EUROPEISKA GEMENSKAPERNAS KOMMISSION

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Ändrat förslag till

EUROPAPARLAMENTETS OCH RÅDETS DIREKTIV

OM ÄNDRING

AV DIREKTIV 93/16/EEG OM UNDERLÄTTANDE AV LÄKARES FRIA RÖRLIGHET OCH ÖMSESIDIGT ERKÄNNANDE AV DERAS UTBILDNINGS, EXAMENS- OCH ANDRA BEHÖRIGHETSBEVIS OCH OM ATT GE KOMMISSIONEN VERKSTÄLLANDE BEFOGENHETER FÖR ATT UPPDATERA VISSA ARTIKLAR I DETTA DIREKTIV

(framlagt av kommissionen i enlighet med artikel 189a.2 i Romfördraget)

EXPLANATORY MEMORANDUM

1. GENERAL CONSIDERATIONS

At its part-session from 27 to 29 June 1995, Parliament approved - subject to its own amendments - the Commission's proposal for a 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.

The amended proposal incorporates the amendment pointing out the existence of the *modus vivendi* as regards committee procedure, together with all the amendments clarifying the extent of the powers to be assigned to the Commission.

However, the remaining amendments have not been incorporated; the Commission already explained the reasons for this when its original proposal was discussed, both within the Committee on Legal Affairs and Citizens' Rights and in plenary sitting.

The amendment inserting a recital calling on the Commission to re-examine, in accordance with the procedures introduced by the new Article 44a, the question of nationals of Member States who hold qualifications obtained in third countries has nothing to do with the proposal for a Directive. The matter is dealt with in Article 23, which makes specific provision for qualifications obtained in third countries to be recognised, not automatically, but individually on a case-by-case basis, while the committee procedure to be introduced by means of the new Article 44a will permit only Articles 5, 7, 26 and 27 to be amended. Automatic recognition would entail abandoning checks on the content of training received in third countries, whereas training undergone in the Member States has to satisfy the minimum requirements laid down in the Directive. Moreover, the individual recognition already provided for by the Directive is consistent with the subsidiarity principle.

The amendments placing an obligation on the Commission to consult the EC Standing Committee of Doctors and the Advisory Committee on Medical Training before referring any matter to the Committee of Senior Officials on Public Health set up under Council Decision 75/365/EEC fail to take into account the Council's "committee procedure" Decision (87/373/EEC). The latter Decision lays down procedures for the exercise of implementing powers conferred on the Commission, stipulating that the Commission is to be assisted by a committee composed of representatives from the Member States and chaired by a representative from the Commission. Only the Committee of Senior Officials on Public Health, which is already referred to in Article 43 of the Directive and whose exclusive jurisdiction has thus already been recognised, satisfies this dual requirement. What is more, the explanatory statement on the draft legislative resolution contained in the report by the Committee on Legal Affairs and Citizens' Rights states that "whilst the involvement of a committee of medical experts would be welcome it is obvious that this could not be brought about under the rules laid down in Decision 87/373/EEC on commitology ... " (point 7 in part B of the report) and the amendments in question thus contradict the legal assessment given in the report.

The text proposed by the Commission does not preclude consultation of any body whose opinion it regards as helpful, but introducing mandatory consultation before referral to the Committee of Senior Officials on Public Health - as proposed in the amendments

concerned - would make the procedure cumbersome in cases where there was no apparent need for such consultation and distort Decision 87/373/EEC by imposing, through a supplementary procedural stage, additional requirements never previously stipulated in Community legislation regarding committee procedures. Moreover, in accordance with the subsidiarity principle it is for each Member State represented on the Committee of Senior Officials to undertake such consultation among members of the profession as it sees fit.

Lastly, the EC Standing Committee of Doctors is a private professional association. To date, no directive has required mandatory consultation of such an association.

2. COMMENTS ON THE PREAMBLE AND THE ARTICLES

1. The recital (amendment 1) proposed by Parliament in order to point out the existence of the *modus vivendi* as regards the committee procedure has been incorporated in full.

