

The Maltese Medical Profession and Accession to the European Union

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The aim of this paper is to highlight the impact EU accession would have on the practice of medicine in Malta and on the members of the medical profession themselves, from the 'student' phase, through the 'working' phase, on to 'retirement'. Besides laying down the hard facts, an attempt has also been made to highlight the most probable benefits, drawbacks, concerns, and problems that could ensue.

The ordinances regulating the medical profession in Malta

The profession in Malta is regulated by the Medical and Kindred Professions Ordinance, and the Department of Health (Constitution) Ordinance. Medical training, both academic and practical, is regulated by the Education Act.

The Medical Council, constituted in terms of section 20 of the Department of Health (Constitution) Ordinance, is charged to keep Registers in respect of medical practitioners, veterinary surgeons, and dental surgeons/dentists, and to prescribe and maintain professional and ethical standards of such professions. The same Ordinance also gives the Medical Council disciplinary jurisdiction.

License to practice the medical profession in Malta is granted by the President of the Republic, and the Medical and Kindred Professions Ordinance also provides for the recognition of degrees from foreign Universities, if the Medical Council is satisfied that the necessary equivalent standards of knowledge and proficiency have been achieved.

Council Directive 93/16 EEC

It has to be said from the very outset that membership of the European Union will have both positive and negative impacts on the Maltese medical profession, as will be the case in practically all other sectors of Maltese society.

On accession all Maltese ordinances will remain in place as will be most of the laws and regulations concerning course content and training, (with the exception as provided for general medical practitioners), ethical standards, disciplinary measures, the need for good character and good repute, good physical and mental health, taking of the Hippocratic Oath and registration. These are all consonant with the spirit and letter of the basic act regulating the Medical profession in the EU, known as "Council Directive 93/16/EEC of 5th April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications" referred to as Document 1993L0016, and the many subsequent amendments incorporated in Directive 2001/19/EC of the European Parliament and of the Council of May 2001, referred to as Document 32001L0019.

The major impact that will result on accession derives from the implementation of the fundamental principles of freedom of movement, freedom of establishment, and freedom to provide services, which gives every EU citizen the right to seek work and take up that work for which he is qualified in any EU country. Hence the emphasis within the EU of the mutual recognition of degrees and diplomas, and other evidence of formal academic qualifications, and the long term objective of harmonization of academic and proficiency standards.

The medical profession is one of the professions covered by so called "sectoral directives" which besides establishing a general system for recognition of qualifications, also sees to it that one's training has to a certain extent been harmonized at EU level, and that one's qualifications will, under normal circumstances, be recognized automatically.

A formal application for recognition will have to be made to the competent authorities of the member state in which one intends working. Within three months the authority will process all documents and testimonials, and give a decision (Art 15). Negative replies will have to be reasoned and the right of appeal under national law exists (Art. 9 Dir.2001/19/EC). Each

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Member State will designate the authorities and the bodies that are deemed competent to issue and / or receive the diplomas, certificates and other evidence of formal qualifications. (Art.42).

On accession of a country to the EU, job opportunities and vacancies have to be posted on the EURES website, in order to be accessible to all EU nationals.

Whether one is given work or not should not depend on any consideration based on nationality, as this would be tantamount to discrimination. Within the EU, there is agreement that whereas each country can regulate the practice of certain professions within its territory, it has to be assured that applicants from other EU countries cannot be discriminated against as long as they satisfy the same criteria and conditions expected from nationals of the country offering employment. These rights and privileges also extend to citizens of Norway, Iceland and Liechtenstein, forming part of the European Economic Area, where the “four freedoms” apply.

On accession, Maltese citizens can proceed to study and practice medicine in any EU country, and concurrently EU nationals can also study and practice medicine in Malta. As most doctors would either be self employed, thus rendering a service, or seek employment in State or private hospitals, the concession that the Maltese Government has obtained from the EU to be in a position to somehow control the flow of “workers” from the EU in the first seven years following accession in “urgent and exceptional cases where the inflow of EU workers puts a strain on the local labour market or sectors of it” hardly applies in this context.

In this connection, whereas according to Article 48(4) (now article 39) of the EEC Treaty, the provisions relating to the freedom of movement of workers do not apply to employment in the public service, and whereas in certain Member States doctors in public hospitals have the status of “public servants”, in Document 375Y0701(01), the Council of the EU notes that where in a member state the practice of the medical profession in a public hospital carries with it the status of public servant, that member state shall, with a view to facilitating the mobility of professional persons in this sector, undertake to enable nationals of the other member states to take up this activity under the same conditions and with the same rights having equivalent effect to those of nationals in that professional field in the host country.

