

PUBLIC HEARING EUROPEAN PARLIAMENT ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

11 OCTOBER 2016

Dr. Katerina – Marina Kyrieri

Greeting

Bonjour, Goedemorgen in all 24 European languages,

Dear Honorable Members of the European Parliament, Officials of the EU Institutions, parliaments' administrators, MEP assistants, petitioners, policy-makers, experts and citizens who have come here to attend this hearing on the obstacles to EU citizens' freedom to move and work in the Internal Market,

It has been with a great pleasure to be invited and be able to exchange views with you on such an important and always topical issue.

In particular, I am very grateful for this invitation to the Petitions Committee and its Members, the Secretariat, the administrator responsible for its organization, Mrs. Claire Genta, as well as Milieu Consulting with whom I cooperate as a Senior Expert for a conformity check on the recognition of professional qualifications across the EU.

I am very happy to visit the European Parliament and the Petitions Committee for two reasons: First, because some years ago (2004-2007), I was also an MEP assistant, and second, because I had to follow the workings and meetings of the Petitions Committee. So this political environment is not unfamiliar at all, however, I would have never expected to speak within a Committee that I used to work for.

Introduction

Regarding our topic on the recognition of professional qualifications and the submitted petitions, my presentation will refer to the content of the Directive 2005/36/EC, its modernization and impact on the national legislations. I strongly believe that a good

understanding of the provisions will lead to better implementation and application of the EU law at national, regional and local level by the competent authorities and for the benefit of the EU citizens.

What we can observe is that positive integration proves difficult in important areas such as entry, residence and recognition of professional qualifications with “information deficits” and lack of communication, trust and security. We attest that in the following examples:

- A mountain biking instructor’s qualification from the UK was not recognized in France, preventing him from working there during the summer because outdoor professional qualifications are not recognized in France. Or,
- An Italian citizen had problems regarding the equivalence of her Italian diploma in Archaeology. The Belgian administration asked for many documents and the descriptions and marks of all 60 exams she had taken.

According to the findings of the 2016 Flash Eurobarometer on EU Citizenship¹ only 4 out of 10 Europeans feel fairly or well informed about what they can do if their rights or those of their family members are not respected in case of mobility. Close to 6 in 10 feel that they are either not or not at all informed. And when it comes to enforcement, less than 3 in 10 Europeans know what to do if their rights as EU citizens are not uphold.

Furthermore, training requirements for obtaining professional qualifications can differ from country to country and may, therefore, make the exercise of a profession in another Member State quite difficult, even impossible. A positive harmonization approach would have to deal with the fact that plumbers’ skills and medical doctors’ qualifications are not as easily defined as a car’s safety and pollution characteristics. According to the study which was just presented to us, 11 Member States create obstacles in recognizing professional qualifications, 8 in recognizing academic diplomas

¹ European Commission (2016), *Flash Eurobarometer 430 on European Union Citizenship*.

and in 3 Member States (e.g. DK, IT, UK) the recognition of both professional qualifications and academic diplomas is problematic.

In addition, so long as Member States maintain unnecessary entry restrictions and employees' or service providers' soft skills, competencies and qualifications are not recognised in a fast, simple and reliable way by employers, market agencies, customers, or patients, disproportionate limitations and poor judgments can hinder labour mobility.

Among recent active EU-28 movers, highly educated people are slightly more likely to move (2.3% have moved) than the total active population of working age (1.9%).² The EU-28 movers make up around 43% - 44% (2014 and 2012 respectively) and EFTA movers only around 1%. Both across the EU-28 and EFTA and in the five main countries of residence (DE, UK, ES, FR, IT), the largest shares of EU-28 movers are of working age (over 65%).³

From the mid-1990s the European Commission began to consider alignment of educational provision and mutual recognition of qualifications as an important policy area for increasing mobility. A number of measures have been developed to facilitate the transparency and transferability of skills, qualifications and experience across the EU.

