



EUROPEAN REGION

World Confederation
for Physical Therapy

**Briefing Paper
The Recognition
of Professional
Qualifications - a
guide to Directive
2005/36/EC for
Member
Organisations**

BRIEFING PAPER
THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS - A GUIDE TO
DIRECTIVE 2005/36/EC FOR MEMBER ORGANISATIONS

European Region of the World Confederation for Physical Therapy (WCPT)
EU Matters WG

1. Background to European Directive

Directive 2005/36/EC came into force in September 2005 with a two-year implementation period. It has replaced the Sectoral and General systems of recognition with one piece of consolidated legislation. Regulations governing temporary workers and proposals for Common Platforms are new aspects.

The intention of the Directive is to make it easier for qualified professionals to practise their profession in European Economic Area (EEA) countries other than their own, with a minimum of bureaucracy but with due safeguards for public health and safety, consumer protection and the maintenance of professional standards. They are to have access to the same rights as nationals (Recital 6 L255/22).¹

Pursuant to Article 3(1)(c) of the EC Treaty, the abolition of barriers to the free movement of persons and services between Member States (Recital 1 L255/22) is an important objective of the European Community. In addition the Charter of the ER-WCPT states that ER-WCPT seeks to 'facilitate free migration and the right of establishment for physiotherapists in Europe' <http://www.physio-europe.org/index.php?action=downloads&downloadarea=11>

The Directive applies to all Member States of the European Union and to countries of the European Free Trade Association (EFTA), namely Iceland, Liechtenstein and Norway. Together these countries form the EEA. Members of third countries may still apply for recognition of professional qualifications in an EEA country (Recital 10 L255/23).

2. The purpose of this paper

What follows is an explanation of the Directive as it applies to the physiotherapy profession. Some clauses in the Directive contain options that allow Member States to choose how to implement them hence this paper should be used in conjunction with the Directive and the Member State's legislation which transposes it into national law.

This paper may be used to:

- Inform discussions between Member Organisations and the authorities in their Member State who are responsible for implementing the Directive.
- Enable Member Organisations to have sufficient knowledge of the Directive to influence agendas such as the system of regulation in their member state as it is developed in their own country.
- Inform individual physiotherapists seeking information on migration.

¹ A Recital is a point of explanation which forms part of the introduction to the main text of the Directive 2005/36/EC. Recitals take account of other EU legislation which has a bearing on this Directive.

It is strongly recommended that Member Organisations use this briefing paper as a guide. In addition reference should be made to the following documents or sources of information:

- Original Directive
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>
- Legal instrument and/or laws that transposed the Directive into national legislation
- Web pages of the Competent Authorities of EEA Member States with whom the implementation of the Directive lies [see list on Health Professions Council website of international regulatory authorities
<http://www.hpc-uk.org/apply/international/requirements/>

3. Preliminary part of Directive as it applies to physiotherapy

A number of important points applicable to the physiotherapy profession are set out in the preliminary recitals i.e. initial points listed in the Directive. These are listed with their page numbers (L255/23-142) for ease of reference to the text of the Directive.

3.1 Recital 8 (L255/23)

Physiotherapists must practice according to the disciplinary and professional rules of the host Member State. For example a migrant physiotherapist with acupuncture skills may only use them if acupuncture is within the scope of practice of the profession in the host Member State.

3.2 Recital 11 (L255/23)

Member States retain the right to lay down minimum standards of education for physiotherapists. The previous education and experience of migrant physiotherapists must be taken into account in the recognition process.

3.3 Recital 14 (L255/24)

Migrant physiotherapists with a minimum of one year of training at post-secondary level should be able to apply for recognition in another EEA Member State if the requirement in that country is completion of a programme of higher or university education of no more than four years. Compensation measures may be required. If access to a regulated profession requires longer than four years education at higher or university level, then the migrant physiotherapist must have successfully completed higher or university education of at least three years.

3.4 Recital 15 (L255/24)

The Directive recognises that there is no single minimum standard of qualifying education across the EEA that provides access to the physiotherapy profession. Where there are significant differences between the applicant's qualifications and the requirements of the host Member State, compensation measures such as an adaptation period or a test of competence may be required. The migrant is required to choose. The Directive states that '*any derogation from that choice should in each case be justified by an imperative requirement in the general interest.*'

3.5 Recital 16 L255/24

The Directive provides European organisations like the ER-WCPT with the option to consider establishing what is called a Common Platform. This is defined as '*a set of criteria which make it possible to compensate for the widest range of substantial*

differences which have been identified between the training requirements in at least two thirds of the Member States, including all the Member States which regulate that profession’.

