Opinion on the proposal for a European Parliament and Council Directive amending Directive 93/16/EEC which facilitates the free movement of doctors and provides for the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, and conferring implementing powers on the Commission for the updating of certain Articles thereof [1]

(95/C 133/06)

On 18 January 1995 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Social, Family, Educational and Cultural Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 9 March 1995. The Rapporteur was Mr Fuchs.

At its 324th Plenary Session (meeting of 29 March 1995), the Economic and Social Committee adopted the following Opinion unanimously.

1. General comments

1.1. The Economic and Social Committee notes that the purpose of the proposed company directive is to bring about more efficient updating of certain articles of Directive 93/16/EEC, which relates to doctors.

1.2. It acknowledges that the present situation as regards specialists' qualifications in the Member States is not reflected in the consolidated text of the Directive.

1.3. The Committee welcomes the intention of incorporating in Directive 93/16/EEC adaptations of descriptions of specialists which have been introduced or amended in the Member States in the meantime.

2. Specific comments

2.1. *Legal procedure*

2.1.1. The Committee notes that the intention is to introduce a legal procedure for amending Article 5 (3) and Article 7 (2) of Directive 93/16/EEC concerning the rules on the mutual recognition of specialists diplomas, certificates and other qualifications, and Articles 26 and 27 concerning the minimum duration of further training in the specialist areas described therein.

2.1.2. The basis for the introduction of this procedure is the Council decision laying down the procedures for the exercise of the implementing powers conferred on the Commission (Decision 87/373/EEC) [2].

A new Article 44 A will empower the Commission to amend the above provisions.

For the amendment of Article 5 (3) and Article 7 (2) the advisory committee procedure under the above Directive is to be used, whereas for amendment of Articles 26 and 27 the management committee procedure is to be used.

In the first case the Commission has the final decision even if the advisory committee should disagree. In the last case, should the management committee disagree, the Council would still have the possibility, by a qualified majority, to 'take a different decision within the time limit referred to in the previous paragraph'.

2.1.3. The Committee of Senior Officials on Public Health set up by Council Decision 75/365/EEC, which is the ESC's view should as far as possible be composed of experts, is to function both as advisory committee (Article 5 (3) and Article 7 (2)) and as management committee (Articles 26 and 27). It should be pointed out here that this committee is composed of senior officials in the field of public health appointed by the Member States, and concerned not only with doctors but also with nurses, dentists and midwives.

2.2. *The aims of the authorization must be clarified*

2.2.1. The Committee notes that the authorization for the Commission to amend the said Articles is more extensive than the aim of the draft — namely a more efficient updating of certain Articles — warrants.

2.2.1.1. The Committee doubts, first of all, the basis in Community law for this authorization to amend, since under Article 145 of the EC Treaty 'the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down'. However, when

[1] OJ No C 389, 31. 12. 1994, p. 19.
[2] OJ No L 197, 18. 7. 1987, p. 33.

using such powers, the Commission may neither amend nor supplement the legal acts of the Council to be implemented.

2.2.1.2. Such a far reaching authorization is unnecessary, given that it is only a question of the adoption of new specialist descriptions, the amendment of existing specialist descriptions and the amendment of the minimum duration of further training for specialists.

2.2.1.3. The Committee takes note of the justification for the planned amendment procedure for Article 26 and 27, which includes the statement:

> 'The question of the length of training for medical specialists is one which involves financial considerations and many Member States national care delivery systems are dependent on trainee specialists.'

However, in the Committee's view, costs are not important for the duration of further training, the sole decisive issue is whether the planned duration of further training suffices for a doctor to be recognized as having thorough knowledge and experience, i.e. as a specialist. For the same reason the Committee has doubts about the general powers of the Commission to amend these provisions.

2.2.1.4. The Committee points out that the 'updating' of specialist qualifications is not only a technical or drafting question of inclusion in the catalogue; in individual cases it entails an evaluation of qualitative and substantive conformity with the relevant specializations.

2.2.1.5. The Committee therefore proposes that given the aims of the Draft Directive (2.2.1.2), the new Article 5(4) and Article 7(3) and the new sections of Articles 26 and 27 should make it clear that the Commission's powers are based on the standard rules laid down in these provisions. In other words, the Commission's powers should be confined to the adoption and amendment of specialization descriptions on the basis of Member States' data, and to the amendment of the minimum duration of specialist further training.