An exception is made in the sense that this undertaking shall not extend to the activity of a hospital doctor which involves high level administrative duties or which includes activities which are connected, even occasionally, with the exercise of official authority.

According to Directive 93/16/EEC a complete period of medical training is deemed to mean at least a six-year course or 5,500 hours of theoretical and practical instruction given in a

university or under the supervision of a university. (Art.23 (2)). This sectoral Directive also stipulates the minimum length of training courses in specialized medicine, and the conditions under which it should be carried out. Whereas these conditions should not present any problems to the Maltese medical profession, two particular aspects have to be addressed, where our systems will have to make the necessary changes to be more in line with the directive.

One of them is the emphasis given by the Directive on the specific training a doctor should be given before going into general practice as a ‘general medical practitioner’ (Art. 30 to 41). It specifies the need for a full time course in ‘general medical practice’ lasting three years (Directive 2001/19/EC amending Council Directive 93/16/EEC) or equivalent in part time training, which should be ‘practically rather than theoretically based’ giving ample opportunity for “hands on” experience.

The other is the importance given to the need of continuous medical education and lifelong learning, whereby doctors maintain their knowledge of developments in medicine, something which has become a sine qua non in view of the rapid advances in technical and scientific progress in the area of medicine. (Art .8 Directive 2001/19/EC of 14th.May 2001)

Studying abroad

If, after accession, a Maltese student decides to study medicine in another EU country, or if foreign EU nationals decide to study medicine in Malta, they will benefit from the right of residence (Directive 93/96/EEC of 29/10/93), needing only a valid identity card if their stay is shorter than three months. If they intend to stay longer they will have to provide proof that they have been accepted to study at an approved educational institution, are covered by an adequate health insurance (as they will not be entitled to health related benefits), and most importantly that they have sufficient financial means to prevent them from becoming a burden on the social security system of the host country.

Access to university courses implies that there should be equality of treatment to all EU nationals at any EU educational institution, and that there should be no discrimination whatsoever between nationals and non-nationals in selection processes, even when a “numerus clauses” exists in a particular faculty. Non nationals are entitled to receive any financial assistance intended to meet the costs of registration, and to cover other fees needed to enter university, or cover course fees, which are given to nationals of the member state where studies are being carried out. They are not entitled to receive any support or maintenance grants such as stipends, which nationals receive to help them cover part of their daily living expenses, as this depends on the payment of social security contributions by their parents.

In the case of Malta this will be a double-edged development. It is difficult to foretell how many Maltese will opt to study abroad, and how many EU nationals will decide to study in Malta. It is worth reflecting on the fact that the small number of Maltese who decide to study abroad will have to compete with thousands others. This is no big problem, as this is already the case. Many Maltese have carved a name for themselves abroad in spite of stiff competition. On the other hand the possibility of a fairly large number of students from EU countries opting to compete for places in our university might severely affect the chances of Maltese themselves, especially in courses like medicine where certain constraints due to limitation of teaching facilities will inevitably have to be taken into consideration. The appeal of our Mediterranean climate, and the fact that English is the teaching medium, will probably also serve to attract students.

As things stand foreign students will not be asked to pay any tuition fees at university, unless these same fees are also asked of Maltese students. Another consideration is that it is easier for an EU national coming from a richer country to afford supporting himself financially during his studies here in Malta, than it is for a Maltese student to foot the bill in an EU country where the cost of living is much higher than it is locally.

The concern is not having more foreign students, but the financial implications this will have on our University, and secondly the chances that such competition for places at the university might affect negatively the chances for Maltese students.

Linguistic competence

The issue regarding the Maltese language is a complex one. Can the Maltese government or the authorities responsible for recognition of degrees, prevent an influx of doctors from seeking and obtaining employment, or working on their own in Malta, by making knowledge of the Maltese language a necessary qualification? The relevant Directive 93/16 in Art 20(3) simply states that "Member States shall see to it, where appropriate, the persons concerned, acquire, in their interests and in that of their patients, the linguistic knowledge necessary to the exercise of their profession in the host country".

Regulation 1612/68 on the Free Movement of Workers, when dealing with eligibility for employment (Art 1-6) envisages the possibility of the need of linguistic competence for certain posts provided this is necessary because of the nature of the post to be filled, and as long as this same requirement is applied to all applicants irrespective of nationality.

The current situation is such that proven proficiency in the Maltese language is not a prerequisite for entry into University, and definitely neither for following a course in medicine. Most of the tuition and textbooks are in English. There is also the

precedent that both nurses and medical doctors, who know not a word of Maltese, have for many years served in our health institutions. In addition, Article V of our Constitution lays down that the official languages for Malta are Maltese and English.