3.6 Recital 33 (L255/226)

It is recommended that contact points should be set up to provide the public with contact details for the authorities responsible for recognition of qualifications and regulation. Details of the Competent Authorities can be found on the ER-WCPT website’s Member Organisation pages. (Link)

4. Key Articles in the Directive

Readers should refer to Annex 1 which contains the definitions listed in Article 3 of the Directive.

4.1 Qualifications obtained outside the EEA - Article 3, paragraph 3 (L255/28)

If a country outside the EU issues a qualification to a physiotherapist and if that physiotherapist has then practised physiotherapy for three years in a member state, the qualification issued from the country outside the EU will be considered as evidence of formal qualifications as defined in this Directive.

E.g. a physiotherapist who obtains a qualification in Brazil and who works in Portugal for three years wishes to move to the UK. The competent authority in the UK must consider the original qualification in the same manner as a qualification obtained in the EEA.

4.2 Temporary Provision of Physiotherapy Services - Article 5 (L255/28-29)

Some physiotherapists may wish to work occasionally or for a short period in another Member State, particularly if they live close to the border. The Directive has clarified the recognition procedure for temporary provision of services. There is flexibility about transposition into national law on this topic.

Article 5 underlines the principle of free migration and provision of services within the EEA which shall not be restricted for reasons relating to qualifications. Physiotherapists providing temporary services must

- a. Be already entitled to practice in their own country (called the Member State of establishment).
- b. Have practised for two years within the last ten in their own country, if the profession is not regulated there.
- c. Be subject to the professional, ethical, safety and disciplinary rules of the country in which they are to provide services (called the host Member State).

The competent authority in the Member State where the services are provided is required to monitor the working pattern of the physiotherapist and assess its duration, frequency and regularity. For example if a physiotherapist were to work regularly for extended periods, this would not constitute temporary work.

4.3 Temporary workers - Article 6 (L255/29)

This article sets out some points that are not to be applied to temporary workers. They shall not be required to:

- Join, or pay fees to, any professional body in the host Member State. Member States may provide automatic temporary registration/membership of such bodies or make it the responsibility of the Competent Authority to provide pro forma membership (see Article 7).
- Register with a public social security body for settling accounts with an insurer relating to physiotherapy services provided to insured patients. However the

physiotherapist must inform the body referred to, in advance, about what services will be provided.

4.4 Declaration to be made in advance of providing temporary services - Article 7 (L255/29)

This article explains procedures for recognition of qualifications and temporary registration in the host Member State. Regulators have various options. Member States may provide for automatic temporary registration to enable disciplinary provisions in force on their territory, to be applied. They are allowed to

- require certain documentary evidence from service providers
- conduct further checks on certain providers in the interests of public health and safety
- treat as misconduct breach of conditions imposed in the service provider's home state.

Prior to providing services for the first time the physiotherapist may be required to provide a written advance declaration of their intention to provide services and details of professional liability insurance cover. The declaration shall be renewed annually. In addition, the physiotherapist may also be required to provide the following documentation:

- Proof of nationality
- Evidence of professional qualifications
- Attestation of legal establishment (or proof of 2 year professional experience – see Article 5 b above)
- Evidence of no prohibitions or restrictions regarding professional practice
- Evidence of good character - no criminal convictions
- Details of personal professional liability insurance cover

If permission is provided to the applicant, services shall be provided under the title of the physiotherapist's Member State of establishment (Article 7, paragraph 3). The competent authority shall endeavour to inform the service provider of its decision within one month of receipt of all the documentation. Delays must be explained and a final decision reached within a further one month. If these mandatory deadlines are not met the services may be provided (Article 7, paragraph 4).

4.4.1 Compensatory measures for temporary service providers (Article 7, paragraph 4)

The Member State may wish to make additional checks on the qualifications of the service provider. Where substantial differences are identified between the qualifications of the service provider and the requirements of the host member state, compensation measures may be required. This is likely to be an aptitude test, given the short timescales (see above). After this type of verification, services will be provided under the title of the host member state.

4.5 Life Long Learning and Temporary Service Providers

Recital 39 (L255/26) refers to compliance with conditions of pursuit in the host member state, provided these are 'objective and proportionate'. Member States may make their own arrangements about lifelong learning requirements for temporary service providers.