2. Amendments 4, 5 and 6 - proposed by Parliament in order to clarify the extent of the powers to be assigned to the Commission by stating that it may not amend the basic provisions of Articles 5(3), 7(2), 26 and 27, as provided for in the original proposal, but only the lists of designations and minimum course lengths contained therein - have been incorporated in full, subject to minor changes on specific legal points.

3. The first part of amendment 8 proposed by Parliament - which likewise relates to the extent of the powers to be assigned - has also been incorporated in full, subject (once again) to minor changes on specific legal points. However, the second part of this amendment - which relates to the mandatory consultation of the EC Standing Committee of Doctors and the Advisory Committee on Medical Training - has not been incorporated for the reasons stated above.

3. CONCLUSION

The amended proposal for a Directive takes very extensive account of the concerns expressed by the Economic and Social Committee and by Parliament regarding the scope of the powers which it is proposed to assign to the Commission; those powers form the core of the proposal. Although the Commission has also taken note of the other concerns expressed, for the legal reasons set out above it has not been possible to incorporate these into the text.

The European Parliament and the Council are invited to adopt the proposal in the amended form attached.

ÄNDRAT FÖRSLAG TILL EUROPAPARLAMENTETS OCH RÅDETS DIREKTIV OM ÄNDRING AV DIREKTIV 93/16/EEG OM UNDERLÄTTANDE AV LÄKARES FRIA RÖRLIGHET OCH ÖMSESIDIGT ERKÄNNANDE AV DERAS UTBILDNINGS, EXAMENS- OCH ANDRA BEHÖRIGHETSBEVIS OCH OM ATT GE KOMMISSIONEN VERKSTÄLLANDE BEFOGENHETER FÖR ATT UPPDATERA VISSA ARTIKLAR I DETTA DIREKTIV

Efter Europaparlamentets yttrande av den 29 juni 1995 över Europaparlamentets och rådets förslag om ändring av direktiv 93/16/EEG om underlättande av läkares fria rörlighet och ömsesidigt erkännande av deras utbildnings, examens- och andra behörighetsbevis och om att ge kommissionen verkställande befogenheter för att uppdatera vissa artiklar[1] i detta direktiv och i enlighet med artikel 189a.2 EG-fördraget som införts genem i Fördraget om Europeiska unionen har kommissionen beslutat att ändra det ovan nämnda förslaget enligt följande:

1. Följande skall införas mellan andra och tredje stycket i ingressen:

   "Tillämpningen av förfarandena i rådets beslut 87/373/EEG kommer att ske i enlighet med den tillfälliga lösning för kommittéförfarande som överenskommits mellan parlamentet, rådet och kommissionen, till dess att en revidering av fördragen får effekt i kraft av artikel N.2 i Fördraget om Europeiska unionen."

2. Artikel 1 skall ersättas med följande:

   " *Artikel 1*

   1. I artikel 5 i direktiv 93/16/EEG skall en ny punkt med följande lydelse läggas till som punkt 4:

      "4. Förteckningen med benämningar i punkt 3 skall ändras enligt det förfarande som avses i artikel 44a.2."

   2. I artikel 7 i direktiv 93/16/EEG skall en ny punkt med följande lydelse läggas till som punkt 3:

      "3. Förteckningen med benämningar i punkt 2 skall ändras enligt det förfarande som avses i artikel 44a.2." "

3. Artikel 2 skall ersättas med följande:

   " *Artikel 2*

   Sist i artiklarna 26 och 27 skall följande stycke läggas till:

   "Den förteckning över minimilängden på de specialistutbildningar som anges i denna artikel skall ändras enligt det förfarande som avses i artikel 44a.3." "

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[1] EGT nr C 389, 31.12.1994, s. 19.

4. I artikel 3 skall inledningsfrasen och den nya artikel 44a.1 ersättas med följande:

"Efter artikel 44 i direktiv 93/16/EEG skall följande artikel 44a införas:

"

Artikel 44a

1. Vid hänvisning till denna artikel skall kommissionen biträdas av den kommitté bestående av högre tjänstemän inom hälsoväsendet som upprättats enligt rådets beslut 75/365/EEG."

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