Background to the Directive

In 2005, the Professional Qualifications Directive 2005/36/EC entered into force which consolidated the *acquis communautaire* of 15 Directives in the above field of EU law. With this legislation, the EU has reformed the system for recognition of professional qualifications, in order to help make labour markets more flexible, further liberalise the

² 2014 Annual report on labour mobility, Prepared under Contract No VC/2013/0301, October 2014, p. 1.

³ 2015 Annual Report on Labour Mobility, Final Report, European Commission, Directorate – General for Employment, Social Affairs and Inclusion, p.14.

provision of services, encourage more automatic recognition of qualifications in a context of mutual trust and simplify administrative procedures.

Eight years later, the Council of the European Union adopted the modernized Directive 2013/55/EU. Modernising the professional qualifications' legislation was considered as a key action to improve the mobility of EU citizens in the Single Market. This presentation is thus designed to contribute to the debate about the impact of migrant workers on the labour market and particularly examine the relationship between the recognition of professional qualifications and occupational mobility. In particular, it answers to the question of modernization, analyses the main features of the amending Directive and sketches its implications for national authorities in terms of transposition. As a final point, the presentation advocates the potential value of the Directive in reducing the crisis-induced unemployment so long as the governments' political will to regulate professions is accompanied by a fundamental revision of national skills' policies.

The capacity for occupational mobility is essential if the EU economy is to be efficient and effective in the global market and if skills mismatches and/or shortages across sectors, countries and regions are to be alleviated. The critical factor in building this capacity requires the development of the human capital potential of the EU citizens through their right to move and work in another Member State (Article 45 TFEU) together with processes for its recognition and transferability across the EU.

Why a Modernized Directive?

The Modernized Professional Qualifications Directive is a step forward towards improving the professional mobility in respect of mutual trust. Not only labour markets are expected to work more efficiently in the absence of diversities in the national qualification systems but also customers and patients will equally benefit from the internationalization of the free movement of professionals. The assessment and transparency work on regulated professions through the increased cooperation

between the Member States can help in the fight against unemployment. However, the extent to which the Directive will have a positive impact on crisis-induced unemployment is uncertain.

On 19 December 2011, the Commission published a proposal for a revision of the Professional Qualifications Directive (2005/36/EC)⁴ which the Council eventually adopted on 20 November 2013 and the amending Directive 2013/55/EU took effect on 17 January 2014. The updating of the Directive on the recognition of professional qualifications, one of the priorities identified in the Single Market Act - published in April 2011⁵ - is that modernization was required to adapt the legislation on regulated professions⁶ to an evolving labour market. This was necessary not only in the light of modern technologies, but also due to simplification reasons by having a smoother system of recognition, aiming to support the mobility of professionals, offering or seeking a job across the EU. Improving mobility of EU citizens is an important element of matching labour supply and demand, and thereby contributing to meeting the Europe 2020 targets for sustainable and inclusive growth which the EU is still lagging behind.

The need for further simplification and amendment of the existing rules was clear; the professional mobility is still low, yet, 28% of the Europeans at a legal employment age (persons aged 15 years and older) are considering working abroad,⁷ at least 15% of all

⁴ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255/22, 30.09.2005), <http://eur-lex.europa.eu/LEXUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>;

⁵ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Single Market – Twelve levers to boost growth and strengthen confidence – “Working together to create new growth”*, {SEC(2011) 467 final}, COM(2011), 206 final, pp. 7 and 11.

⁶ A regulated profession implies that access to a profession is subject to a person holding a specific qualification according to national laws or regulations; there are 800 categories of regulated professions across the EU 28 MS; (for further information visit the Regulated Profession Database). Training requirements for obtaining such professional requirements can differ from country to country and may, therefore, make the practice of a profession in another MS quite difficult, if not impossible.

⁷ Commission Staff Working Paper, *Impact Assessment – Accompanying document to the Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System*, {COM(2011) 883 final}, {SEC(2011) 1559 final}, SEC(2011) 1558 final, p. 2.

