

# The Mutual Recognition of Diplomas

## A quest for a more effective/efficient operation of the system while ‘living in the shadows’

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### Abstract<sup>1</sup>

The Recognition of Diplomas and Professional Qualifications obtained abroad is a potential stumbling block to the Free Movement of Professionals. Although a system to facilitate this has long been established, it often faces problems itself which, in turn, make this field a source of obstacles to free movement. The methodology in this framework has changed and should speed up matters, but more could be done in particular to boost the crucial element of success: mutual trust. Progress here would enable the relevant bodies to decide upon recognition with greater ease. A pivotal means to achieve this would be an increase in the exchange of information between the parties concerned. Furthermore, counterweighing the Directives' aim of promoting the free movement of professionals, in real life there is also the need for security and safety, which the relevant authorities have to safeguard as well, and which can thereby enter into conflict with the aim of free movement. Here the issue of being able to effectively control the professional conduct of foreign professionals comes into play as well. They would also benefit from enhanced cooperation and a cross-border exchange of information, increasing mutual trust in the process.

### Introduction

The mutual recognition of diplomas and qualifications obtained abroad is a cornerstone of the Internal Market as the freedom of movement for persons would be seriously impaired without a system facilitating such recognition. Instead of imposing nationality requirements, a Member State could maintain its borders contrary to the Internal Market by insisting on the national diplomas before granting foreigners access to regulated professions. This would condemn the cross-border movement of professionals to a paper-existence as hardly anyone would re-train to overcome such a hurdle. Alternatively, this freedom would be limited to unregulated professions.

In order to avoid this, Member States' authorities with the power to refuse access to a profession cannot ignore foreign diplomas and qualifications,

but are obliged to consider them properly. Mechanisms have been put in place to ease the work of the officials, especially when it comes to obtaining information on what the foreign paper stands for.<sup>2</sup>

It is not within the scope of this article to present these systems. Rather, as these systems have problems of their own, it is the practical problems with them which will be examined here.

### Misunderstandings about European Law in General

It is often overlooked that the provisions of the Directives that permit a refusal of recognition do not force a state to do so – they provide it with the possibility to do so. When the conditions imposing recognition are not met, a state can refuse recognition, but if it wants to it can also grant recognition. It can adopt a more liberal approach and is entitled to recognise a foreign diploma that it could otherwise refuse to recognise. However, there is no possibility to be stricter than the Directives allow, for example the additional requirements a state can ask for, constitute what is the maximum, i.e. the ceiling on what can be demanded is provided for in the Directives. One

also sometimes encounters an undue limitation to the Directives: European Law has more to say on the mutual recognition of diplomas than purely what is stated in the relevant Directives.

There is the text of the Treaty and the case-law of the European Court of Justice on the principles it directly imposes on national administrations. However, this fact is sometimes overlooked and recognition is then refused too quickly on the basis that the situation does not fall within the Directives and due to the belief that there is thus no obligation to recognise. However, the Court of Justice in Luxembourg has made it clear<sup>3</sup> that a Member

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State also has to consider recognition in situations that fall outside the framework of the Directives and then the decision has to be based on principles found in the Treaty, as interpreted by the case-law.

### Practical Problems

- Officials working in this area face an uphill struggle: the profile of this topic is low although it can 'make or break' the free movement of professionals. Officials therefore come in for criticism when things go wrong, but no-one notices their work when everything runs smoothly. In addition, the amount of cases involved may appear to be surprisingly small. However, the numbers of demands for recognition are actually just the tip of the iceberg and do not show the true extent of the movement of professionals across borders. There are those professionals who operate under their 'home country' title and, more importantly, those who work in the framework of international operations, either as self-employed professionals in large cross-border partnerships or as employees in companies and who therefore do not appear in any statistics.

The infrastructure to facilitate the recognition procedure therefore suffers from a poor allocation of resources. More proactive work would be possible with greater resources and a better infrastructure. Some of the problems and possible means to address them, such as an increase in the exchange of information, are mentioned below, and the situation would obviously immediately improve with an increase in resources.