In the National Programme for the Adoption of the Acquis, as at January 2002 (Final Draft) under 3.1.2. Page 46, when dealing with Free Movement of Persons, no mention is made of the need of proficiency of the Maltese Language for EU doctors to practice in Malta. The proposed Health Care Professions Act, intended to align Maltese legislation with Directive 93/16/EEC amongst others, states that "this Act will allow for automatic recognition for those countries with which Malta has or will have an agreement e.g. European Member state in the future, where foreigners will have the right to practice". Linguistic assessment is only referred to in the subsequent sentence which states "For other countries, applicants will have to qualify in a proficiency and linguistic assessment and fulfill all the conditions required to practice in Malta".

One can envisage the need for proficiency in the Maltese language to form part of the curriculum covering the specific training in general medical practice recommended in Title IV of Directive 93/16, but not for other medical posts or specialties, be they hospital-based jobs, or for those "providing a service on a temporary basis in a host country" such as visiting consultants, who according to Art 17 "shall provide services with the same rights and obligations as the nationals of the host member state", even doing away with the requirement of registration with a professional organization or body, and possibly only requiring the person concerned to make a prior declaration to the competent authorities concerning the provision of his services.

A European Court of Justice decision (case C 55/94) holds that the fact that the "provision of services" is temporary, does not necessarily mean that the provider of services may not set up for himself some form of infrastructure in the host member state from which he can perform the services in question (e.g. consulting room, office in private clinics or hospitals, etc)

Working time directive

Directive 93/104/EC deals with working conditions, and lays down regulations and guidelines about minimum daily resting periods, weekly rest periods, annual leave, length of break periods during working time, maximum weekly working time, night duties, shift work, and working patterns. According to this directive, the maximum number of hours, including overtime, should preferably not go beyond 48 hours for each seven day period when calculated over a reference period of four months (Article 6), unless the employer "has first obtained the worker's agreement to perform such work" (Art 18).

Following the agreement reached with the European parliament in Conciliation Committee on 3rd April 2000, the

Council adopted a Directive relating to adjustment of working hours, which amends Directive 93/104/EC in order to include sectors of activities previously excluded, amongst which junior and trainee doctors (housemen). It guarantees them the same rights concerning the minimum daily rest period of 11 consecutive hours; the time of 'break' when the working day exceeds six hours, the minimum rest period of one day per week, the maximum working week of 48 hours on average, four weeks of paid leave per year, and limitation of night work to 8 hours on average every 24 hours. These measures may be introduced over a five-year transition period, followed by a four-year implementation period.

Total transition period to arrive at a 48 hour average working week for junior doctors, and doctors in training, will be nine years, possibly also being as long as 12 years if further extensions contemplated by the Directive are applied for and granted by the Commission.

Social security rights and benefits

Within the European Union there are different social security systems which are the result of long standing traditions deeply rooted in national culture and preferences. Community provisions on social security do not aim at harmonization of the systems, but provide for a simple coordination of these systems, by providing common rules and principles, aimed at not placing in a worse position a person who has exercised his or her right to move within the EU, than one who has always resided and worked in one single member state.

Entitlement to benefits is often conditional upon the completion of certain periods of insurance, employment or residence, called "waiting periods". These periods can be "aggregated" which means that periods of insurance, employment, or residence completed under the legislation of one Member State are taken into account, where necessary, for entitlement to benefit under the legislation of another member state.

All employed and self employed persons are subject to the legislation of only one member state at a time; the only exception being where a person is simultaneously employed in one member state, and self employed in another member state, when he can be insured in both of these states. On this depend one's payment of social security contributions, entitlement to benefits, and acquisition of future pension rights.

Unemployment benefits are paid by the country where one was last employed. If one goes abroad looking for a job, one can receive unemployment benefit for three months, provided one satisfies the authorities that one has actively tried to find a job in the original country for at least four weeks after becoming unemployed, and register with the employment service of the host country. If no job is found, no more unemployment benefit

will be paid if one does not return to one's original country. Benefits in respect of accidents at work or from occupational diseases are paid according to the legislation of the country in which one resides.

During a temporary stay in a different country from the one in which one is insured, one is entitled to all "immediately necessary" benefits in kind, whatever the nature of the visit, meaning one will be entitled to all "urgent" medical treatment necessary in accidents, sudden illness, etc. irrespective whether it is intensive care or any type of surgical intervention.

It is only in exceptional cases and under strict conditions, including receiving permission from one's sickness insurance institution, that one is entitled to proceed to another country in order to get treatment there.

Invalidity, retirement and pensions

Invalidity schemes in European Union countries differ considerably, and determining the degree of invalidity is a potential problem for persons who have been insured in more than one country. This is still a problem area.