4.6 Collaboration between Competent Authorities (Article 8 L255/30 and Article 56 L255/50)

This is essential for the protection and security of the public and relies on close collaboration between Competent Authorities on disciplinary and criminal matters, with due respect for confidentiality and data protection legislation. The ER-WCPT has had substantial input into the design of the Internal Market Information tool designed to facilitate information exchange about applicants for recognition.

4.7 Information for Patients (Article 9, L255/30)

The Member State may require the temporary service provider to give patients some information, listed below, if they are practising under the title of their Member State of Establishment. Competent authorities may set up a new register for temporary service providers, stating their entitlement to be registered.

- Registration number and register where their details may be found
- Contact details of the competent authority
- Professional body to which they belong
- Professional title, qualifications and where awarded
- VAT ID number where relevant
- Professional liability insurance status.

5. General System of Recognition (Articles 10, 11d and 12)

These articles apply to migrant physiotherapists who wish to work on a long term basis in another Member State and who have completed qualifying higher education of at least three, and not more than four years, duration or the part time equivalent. The Directive confers rights to equal treatment of their professional qualifications by virtue of recognition of those qualifications in the Member State of establishment.

5.1 Conditions for recognition (Article 13, L255/32)

Applicants for recognition shall be permitted access to the profession and to its practice under the same conditions as apply to nationals.

Attestations of competence and evidence of formal qualifications shall

- a. Have been issued by a Competent Authority in a Member State in accordance with regulations obtaining there
- b. Show evidence of a level of qualification at least equivalent to the level immediately prior to that required in the host member state (Article 11d, L255/32)
- c. Show evidence that the physiotherapist holding the qualification has been prepared for practising the profession (e.g. a course transcript)

Applicants from Member States where the profession is not regulated must provide evidence of one of more of the attestations listed above as well as evidence of two years full time experience within the last ten.

5.2 Compensation Measures (Article 14, L255/33)

Article 14, paragraph 1 states that Member States have the option to require applicants to undertake a test of competence or period of adaption of up to three years, if

- a. Training is at least one year shorter than in the host Member State
- b. Content is substantially different in the host Member State
- c. One or more professional activities in the host Member State do not exist in the Member State of establishment.

If Member States opt for compensation measures in particular cases, they must offer applicants the choice of a test of competence or an adaptation period (Article 14, paragraph 2). If a choice is not offered, Member States must provide other Member States and the EU Commission with justifiable reasons for their action.

5.3 Application Procedure (Article 51 L255/49)

Competent authorities shall:

- Acknowledge receipt of applications within one month
- Provide a decision within three months of receipt of the application or at the latest four months after initial submission

5.4 Language Competence (Article 53 L255/50)

The wording of this article is as follows:

'Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State'.

EEA nationals are exempt from a requirement to provide evidence of such language proficiency to competent authorities, as a condition of recognition of professional qualifications. Individual employers will check that applicants have the necessary language skills for the job.

6. Competent authorities (Article 56, L255/50)

They shall cooperate with one another to facilitate application of this Directive and ensure confidentiality of information which they exchange.

7. Common Platforms (Article 15, L255/33-34)

A common platform is an optional initiative. It is defined as a set of agreed criteria for the mutual recognition of professional qualifications which if met, would allow compensation measures to be waived. A review of other professions indicates that a small number are considering the establishment of a Common Platform however, ER-WCPT is not considering the establishment currently.

Annex 1: Definitions, Article 3 (L255/27-28)

- ‘regulated profession’: a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;
- ‘professional qualifications’: qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience;
- ‘evidence of formal qualifications’: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Where the first sentence of this definition does not apply, evidence of formal qualifications referred to in paragraph 3 shall be treated as evidence of formal qualifications;
- ‘competent authority’: any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the applications, and take the decisions, referred to in this Directive;
- ‘regulated education and training’: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice. The structure and level of the professional training, probationary or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose; 30.9.2005 L 255/27 Official Journal of the European Union EN
- ‘professional experience’: the actual and lawful pursuit of the profession concerned in a Member State;
- ‘adaptation period’: the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State. The status enjoyed in the host Member State by the person undergoing the period of supervised practice, in particular in the matter of right of residence as well as obligations, social rights and benefits, allowances and remuneration, shall be established by the competent