However, sometimes the issuing authorities are slow to provide full information and hence there should be means for that country's contact point in the European network to force a more rapid reaction to enable the host country's authorities to access the information needed for its decision on recognition.

- A matter that is often underestimated and thus does not feature sufficiently, is feedback from the decision makers to the information bodies that provide these decision-makers with data on the foreign diplomas and advise them on what the analogous position in the national system would be (these are often the national contact points in the various international networks in this field). The latter usually only hear about further developments of a dossier they have handled when things go badly. It would of course provide more satisfaction to such officials to also hear of the cases that went well. They would then also be able to provide more complete feedback to the regulators and legislators for whom this information should be important when considering a reform of the profession in question.
- In addition, the whole recognition procedure is a

long learning process: collecting data on foreign systems in order to take the relevant decisions, keeping these data up-to-date, maintaining the networks etc. Some problems may be easier to deal with as the level of knowledge on the other countries increases.

- Another practical issue that has been highlighted is that of the proof of professional experience. Here one should consider cultural differences between countries on the approach towards documentation. Some countries are very formal, others need the inclusion of a great level of detail in order to feel confident about ascertaining the substance of the experience documented and the value of that particular document. Others again are used to more general documents. A

possible factor here is the size and homogeneity of a profession: if it is akin to a 'club', then few words are necessary for a document to be understood by the others in that profession (they know what it means). However, in a country where that profession is, for example, more diversified, such a 'compact' document may lead to unnecessary uncertainty about the precise nature of the experience proven thereby. Here, too, an increased flow of information is of help: learning from others, sharing best practice, establishing a code of conduct and, if possible, greater standardisation would all go in that direction. For example, if the format of a reference is similar, it is easier to process in another country.

- Then there is the problem with terminology: similar sounding diplomas may stand for very different things. There is also the difficulty of using 'coded language', such as the use of certain apparently positive terms in a letter of reference to describe what are, in fact, shortcomings of and problems with the person concerned. For example, when a reference states that someone was 'very punctual', it actually means that apart from punctuality there is nothing else, positive or negative to be said of that person, i.e. he or she is without drive, initiative or enthusiasm. Or, when someone is referred to as being very 'open to the concerns of others', it means that he is a womaniser. Since this is only apparent to those who share this 'code', the meaning is most probably not shared in other Member States, and serious errors of judgement or a lack of protection of the consumer/client can result. If you are surprised by the examples, that is no surprise since they stem from the code that is apparently being used in Germany.
- The choice given frequently in the Directives to applicants<sup>4</sup> of whether to take an aptitude test or to complete an adaptation period can pose problems for states where the size of the profession in question is (still) small and the infrastructure for either an aptitude test or for the proper organisation and

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supervision of such an adaptation period is not in place. It could also be the case that since the adaptation period could be spent in a private practice or in company employment, there may be unwillingness to take on such trainees if they are going to become competitors or join competitors later on. Better explanation of why an adaptation period or test is needed might also help the applicant make a better choice here.

### **Important aspects for dealing with these problems in the short term**

A decisive matter in overcoming any practical problem is the attitude and methodology of the operators – aspects that ‘make or break’ a system, since even the best-designed system will not function properly when the operators have the wrong attitude and, conversely, even a ‘bad’ system can function to a greater or lesser extent with the right attitude.

Regarding the attitude and methodology employed by those operating the system, we can see how the guiding spirit has evolved over time:

- From the principle of equivalence (using a course-by-course/subject-by-subject analysis in a quest for an identical content between the foreign diploma and the local one, which was somewhat feasible at the time, when (higher) education was fairly comparable and there was little mobility), an approach which was embodied in the sectoral Directives (with full harmonisation of the study programmes) at a time when and on issues where traditionally there was already a certain homogeneity among the different countries’ systems, there is – a shift to the principle of recognition (with an increase in mobility and an expansion/proliferation of higher education and different types of courses, where one no longer looks for the identical but the comparable, i.e. verification that a course is on the same level, while accepting small differences in content), as demonstrated by the move to the use of general Directives (mutual recognition: mutual confidence in educational systems, reversed burden of proof, acceptance – while respecting differences, recourse to the concept of the ‘finished product’ meeting minimum requirements).