According to Regulation (EEC) No 1251/70 a worker who has reached the age laid down for entitlement to an old age pension, and who has been employed in a particular member state for at least twelve months, and has resided there continuously for more than three years, has the right to remain there permanently and retire in the territory of that member state. So can a worker who ceases to work as a result of permanent incapacity to work, who had resided in that particular state for more than two years. Council Directive 75/34/EEC provides similar rights to EU nationals who have pursued activities as self employed in another Member State.

Pensionable age varies in different countries in the EU. On retirement a person will get a pension from every state where he was insured during his working life for at least one year. These pensions will correspond to the insurance periods completed in each of the states concerned, and each will be calculated in accordance with the legislation of each country involved as is done for its own nationals.

The question of supplementary pension schemes is lately being given a lot of attention and study, and more information may be found on the document "Your Social Security Rights when moving within the European Union- A Practical Guide" (http://europa.eu.int/comm/employment_social/soc-prot/schemes/guide_en.htm)

Impact on our public and private health care systems

The above considerations were touched upon lightly for two reasons. First as information to doctors who would eventually retire in any country of the EU, if accession of our country were

to take place. Secondly and most importantly to highlight the impact accession could have on our public health care system with the ensuing obligations to provide for EU nationals, retired or working in Malta, were we to become a future member state.

In one of its documents to the Commission (Intergovernmental Conference on the Accession of Malta to the European Union. Ch.2 Free Movement of Persons. (Attachment) dated 20th April 2001 p.3) it is acknowledged by Government that “Malta is aware that the public health care system will have to incur a substantial increase in costs emanating from the obligations of Regulation (EEC) 1408/71 (application of social security schemes to employed persons and their families moving within the Community) and Regulation (EEC) 574/72 (fixing the procedure for implementing Regulation (EEC) 1408/71. The Department of Social Security within the Ministry for Social Policy is also aware of the substantial costs involved. No formal economic impact assessments have been carried out to estimate the possible magnitude of this financial burden”.

I hasten to add my concerns also for the impact all this could have on our already overstretched, overworked and overloaded state health-care system.

Ethical problems that may arise

One thought I wanted to share, and which I do not intend to go into deeply here, concerns the possibility of future ethico-moral conflicts that doctors in practice could encounter in the performance of their duties, when confronted with the wishes and expectations of residents coming from other EU countries., who on accession, because of their fulfilling residency requirements, would by right ask for, or expect, treatments or management of their physical or mental conditions, which treatment could be available in their own country, but which locally, because of moral or ethical considerations we do not provide or recommend.

It has to be remembered that on accession the status of these patients from other EU countries, will change from the present “guest status” as tourists, to one of residents with acquired rights for treatment in our health institutions.

Final net results: flooding of local market? ...brain drain?

It is well nigh impossible to foretell what the final impact on the medical profession, and on the practice of medicine in Malta would be, were Malta to become a member of the European Union. There are many factors that have to be

considered. Understandably, opinions vary.

As far as employment opportunities are concerned one has to remember that whatever was discussed in this paper applies in both directions: Maltese doctors looking for work and career opportunities abroad, and EU nationals looking for work and, why not, career opportunities also in Malta, competing in both instances on the same level playing field with the nationals of the host country.

How many Maltese will take up medical studies and find work as doctors in other EU countries? Will this have any negative effect on the available number of doctors needed to run our health care systems, be it public or private? Will they be lured abroad by the better salaries, better work and research opportunities, and advancement possibilities?

On the other hand one should not discard outright the appeal our country, with its mild Mediterranean climate, relatively low cost of living, good living standards, and our renowned hospitality, could have on foreign students and doctors. Our salaries may not be an enticement in themselves but there are many other factors which could compensate, and which could be instrumental in attracting qualified medical personnel towards our shores, not necessarily to spend their whole life practicing medicine here, but even to go through the experience of practicing for a year, or two, in a different country from their own. This by itself would not be detrimental as even the pooling of different ideas and practices in itself is positive and salutary to the medical profession, as long as it does not have any negative effects on the work possibilities of fellow Maltese doctors and specialists.

Final thought

Throughout this paper the way the Maltese medical profession would fare in the event of future accession of Malta to the EU was discussed in a “sectoral” way, bereft of any other consideration of any collateral impact accession could have on the members of the medical profession themselves and their families as citizens, as fathers and mothers, young men and women.

Besides their interests in their chosen profession, they should also look beyond the narrow confines of such a single consideration, and evaluate objectively how their whole life, and not simply the profession they practice, would be effected , positively or negatively by accession to the European Union and the implementation of the whole of the *Acquis Communautaire*, with the subsequent social and economic impact it would have on the quality of life in Malta as we have know it up to now.