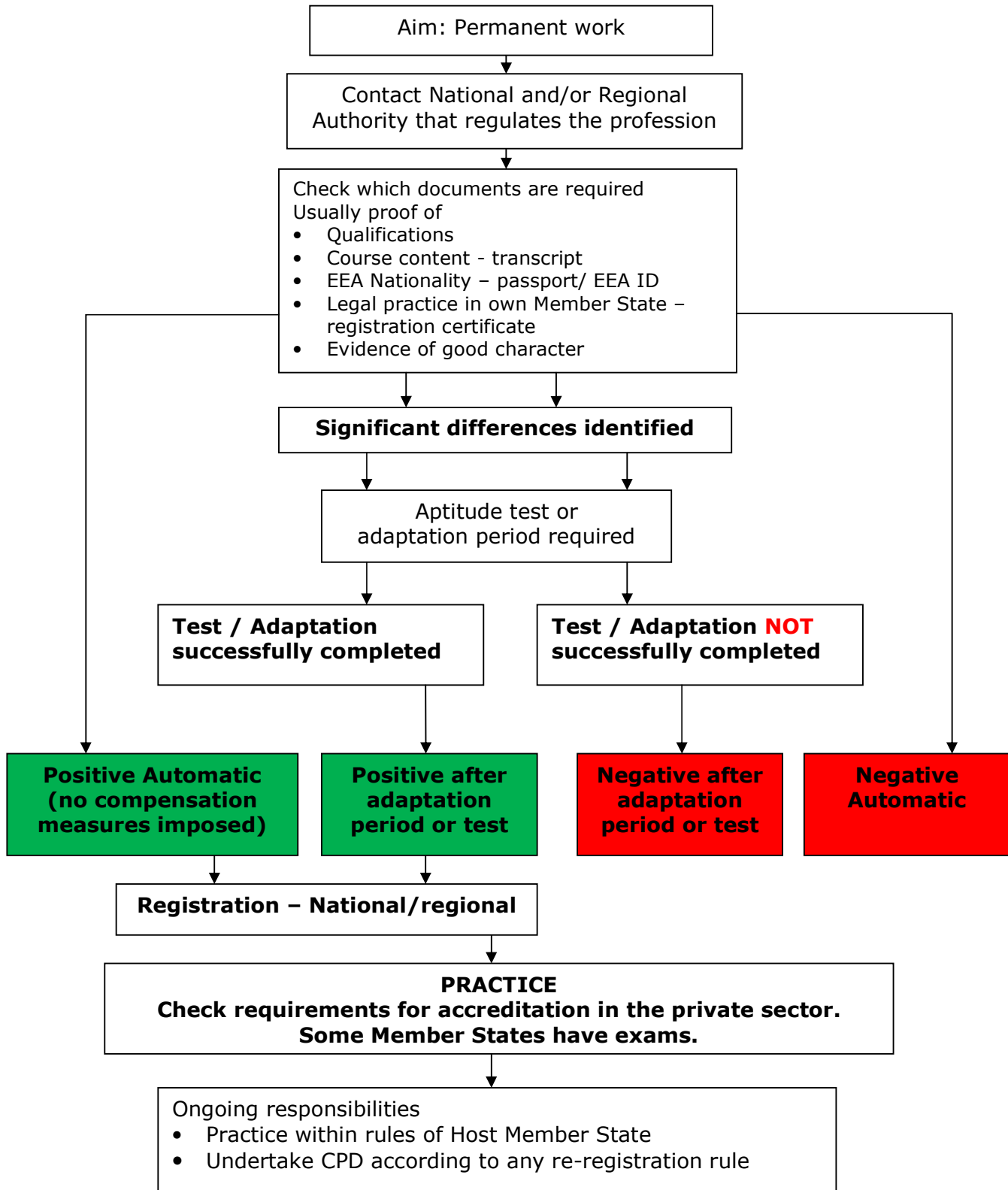
authorities in that Member State in accordance with applicable Community law;

- ‘aptitude test’: a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant. The aptitude test must take account of the fact that the applicant is a qualified professional in the home Member State or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to pursue the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test and the status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that Member State;
- ‘manager of an undertaking’: any person who in an undertaking in the occupational field in question has pursued an activity:
 - as a manager of an undertaking or a manager of a branch of an undertaking; or
 - as a deputy to the proprietor or the manager of an undertaking where that post involves responsibility equivalent to that of the proprietor or manager represented
or
 - in a managerial post with duties of a commercial and/or technical nature and with responsibility for one or more departments of the undertaking.

Annex 2: Flowchart

Permanent Work

Recognition of qualifications for migrant physiotherapists, with EEA nationality, seeking **permanent** work within the EEA internal market under Directive 2005/36/EC



Temporary or occasional work

Recognition of qualifications for migrant physiotherapists, with EEA nationality, seeking **temporary** work within the EEA internal market under Directive 2005/36/EC