SOLVIT cases concern issues of professional qualifications,⁸ including difficulties with compensatory measures, problems with education levels (e.g. European Qualifications Framework versus Bologna Process), differences in scope activities. Also, restrictions to free movement of persons and services are abundant in the case law of the Court of Justice (CJEU)⁹, and the working age population in many Member States (MS) is expected to shrink by 6 million persons (1 million for health professionals by 2020).¹⁰ On top of that, the demand for highly qualified workers continues to increase where this is projected to rise by over 16 million jobs in the EU between now and 2020¹¹, and along the same lines professionals trained at vocational schools such as in the craft sector will be needed too.

What is the modernized Directive?

The amending Directive applies to professionals wishing to establish themselves by practicing a regulated profession in an EU country other than that in which they obtained their professional qualifications. The interactive map of regulated professions published in May 2014 reveals the causes of obstacles in sectors and professions where the modernization in accordance with Art. 59 of the Directive may have the greatest effect.¹²

⁸ European Commission MEMO 11/923, *Modernisation of the Professional Qualifications Directive – Frequently Asked Questions*, 19 December 2011, p. 3, available at: http://europa.eu/rapid/press-release_MEMO-11-923_en.htm?locale=en;

⁹ For example: Case C-2/74, *Jean Reyners v. Belgium* [1974] ECR 631; Case C-33/74, *Johannes Henricus Maria van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 01299/ECLI:EU:C:1974:131; C-115/78, *J. Knoors v Staatssecretaris van Economische Zaken* [1979] ECR 00399/ECLI:EU:C:1979:31; Case C-246/80 *C. Broekmeulen v Huisarts Registratie Commissie* [1981] ECR 02311/ECLI:EU:C:1981:218; Case C-107/83 *Klopp* [1984] ECR 2971; Case C-340/89, *Irène Vlassopoulou tegen Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, [1991] ECR I - 02357/ECLI:EU:C:1991:193; Case C-19/92, *Dieter Kraus v Land Baden-Württemberg* [1993] ECR I - 01663/ECLI:EU:C:1993:125; Case C-55/94, *Reinhard Gebhard tegen Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I - 4165/ECLI:EU:C:1995:411.

¹⁰ Public health emerged as a particular issue during the evaluation; thus, safeguards for patients who have concerns about language skills and malpractice were necessary to be included in the modernised Directive.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An Agenda for new skills and jobs: A European Contribution towards the full employment*, COM (2010) 682 final, 23.11.2020, p. 9.

¹² Art. 59 requires MS to provide the Commission with a list of their regulated professions and undertake an assessment of the justification and proportionality of the rules in place; Visit European map of regulated professions http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=map;

Additionally, it establishes rules concerning partial access to a regulated profession¹³ granted on a case-by-case basis¹⁴ and recognition of professional traineeships pursued in another MS.¹⁵ It is not applicable to the professions governed by specific Directives such as statutory auditors and lawyers (advocates).¹⁶

Whilst extending its scope to trainees and apprentices, the Directive continues to offer three different routes on recognition. In particular, it foresees:

- 1) Automatic recognition for a limited number of professions (doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects); yet, it introduces changes in the definition of the minimum training requirements¹⁷ and offers avenues to establish “common training frameworks”¹⁸ based on a set of knowledge, skills and competences which are not yet concrete and exemptions may apply for health professionals.¹⁹
- 2) Mutual recognition for a large majority of professions; however, it is only in cases where the qualifications of a professional differ substantially, or the length of time spent in the profession falls short from those required of the host MS, that the latter may impose justified compensatory measures such as adaptation period or aptitude test to close the gap and grant access to a profession²⁰.

¹³ Art. 4f.