Some countries go further and practise a principle of acceptance. Thus, even when there are bigger differences, a foreign diploma is accepted due to mutual trust, boosted by international cooperation. The increased mobility of graduates makes the move towards this spirit of acceptance even more necessary. This approach respects the differences between the

systems. A certain convergence of the systems boosts this development and enriches the home system.

In this respect it is useful to look back at the Bologna Declaration of 1999 on a European Higher Education Area,<sup>5</sup> which tries to achieve greater transparency and easier mobility through:

- a pan-European move to a Bachelor (undergraduate)/ Master & Dr. (postgraduate) system by 2009, with the Bachelor’s degree providing access to the labour market,
- the use of the ECTS<sup>6</sup> and
- the Diploma Supplement.<sup>7</sup>

From an approach concentrating on the paper qualifications it could also be said that there is a move to an approach where the person counts, not (just) the diploma, since work experience demonstrates more what a person is actually able to do than a diploma, which stands for what one should be able to do. The European Court of Justice has in fact always stated that authorities have to consider everything in a person’s background, not just the diplomas, but also any experience already acquired:

“The authorities of a Member State to whom an application has been made by a Community national for authorisation to practise a profession, access to which depends, under national law, on the possession of a

diploma or professional qualification, or on periods of practical experience, must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his [or her] relevant experience, by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national rules.”<sup>8</sup>

When actually deciding on recognition, there are a number of different criteria that are being used:

- Formal Criteria: laws/agreements governing access to the profession/regulating recognition
- Functional Criteria: the purpose and rights relating to the profession
- Material Criteria: entrance level/selectivity/duration/study load/structure/content leading to a final level of know-how necessary to practise the profession
- Other criteria: the purpose/status of the Profession.

As for the officials who operate the relevant information systems, their influence, often only of a non-binding nature, (just) advising those who actually decide on recognition, can vary with their own attitude and methodology. By highlighting the potential impact of

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a wrong decision (e.g. the danger of having to pay compensation) their advice can become more forceful. By spreading best practice and information on the systems in place in other countries, their advice can be made easier to accept even where decision makers are reluctant to recognise a particular diploma/qualification at first sight.

Recognition for professional purposes is more difficult than for academic purposes, since there are not only differences in training but also in the profession itself, for example, the differences between the various legal systems both in form and content. In addition, there is a psychological element in that professionals tend to be strict – they are used to their system and consider it to be the most appropriate for their situation, thereby placing a significant hurdle in the way of different approaches. In addition, one should never underestimate an instinctive protectionist reaction when faced with newcomers from abroad (who could become competitors).

... And this is not just a matter for the authorities: One should also examine the attitude of the applicant, which can improve matters or make them worse. For example he/she may consider having to take an aptitude test to be ‘beneath him/her’, an attitude which would do nothing to reassure the competent authority. In other words, if the applicant insists on having his foreign diplomas recognised without such an ‘insulting’ requirement (as he/she is ‘far too senior’ to face this kind of hurdle), this behaviour will not make the recognising authority feel at ease. Such intransigence would lead to the opposite result – a hardening of the resolve of the host country’s authorities to refuse outright recognition.

### **The issue of professional ethics and how it can affect the system of recognition**

A further topic that is somewhat ‘underexposed’ is related to the enforcement of professional ethics and codes of conduct across borders:

The issue of professional ethics is not as such part of the System of Mutual Recognition of Diplomas and Professional Qualifications. However, with professional experience being a factor in the decision on recognition, a breach of professional ethics is obviously a matter that should be part of the consideration of an applicant’s track record. The great majority of those who make use of the freedom of movement are not an issue here, but there are some who do move country in order to escape problems. Those few that belong to the latter type have to be taken into account by the recognition system in order to protect the clients in the host country.

