained in Romania

1. As regards the Romanian qualification as nurse responsible for general care, only the provisions on acquired rights laid down in paragraphs 2 and 3 shall apply.

2. In the case of nationals of Member States who were trained as a nurse responsible for general care in Romania and whose training does not satisfy the minimum training requirements laid down in Article 31, Member States shall recognise as sufficient proof any of the following evidence of formal qualification as nurse responsible for general care, provided that that evidence is accompanied by a certificate stating that those Member State nationals have effectively and lawfully been engaged in the activities of a nurse responsible for general care in Romania, including taking full responsibility for the planning, organisation and carrying out of the nursing care of patients, for a period of at least three consecutive years during the five years prior to the date of issue of the certificate:

- (a) *Certificat de competențe profesionale de asistent medical generalist* with post-secondary education obtained from a *școală postliceală*, attesting to training started before 1 January 2007;
- (b) *Diplomă de absolvire de asistent medical generalist* with short-time higher education studies, attesting to training started before 1 October 2003;

¹⁰ COM/2020/191 final and SWD/2020/79 final.

(c) *Diplomă de licență de asistent medical generalist* with long-time higher education studies, attesting to training started before 1 October 2003.

3. Member States shall recognise the following evidence of formal qualification as nurse responsible for general care:

(a) the evidence of formal qualification referred to in paragraph 2, as well as the evidence of formal qualifications of post-secondary level listed under Article 4 of the Order of the Minister of National Education No 5114/2014 on the approval of the methodology for organising, conducting and completing the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education (Official Journal of Romania No 5 of 6 January 2015), provided that such evidence is accompanied by either of the following:

(b) the evidence of formal qualifications obtained on the basis of a special upgrading programme:

(i) *Diplomă de licență* referred to in Article 3(2) of the Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014 of 11 August 2014 on the approval of the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education and higher education (Official Journal of Romania No 624 of 26 August 2014), accompanied by a diploma supplement stating that the student has completed the special upgrading programme, or

(ii) *Certificatul de revalorizare a competențelor profesionale* referred to in Article 3(1) and in Annex 3 to the Joint Order of the Minister of National Education and of the Minister of Health No 4317/943/2014 of 11 August 2014 and in Article 16 of the Order of the Minister of National Education No 5114/2014 on the approval of the methodology for organising, conducting and completing the special upgrading programme for the initial training of nurse responsible for general care acquired prior to 1 January 2007 for graduates of post-secondary education (Official Journal of Romania No 5 of 6 January 2015).’.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*OP, please insert date: one year after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President