¹⁴ The competent authority of the host MS shall grant partial access to a professional activity when all the following criteria are met: 1. The professional is fully qualified to exercise in the home MS the professional activity for which partial access is sought in the host MS; 2. Differences are so large that the application of compensation measures would amount to requiring the applicant to complete the full programme of education and training required in the host MS to have access to the full regulated profession in the host MS; 3. The professional activity can objectively be separated from other activities falling under the regulated profession in the host MS.

¹⁵ Art. 55a.

¹⁶ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services [1977] OJ L 78/17; Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, [1998] OJ L 77/36.

¹⁷ For example, for doctors, the Directive clarifies that the basic medical education ought to be based on 5.500 training hours done within a minimum of 5 years (Art. 24.2).

¹⁸ To initiate this project, the profession should be regulated at least in 1/3 of MS (Art. 49a.2b).

¹⁹ A MS shall be exempted from the obligation of introducing the common training framework if there are substantial differences between the common training framework and the training required in its territory, which entail serious risks for the public health or safety of the service recipients (Art. 49a.5c).

²⁰ Art. 14.

3) Provisions of services or work on a temporary and/or occasional basis with improvements on documents' obligations and procedures.²¹ In such situations, professionals can in principle work on the basis of a declaration made in advance which covers detailed information of the establishment, insurance and professional competences in another MS. As regards professions in public health and safety sectors, a prior check of qualifications, language text and taken disciplinary actions is allowed to be made.

The modernization of the Directive reaffirms the underlying philosophy of mutual recognition and trust between MS, whilst developing on existing rules by introducing brand new elements and exploring innovative ways to better reflect this concept in practice.

A key feature is the introduction by this year (January 2016) of the European Professional Card (EPC) taking the form of an electronic certificate.²² This will be delivered in the home MS and transmitted via the Internal Market Information System (IMI) to the host MS to present the documents for the recognition process, both for permanent and temporal mobility. The issuance of the EPC will not provide an automatic right to practice a particular profession if there are registration requirements or other control procedures already in place in the host MS before the EPC is used. Following a call for expressions of interest in the introduction of the EPC announced on 18 October 2013, the European Commission proposed the creation of a Focus Group and a more thorough examination of the EPC implementation conditions for five professions as a first wave (nurses, pharmacists, physiotherapists, mountain guides and real estate agents).²³ Whilst the Implementing Regulation 2015/983/EU is being

²¹ Arts. 7 & 8.

²² The European Commission shall, by means of implementing acts, adopt necessary measures to ensure the uniform application of the provisions on the *EPC which shall not take the form of a physical card due to the risk of falsification or outdating*.

²³ This list also does not preclude other professions being considered at a later date. The Commission carried out an assessment, with the involvement of the relevant stakeholders and the Member States, on the suitability of introducing the EPC for doctors, nurses, pharmacists, physiotherapists, mountain guides, real

adopted on the issuance process of the European Professional Card and the application of the alert mechanism, it remains to be seen how this procedure will function in reality, what kind of impact will there be on EU countries, including value for professionals, competent authorities and costs/fees, (including possible double fees), in relation to administrative procedures.

As regards professions with health implications and professionals dealing with children, the facilitation of service provision has to be ensured in the context of strict respect for public health, patients' safety and consumer protection. The Directive is with no prejudice to measures necessary to ensure a high level of health and consumer protection. More concretely, it launches a proactive alert mechanism which foresees that the competent authorities of a MS shall inform the competent authorities of other MS about those professionals who have been restricted or prohibited, even temporarily, by national authorities or courts to practice.²⁴ However, it does not explain how to address the differences in the disciplinary national systems (e.g. 'black lists', persecutions, prohibitions, enhanced supervisions, investigations or courts' decisions). Furthermore, the control of language knowledge is reinforced for health professions. The applicable rule to all is that professionals shall have a knowledge of languages necessary for practicing the profession in the host MS. However, when it concerns health professionals, there are no limitations for the control. Member States' competent authorities have a great margin of appreciation as to how (e.g. language testing or evidence of language competencies) and when (before or after the registration) they will apply the linguistic obligations, thus making the access to the profession a two-step process.

estate agents and engineers. Following that assessment the Commission has selected five professions (nurses, pharmacists, physiotherapists, mountain guides and real estate agents) for which an EPC should be introduced. The European Commission has proposed that the implementing act will be adopted by 2015 and provisions in each Member State must be made so that the EPC is available for the professions in the first wave by the end of the transposition period and for the second wave of professions to run in 2018.