It is useful to reflect on and examine the purpose of having codes of conduct: they serve to promote public confidence in the relevant professions. This trust needs

to be earned and nurtured, and communication – such as the indication of the standards that are expected – helps.

The problem here is two-fold:

- Some countries do not require subscription to a code of conduct and therefore are not likely to register behaviour that would be contrary to such a code (if there is one). What should happen when someone from one such country goes to another Member State where such an obligation exists?
- Then there is the problem of notification and the flow of information: if a problem has indeed arisen, how are the competent bodies in other countries notified of this in order to protect the public from the individual concerned, should he/she cross the border (perhaps to escape the consequences of the misconduct)? The sworn statement foreseen by the Directives is difficult to accept in some cases and confidence would obviously be increased if some third-party certification could be found in all cases, thereby removing the fear of falsification by the applicant. At the moment such a matter would only be dealt with when formal recognition is requested and proof of good character is required. Nothing is provided for so far in the case of the Provision of Services or Establishment with the use of the home title – the first reaction would be a pan-European register (or black list), but that could constitute a problem from the point of view of data protection and may be difficult to agree upon (e.g. what kind of breach would be included, all or only major ones...). A practical step would be the linking up of existing national registers, but that would not solve the problem described above, where no such register exists in the first place and may also face formidable obstacles in the shape of differences in terminology and the weighing up of particular types of misconduct. A first step in the same direction could be to use a RASEF/RAPEX style network (a system for the rapid exchange of information on dangerous products or foodstuffs to protect consumers EU-wide<sup>9</sup>) or to actually extend these networks to professions. Their purpose is to be an alarm-bell once problems are discovered, and this is precisely the case here, although this time not in relation to dangerous products, but in relation to problematic professionals.

A parallel issue that arises is that of the differences in the possibilities for rehabilitation: if the rules of the profession provide a mechanism for someone who has disrespected professional ethics to be allowed back into practice, such rules may differ widely between Member States on issues such as when readmission can be

considered and the kind of measures and conditions that can be imposed.

### **What does this tell us regarding the need for action**

As can be seen from the above, problems often stem from an uneasiness with recognising a foreign diploma, and the “solving” of the immediate dilemma by refusing recognition. In principle, there should be mutual trust in each others’ training systems instead of such uneasiness about the quality of the foreign professional. In order to build up such mutual trust and confidence, the issue of information and documentation to enable the recognition to be made with confidence is a pivotal one; actually, it is a long-standing practical issue that could become more serious with the advent of new types of training.

In order to improve the operation of the system for recognising foreign diplomas and qualifications, communication is important, and not only in the framework of the information networks.<sup>10</sup> The different competent authorities and professional bodies involved in the regulation of professions should be made to stay in constant contact with their counterparts in the other Member States. Ideally, everyone should talk to everyone else. Thus, in order to prevent the flow of information from slowing down unduly, it would seem that channelling the information through a central coordinator is probably not the ideal solution. Having said that, there should be a central point of reference which is at least kept up to date on the information that has been passed on in order to allow others who were not a party in the original exchange of information to have access to it as well. However, in the latter case, the central point mentioned above is more of a depository of information (for example a database), rather than someone who has to actively pass on the information in the first place. Of course, with the growth in the internet and other information technology, more information is becoming available, thereby increasing transparency.

### **Measures that are being taken to deal with these problems**

Among the measures taken to build mutual trust through an enhanced flow of information are:

- The Lisbon Convention,<sup>11</sup> which aims to improve recognition through:
  - clear recognition procedures,
  - the right of appeal,
  - uniform and transparent criteria.
- The ECTS – Credit Points System (see above)
- The Diploma Supplement (see above)

Then there is the work by the EU in general and by CEDEFOP,<sup>12</sup> the European Centre for the Development of Vocational Training, in particular to increase the

dissemination of information on the different systems (European Forum, information centres, the EUROPASS system in vocational training).