2.2.1.6. The Committee therefore proposes that Articles 1 and 2 of the Draft Directive be reworded as follows:

> '*Article 1*
>
> In Article 5 of Directive 93/16/EEC, the following new paragraph shall be added:
>
> "4. Paragraph 3 of this Article shall be modified in accordance with the procedure set out in Article 44A(2), only as regards the adoption of new or amendment of existing descriptions of specializations as proposed by the Member States."
>
> In Article 7 of Directive 93/16/EEC, the following new paragraph shall be added:
>
> "3. Paragraph 2 of this Article shall be modified in accordance with the procedure set out in Article 44A(2), only as regards the adoption of new or amendment of existing descriptions of specializations as proposed by the Member States."
>
> *Article 2*
>
> In each of Articles 26 and 27 of Directive 93/16/EEC, there shall be added the following new sentence:
>
> "The provisions of this Article shall be modified in accordance with the procedure set in Article 44A(3), only as regards modifying the minimum period of specialist training as proposed by the Member States."'

2.3. *Involvement of the advisory committees for further medical training*

2.3.1. The Committee points out that the Advisory Committee for further medical training (Council Decision 75/364/EEC of 16 June 1975) has been set up in connection with the original adoption of the 'doctors' Directive'. Taking account in particular of the reasons set out above (2.2.1.3 and 2.2.1.4) the Committee therefore regards it as necessary to involve the aforementioned Advisory Committee in the procedure. The Committee regards it as inadequate for the matter to be left to the Committee of Senior Officials for Public Health.

2.4. *Involvement of European doctors' organizations*

2.4.1. The Committee stresses that the proposed amendment procedure for medical further training raises questions for the medical profession which must be discussed by experts. This applies to the question of which new specialization descriptions should be included and to the conformity evaluation of new specialization descriptions. It applies equally to the modification of minimum requirements, e.g. the duration of further training and to determination of the category of minimum duration which is to be laid down at EU level for individual new specialists careers.

2.4.2. The Committee therefore regards it as necessary for the Standing Committee of European Doctors, as the federation of national organizations at European level, to be asked for its opinion in all procedures.

2.4.3. The Committee therefore proposes that the above principle be enshrined in the new text of Article 44 A as follows:

> '4. The Commission shall make its proposals after consulting the Advisory Committee for further medical adjudication (75/364 EEC of 16 June 1975).

It should also give the Standing Committee of European Doctors the opportunity to express an opinion. Before submitting proposals for amendment, the Commission shall ask the Standing Committee of European Doctors for proposals.'

2.4.4. The Committee points out that in its Opinion of 26 February 1992 [1] on the drawing up of the codification Directive, it called for EU bodies to be assisted by medical expertise:

'The Committee is aware that the medical profession and the Advisory Committee on Medical Training is already reexamining the qualitative aspects of specialist training and urges the Commission to make proposals to effect any recommended changes as soon as possible, in the interest of both doctors and their patients.

Medical progress and professional expertise is evolving at such a rate at present that the Commission has an obligation to continually keep under review current medical matters. It is important that the expert committee (the Advisory Committee on Medical Training) is provided with sufficient backup to enable it to carry out its vital Advisor's role to its full extent.'

The Committee is convinced that this 'backup' must and can come from the representatives of the European medical profession, namely the Standing Committee. This backup should therefore be 'institutionalized' through the provision proposed above (2.4.3).

2.5. *Member States to consult the national medical professions*

The Committee proposes that the Commission be urged to ensure, when a draft Directive is being drawn up, that the Member States' authorities responsible for further training take account of the views of the national medical profession.

2.6. *Further development of the system of recognition of doctors' diplomas with the support of the Standing Committee of European Doctors*

2.6.1 The Committee suggests examination of the question of whether the present system of individual references to the extremely varied descriptions of specializations used in the individual Member States, could not be replaced by a more simple system of mutual recognition of main specializations and associated 'subspecializations'.

2.6.2. To this end the Committee proposes that when it takes a decision on the Draft Directive under review, the Council should instruct the Commission to request the Standing Committee of European Doctors to produce a proposal on the further development of the mutual recognition arrangements for specialist medical qualifications, with the aim of improving freedom of establishment and freedom to provide services.

[1] OJ No C 98, 21. 4. 1992.

Done at Brussels, 29 March 1995.

The President

of the Economic and Social Committee

Carlos FERRER