²⁴Art. 10 (2) of the IR No 2015/938/EU provides that Member States shall specify the documents required for issuing EPC and shall communicate this information to other Member States via IMI.

Recommendations and Conclusions

The extent to which skills acquired in one country are accepted and valued in another is one of the most significant non-administrative barriers to the free movement of labour and this is why MS have given the EU competence to encourage mutual recognition of qualifications. Nevertheless, this agenda is far from complete and when human capital is not largely consolidated in qualifications, there is no obvious way in which migrants can demonstrate their suitability for jobs in a new setting. The Commission has not proposed a new Directive but a targeted modernisation of the existing provisions driven notably by the objectives of reducing the complexity of procedures, promoting mutual recognition through efficiency and patients' safety and enhancing administrative cooperation through the Internal Market Information System (IMI) and Points of Single Contact.²⁵

To further improve the mobility of EU citizens, it is imperative to change the general attitude:

- What can be concretely done?
 - First, raising awareness about first-hand information on EU law (for example, about what are my rights as an EU citizen?),
 - Second, providing information on rights through all channels, EU, national, regional, local, MEP constituencies, European Commission Representations and European Parliament Information Offices in the EU Member States, thus explaining what does the EU do for me and why?
 - Second, raising awareness of the informal redress mechanism available for each and every citizen at the local, national and European level as the Commission also suggests to the petitioners. (For example, national points of single contact, national Solvit centres, national ombudsmen, national courts, National Academic Recognition Information Centres (NARIC), Your Europe Advice) and expand their

²⁵ Arts. 50.3, 56.2a, 57, 57a, 57b.

use. It will lead to a faster resolution of citizens' problems in a citizen-friendly way.

- Third, develop a more proactive approach: (for example, delivering guidelines and training of the civil servants, and administrative employees on the Directive's rights and obligations, bearing in mind that the Directive provisions are rather technocratic and thus not easy to be "digested" all at once).

Lastly, national policy makers should step back and consider to match not only labour supply and demand by boosting the supply of skills and qualifications, but also to stimulate greater employer demand for effective support, investment and utilization in skills.²⁶ The next advancement is whether the overall shortage of skilled workforce calls for an adjustment of the above features/provisions for both EU citizens and certain third-country nationals such as family members of EU citizens, long term residents, refugees, and "blue card" holders.

To conclude, the right to practice mobility, move, reside and work freely within the EU should be understood as a POSITIVE challenge, and so it should be encouraged.

❖ Information Note

Milieu Limited in consortium with Risks and Policy Analysts (RPA) has been awarded the DG GROW Contract 'Compliance assessment of Directive 2005/36/EC amended by Directive 2013/55/EU on the recognition of professional qualifications'. The project is about the compliance assessment of the Professional Qualifications Directive. It started in April 2016 and will end May/June 2017. Its aim is to assess the transposition of each Article of the Directive. The consortium has two tasks: 1) completeness assessment: checking whether or not each provision has been transposed, 2) conformity assessment: checking the quality of transposition. In this context, I would encourage the Petitions Committee of the European Parliament to organize a second hearing on the same topic

²⁶ Chartered Institute of Personnel and Development, *The Growth of EU Labour – Assessing the Impact on the UK Labour Market*, September 2014, pp. 27, 33, available at: http://www.cipd.co.uk/binaries/the-growth-of-eu-labour-assessing-impact-uk-labour-market_2014.pdf;

late 2017 so as for the consortium to present the findings, problems, challenges and recommendations as these will emerge from the national comparative assessment reports.