Further pro-active measures to increase knowledge of each other include:

- Association agreements between schools
- SOCRATES/LEONARDO<sup>13</sup>

Also, for the officials operating the system there used to be the KAROLUS Programme, an exchange programme for all national officials working in areas relating to the Internal Market. Here, the officials who decided on the recognition were sent to their counterparts in other countries to see how they did the same work there.

### **Further possibilities**

A possibility to ‘force’ an increased exchange of information could lie in the extension of the product standards notification systems.<sup>14</sup> If these were to be applied to regulated professions, like national norms

and standards on products, the requirements to exercise a profession, including any changes, would have to be notified at the proposal stage. This would leave time for

other Member States or the Commission either to join the initiative, to let it continue without objection, or to object to that action, considering it to be contrary to the Internal Market. The advantage would also be that this would occur before such regulation takes effect, thereby not disrupting the professionals who would like to make use of their freedom to move.

On a substantive matter, to accommodate serious differences in training without having to block professionals wanting to cross borders, a modular system could be envisaged, using a multi-tier profession to accommodate the differences in standards. Therefore, when there are differences between states as to the range of aspects which should be part of a particular profession, applying the ‘home title’ methodology by analogy could help. Instead of a refusal to recognise, there would be a harmonised set of professional titles used in all Member States, reflecting the different types of qualifications used. All qualifications would thus be acceptable as a suitable counterpart exists in the host country, even if the professionals there use a different qualification. However, then there is the practical problem of finding neutral terminology that does not degrade the less stringent qualification.

### **Conclusions**

On all of these issues, regular meetings and information exchanges would at least support moves to increase mutual trust through common understanding of the different systems, which could also increase convergence and, perhaps, ultimately a common set of standards. In fact, most professional rules are constantly changing

## **Communication is important, and not only in the framework of the information networks**

with a core of DOs and DON'Ts that are fairly comparable from one country to the other. So, again, one is back to the call for an increase in the measures supporting the exchange of information.

Although the Directives aim to promote the free movement of professionals, in real life the relevant authorities have to weigh against this aim the need for security and safety, which could conflict with the aim of free movement. Increasing mutual trust would be an antidote to such an unfortunate development. However, mutual trust is like gold dust:

everyone wants it but it is hard to come by.

Finally, one should never forget that the Legislation on the Mutual Recognition of Diplomas and Professional Qualifications only deals with some of the matters that have to be addressed in order to promote true Free Movement of Persons: without support in other areas, such as Social Security, Pensions and Health Insurance, the real Internal Market will not be attained.

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**NOTES**

<sup>1</sup> The following constitutes a summary of the outcome of a colloquium organised by the *European Institute of Public Administration*, Maastricht, from 5 to 7 February 2001 (<http://www.eipa.nl>)

<sup>2</sup> They have either been created outside the framework of the EU, especially in the framework of recognition for academic purposes, or result from EU Law: the 'Sectoral Directives' applying to certain professions only, and the General Systems Directives (Directives 89/48/EEC (OJ L19, 1989); 92/51/EEC 50J L209, 1992) and 1999/42/EC 50J L201, 1999).

<sup>3</sup> Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité, Case C-238/98, [2000] ECR I-6623.

<sup>4</sup> Where the contents of the professional training in the host and home countries are found to differ the authorities of the host country are entitled to require an adaptation period (work under supervision/accompanied by a national professional) or an aptitude test (not further defined in the directives) – only in a few specified cases can the state impose one or the other; normally the applicant must have the choice.

<sup>5</sup> Signed by the Ministers of Education of 29 European countries on the occasion of the Confederation of EU Rectors' Conference held in Bologna on June 18-19, 1999.

