

**IMI Notification Number: 187568: Rules on the recognition of foreign professional qualifications for the exercise of a regulated profession in the fields of mining and geology**

On 18 March 2021, Croatia notified two provisions of the ‘Rules on the recognition of foreign professional qualifications for the exercise of a regulated profession in the fields of mining and geology’. The notification concerns the requirement for a service provider “to make a declaration to or to notify a competent authority in our territory”. The notified requirement applies both to establishment and cross-border provision of services.

The Commission services would like to transmit the following *questions and comments* in relation to this requirement.

- 1) The legal provisions attached to the notification (Articles 6 and 7) concern a full recognition of professional qualifications procedure. Can the Croatian authorities clarify whether this recognition procedure is also imposed on those seeking to provide services on a temporary or occasional basis? And if yes, whether the same document requirements and procedures apply? Please note that Article 7 of Directive 2005/36/EC on the recognition of professional qualifications (hereafter “PQD”) only allows for a simple prior declaration obligation. For the first provision of services, a prior check of the professional qualifications is only possible in case of professions that have public health and safety implications, and where a lack of professional qualifications could cause serious damage to the health or safety of the service recipient (Article 7(4)). Furthermore, Article 59(2) of the PQD requires Member States to notify to the Commission the list of professions for which a prior check of qualifications is necessary under Article 7(4) and to provide the Commission with a specific justification for the inclusion of each of those professions in that list. The Croatian authorities are invited to clarify what conditions and procedures apply to the notified professions in cases of temporary mobility.

Article 7(2) exhaustively lists the documents that may be required to accompany such a declaration. This means that:

- a. If the profession is not regulated in the home Member State, the professional cannot be asked to provide evidence of “formal education” but should be allowed to show, by any means of proof, that he has pursued the activity concerned for at least one year during the previous ten years;
- b. As regards language knowledge, only a self-declaration can be demanded, and only for professions that have patient safety implications;

The service provider should be allowed to provide this prior declaration “by any means”, hence the specific form mentioned in Articles 6 and 7 of the notified rules can only be optional.

- 2) For those professionals seeking to establish in the host Member State, Article 50 together with Annex VII of the PQD exhaustively lists the documents that may be required in a recognition procedure. On this basis, the Commission notes that:
  - a. Applicants can only be invited but not obliged to provide “a formal education supplement showing the educational programme (subjects, hours, exercises, lectures)”. Moreover, where it is impossible for the applicant to provide this information, the competent authority of the host Member State should itself address

the relevant body or authority in the home Member State to obtain such information.

- b. Where the profession is not regulated in the home Member State, applicants should be allowed to prove their professional qualifications by showing that they have pursued the profession for one year over the past 10 years, and that they possess one or more attestations of competence or evidence of formal qualifications. Hence, evidence of formal education can only be required “where applicable”.
- c. A “proof of professional experience” may only be required where applicable.

In addition, the Commission would like to receive clarifications on:

- d. The substance of “the form” referred to in Art. 6 and Art. 7(1)(a) of the notified rules.
- e. What exactly is being aimed at by requiring “evidence of professional qualification (leaving a professional examination, obtaining authorisation to work independently from the competent professional chamber after satisfying all the prescribed requirements, and other) if applicable”? It is noted that attestations of “legal establishment” in a home Member State can only be required in case of temporary service providers.

3) As regards the obligation to provide proof of knowledge of the Croatian language in line with Article 7(1)(h) of the notified rules, the Commission considers that the draft rules infringe the PQD. The Commission notes the following:

- a. Article 53(3) of the PQD clearly states that for professions that do not have patient safety implications, any checking of language knowledge can only take place on a case-by-case basis, and only if there is a serious and concrete doubt. Hence, there can be no general obligation to prove such knowledge and no systematic checking. In addition, such controls may only be carried out *after* the recognition of a professional qualification.
- b. Professionals should be able to prove their language knowledge by any means. It is settled case-law that Member States may not limit the types of proof that are accepted.
- c. Since the proportionality assessment gives no indication of what would be considered the level of language knowledge necessary for practising the profession, the Commission cannot evaluate the proportionality of the language requirement, assuming it would only be checked in case of serious and concrete doubt as required under the PQD. Moreover, no information is offered as regards the type of companies (international or not) that are most active in this area and their personnel composition. Hence, the Commission cannot assess whether less restrictive or more tailor-made measures (e.g. taking into account situations where also the lower qualified personnel involved would come from a Member State other than Croatia) could reach the same objective.

4) From the Annex to the notification containing the proportionality assessment, it appears that also foreign professionals will be required to take the Croatian professional exam. Could you clarify if this is indeed the case, or if foreign professionals can enter the profession simply by

having their professional qualifications recognised? Will such a professional exam also be imposed on those professionals seeking to provide temporary and occasional services?

- 5) Could you clarify whether both the prior declaration procedure and the recognition of professional qualifications procedure can be completed fully by electronic means in line with Article 57a of the PQD and Article 8 of the Services Directive?

Furthermore, the Commission notes that requirements notified by Croatia concern requirements restricting access and pursuit of activities by regulated professions falling within the scope of Directive 2005/36/EC and its reporting obligations set out in Article 59(5) as well as Article 11 of Directive 2018/958 on proportionality test.

Hence, the Commission invites the Croatian authorities to report about these new/amending laws and all the requirements they impose into the Database on regulated professions together with a proportionality analysis of these new requirements by filling in the dedicated foreseen screening form.