➤ **POINTS FOR DISCUSSION**

1. One French petitioner argues that the main obstacle to exercising the right to free movement inside the European Union is the lack of automatic EU-wide recognition of academic diplomas.

Yes, this is true. Individual Member State Governments remain responsible for their education systems and are free to apply their own rules, including whether or not to recognize academic qualifications obtained elsewhere.

One of the goals of the Bologna Process is to facilitate the recognition of qualifications.

In 2007, all member countries of the Bologna Process submitted national action plans to

Improve the recognition of qualifications. The Council of Europe and the European Commission continue to work with Member States, a number of third-countries, and other partners, to develop good practice and policy in this area within the framework of the Bologna Process and through the ENIC and NARIC Networks.

There is lot of autonomy and independence for the Universities, not to mention the lack of standardization from one University to the other, or the distinctions made regarding academic equivalence or equivalence of level, equivalence for work or study.

2. What we learn from the Petition No 1201/2014 where the Commission provided the petitioner with contact details of the Spanish contact point that could help him identify the competent authority and advised him to apply for recognition of qualifications to this authority, is the lack of information as to which are the

national contact points and competent authorities. In this context, MEPS can play a great role in informing and helping petitioners to come into contact with national contact points and competent authorities as they represent at the EU level their national own citizens. Therefore, I would urge future petitioners to contact into contact with national MEPs, ask for their help and support in order to facilitate them with the national administrations and deal effectively, efficiently and within a short period of time with their problem.

3. With reference to the petition No 1313/2015 by G.F. (Greek) on the fact that no authorization is granted in Greece to engage in the occupation of medical laboratory technologist it has to be remembered that Art. 59 requires MS to provide the Commission with a list of their regulated professions and undertake an assessment of the justification and proportionality of the rules in place; Visit European map of regulated professions http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=map;

As the Commission rightly observes, the regulation of professions/professional activities is within the Member States' competence. Every Member State can decide, within the limits of Union law and more particularly proportionality, whether or not to introduce a profession/professional activity into its legal system and how to regulate it. The Directive covers professionals who have pursued the profession in question for one year during the previous 10 years in a Member State that does not regulate the profession.²⁷ The host Member State would need to take into account all the evidence of qualifications, attestations of competence delivered to the professional including evidence of professional experience and regulated education. The imposition of compensation measures is not excluded.

²⁷ Article 13 para 2 Directive 2005/36/EC.

4. Medical specialists holding a specialisation in one of the 54 categories can benefit from the automatic recognition of their specialisation in other Member States, to the extent that the speciality is listed under the relevant point of Annex V of the Directive both for the home and the host Member State. Accordingly, in these cases Member States shall not require the professionals to comply with any additional training or qualification requirements for the recognition of their specialisations. In case of substantial differences, the applicant might be required to complete compensation measures before the recognition of the specialisation in the host Member State. Accordingly, under the second subparagraph of Article 26 of the modernised Directive, the Commission is empowered to adopt delegated acts concerning the inclusion in point 5.1.3 of Annex V of new medical specialties common to at least two-fifths of the Member States. The Commission might consider adopting a delegated act amending point 5.1.3. of Annex V of the Directive, by introducing cardiac surgery as a new medical specialist category, should at least 12 Member States notify the Commission their relevant national specialist programmes meeting the harmonised requirements. In the meantime, holders of this specialisation can benefit from the recognition of their qualifications under the general system for the recognition of professional qualifications.
5. It is not clear whether the professional status of nurses, who have started their training at vocational secondary level prior to Croatia's accession to the EU, is compliant with the requirements of Article 33(1) of the Directive. There is some uncertainty about the professional status which can hinder the recognition process in other EU Member States. Definitely, a follow up by the European Commission is necessary in order to examine if and which requirements of the Directive are met according to the general or automatic recognition regime.