<sup>6</sup> The European Credit Transfer System – a credit points system, where points are attributed to a degree: the visited institution provides an information package on the courses on offer, on the basis of which the home institution attributes a number of credit points the student will have taken into account for the purposes of the diploma of the home institution and there is a contract between the student and the institutions.

<sup>7</sup> A document with the aim of increasing the readability of a diploma: it provides information:

- on the holder,
- on the qualification – the fields of study and the institution,
- on the level – conditions of access,
- on the result,

- on the function – what can be done with it, which professions are accessible with it,
- on the position within the national educational system.

<sup>8</sup> Case C-340/89 Vlassopoulou v Ministerium fuer Justiz, Bundes- und Europaangelegenheiten Baden-Wuerttemberg [1991] ECR I-2357, paragraph 16, Case C-104/91 Aguirre Borrell and Others [1992] ECR I-3003, paragraph 11 and, most recently, Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité, Case C-238/98, not yet reported on paper.

<sup>9</sup> Set up by Council Decisions 84/133/EEC, 89/45/EEC and 93/580/EEC – note also Article 8 of Directive 92/59/EEC (Official Journal No. L228 of 11.8.92, p. 24) on general product safety and Directive 98/43 (Official Journal No. L204 of 21.7.98, p. 37).

<sup>10</sup> 2 networks co-exist:

- for academic recognition the NARICs (national academic recognition information centres – in the EU) and ENICs (European Network of National Information Centres – non EU-Council of Europe members)
- for professional recognition a network of national contact points/coordinators exists for the 2 General Systems (often they are the NARICs as well).

<sup>11</sup> UNESCO-Convention on the Recognition of Qualifications Concerning Higher Education in the European Region, Lisbon, 1997; The European Treaty Series, n°165, Council of Europe – UNESCO joint Convention: The Convention aims at facilitating the recognition of qualifications. It takes as its point of departure that qualifications should be recognised unless the competent authorities of the host country can show that there is a substantial difference between the qualification for which recognition is sought and the corresponding qualifications of the host country. It also makes provisions for the information on the assessment of higher education institutions and programmes, and it strongly emphasises the

importance of information on recognition matters and on the implementation of the Convention. Some distinctive features of the Convention are:

- a joint effort by the Council of Europe and UNESCO, and it will gradually replace several existing Conventions elaborated in the separate framework of each organisation;
- a clear statement of the principle that applicants are entitled to a fair examination of their qualifications within a reasonable time limit and according to transparent, coherent and reliable procedures, and without discrimination with regard to such factors as the applicant's gender, race, colour, disability, religion, political or other opinion;
- a reformulation of the guiding principle for the recognition of qualifications

<sup>12</sup> Cedefop is one of the decentralised EU agencies, created 25 years ago and based initially in Berlin, now in Thessaloniki. Cedefop is basically a research institute covering vocational education and training (VET) and its tasks mainly include providing information and analysis and organising debates on VET. "Cedefop" is the French acronym of the organisation's

official title, European Centre for the Development of Vocational Training (Centre Européen pour le Développement de la Formation Professionnelle).

<sup>13</sup> SOCRATES is the European Programme for education with the aim of promoting the European dimension. It targets all players involved in education with a series of sub-programmes of which the best known is ERASMUS, an exchange programme for university students. LEONARDO DA VINCI is the action programme for implementing the European Community's vocational training policy, supporting and supplementing action taken by the Member States, by pursuing 3 central aims: facilitating occupational integration, improving the quality of training and access to training and boosting the contribution of training to innovation.

<sup>14</sup> Such as the one set up by Directive 98/34/EC (Official Journal No. L204 of 21.7.98, p.37), the one set up by Decision No. 3052/95 (Official Journal No. L321 of 30.12.95, p. 1) and the one set up Regulation (EC) No. 2679/98 (Official Journal No. L337 of 12.12.98, p.8). □