



**BEUCITIZEN**  
BARRIERS TOWARDS EU CITIZENSHIP

## **The barriers that professionals face in gaining access to the services market**

**Silvia Adamo, Catherine Jacqueson and Ulla Neergaard**

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## Partners involved

Number	Partner name	People involved
1	Universiteit Utrecht	Sybe de Vries
7	Kobenhavns Universitet	Silvia Adamo, Catherine Jacqueson, Ulla Neergaard
11	Democritus University of Thrace	Vassilis Hatzopoulos
19	Universitat Pompeu Fabra	Maribel González Pascual



## Table of Contents

1. INTRODUCTION .....	4
2. LEGAL CONTEXT, PROCEDURES, AUTHORITIES, AND ASSISTING BODIES .....	10
2.1 Legal Basis and Set-Up .....	10
2.2 Authorities .....	12
2.3 Administrative Processes .....	14
2.4 Case Law.....	16
2.5 Use and Knowledge of the Internal Market Information System (IMI) and E-Government.....	16
2.6 Assisting Bodies/Associations/Unions .....	18
3. BARRIERS AND GOOD PRACTICES.....	21
3.1 Barriers.....	21
3.2 Informal Barriers .....	22
3.3 Evaluation Studies.....	23
3.4 Main Issues to be Addressed .....	24
3.5 Good Practices .....	25
3.6 Effectiveness and Organisation .....	26
4. SECTORAL CASE STUDIES .....	27
4.1 Lawyers .....	27
4.2 Midwives.....	33
4.3 Hairdressers .....	35
4.4 Caregivers, in-home nurses .....	36
4.5 Tourist guides.....	38
5. CONCLUSIONS: TRENDS, FUTURE DEVELOPMENTS AND POLICY RECOMMENDATIONS .....	41
BIBLIOGRAPHY .....	44
ANNEX: NATIONAL REPORTS .....	45
1. Denmark.....	45
2. Greece.....	45
3. The Netherlands.....	45
4. Spain.....	45



## 1. INTRODUCTION

The EU has from its very origin had a focus on the recognition of professional – and academic – qualifications.<sup>1</sup> In fact, this focus started already in the 1960s where separate directives on the matter started being launched.<sup>2</sup> Most recently, the Professional Qualifications Directive 2005/36/EC was adopted by the European Parliament and the Council, and came into force in 2007. It has been amended several times, with Directive 2013/55/EU being the current latest amendment.<sup>3</sup>

At the time of its introduction, the objective of the Professional Qualifications Directive was *'to codify, simplify and rationalize the conditions under which recognition is ensured, as well as to generalize the scope of application of the relevant rules, in order to cover as many cases as possible'*.<sup>4</sup> Directive 2005/36/EC has thus been framed in order to ease the automatic recognition of professional qualifications. Indeed it provides the rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to as the home Member State) and which allow the holder of the said qualifications to access and pursue the same profession there.<sup>5</sup>

A few categories of regulated professions covered by the Directive are included in a system of **automatic system** of recognition (a number of medical professions, and architects), where it was possible to agree on minimum standards of training.<sup>6</sup> Other regulated professions are instead comprised in a **general system** of mutual recognition, which leaves more room for discretion for Member States to decide upon the requirements to foreign professional qualifications.<sup>7</sup> However, the

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<sup>1</sup> Hatzopoulos, V. (2012), *Regulating Services in the European Union*, Oxford University Press, p. 238.

<sup>2</sup> For an overview of the development, *ibid.* pp. 238-242.

<sup>3</sup> Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'). Relevant legislation on the free movement of professionals can be found at: <[ec.europa.eu/growth/single-market/services/free-movement-professionals/policy/legislation/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/policy/legislation/index_en.htm)>.

<sup>4</sup> Hatzopoulos, V. (2005), A (More) Social Europe: A Political Crossroad or a Legal One Way? Dialogues between Luxembourg and Lisbon, *Common Market Law Review* 42: 1599-1635, at p. 1622.

<sup>5</sup> Article 1 of Directive 2005/36/EU.

<sup>6</sup> Heremans, T. (2012), *Professional Services in the EU Internal Market - Quality Regulation and Self-Regulation*, Hart Publishing, at p. 222 *et seq.* See also Annex V to Directive 2005/36/EU.

<sup>7</sup> Heremans, *ibid.* pp. 223 *et seq.* See also European Commission MEMO, Brussels, 9 October 2013. Modernisation of the Professional Qualifications Directive – frequently asked questions, available at <[http://europa.eu/rapid/press-release\\_MEMO-13-867\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-867_en.htm)>.



effective reach of the Professional Qualifications Directive in promoting professionals' mobility across the Union is contented. The lack of harmonisation of training standards and of a continued education requirement<sup>8</sup> in the Directive does not help in cases where there is disagreement among Member States about the necessary requirements for a regulated profession, while new categories of professions may still need to be formally regulated across the EU. In fact, not only the process of agreeing on minimum standards of training has proved to be extremely slow and time-consuming, but also the minimum standards required have been criticised as insufficient for determining an adequate level of quality of service.<sup>9</sup> Administrative hurdles and linguistic barriers may also ensue. In all these cases, a faulty application of the principle of mutual recognition of professional qualifications may hinder the right to freedom of movement as workers and establishment for professionals in another Member State's services market. Some of these issues (e.g. the question of authorisation) are also treated by the EU Services Directive (2006/123/EC), implemented by Member States in 2009. However, it should be stressed that the Services Directive is not as such at focus in this report.

The EU regulation is not problem-free, and there are still practical and non-legal barriers and problems that remain unresolved. The barriers based on language, national customs, and cultures are difficult to handle and remove, and they involve all regulated professions. An evaluation not of the process leading to a certain professional qualification, but first and foremost of the *quality of the outcome* of professional qualification, held against national standards and objective criteria, should be at the base of mutual recognition.<sup>10</sup> In a time with growing need for mobility in order to cover internal market shortages of labour and skills, further barriers to mobility have to be addressed and possibly removed. These barriers can be constituted by lengthy and costly procedures for application of recognition; an imposition for re-training periods; or unfamiliarity with immigrant workforce in non-regulated professions.<sup>11</sup> The Migration Policy Institute has in one of its studies put forward a series of good practices to implement: among others, to facilitate the access to information for both prospective employers and employees; to create

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<sup>8</sup> van Riemsdijk, M. (2013), Obstacles to the Free Movement of Professionals: Mutual Recognition of Professional Qualifications in the European Union, *European Journal of Migration and Law* 15 (2013) 47–68, at p. 55.

<sup>9</sup> Heremans, *ibid.* p. 232.

<sup>10</sup> Plimmer, F. (2002), Mutual recognition of professional qualifications, *Property Management*, Vol. 20 Issue 2, pp. 114-136.

<sup>11</sup> Desiderio, M. V. (2014), Qualifications, Skills and Integration, in Carrera, S., Guild, E. and Eisele, K. (eds.) *Rethinking the Attractiveness of EU Labour Immigration Policies. Comparative Perspectives on the EU, US, Canada and Beyond*, Centre for European Policy Studies, pp- 37-42.



databases of what credentials are recognized, and to institute pre-departure assessment procedures; and to tailor ‘bridging courses’, work-based compensatory measures, and training modules.<sup>12</sup>

At the EU level, a series of tools are at the disposal of Member States in respect of recognition of qualifications. Most recently, the introduction of the European Professional Card (EPC) in 2016, along with IMI is an important step towards the development of online and easily accessible procedures that could effectively streamline the recognition of professional qualifications. The EPC aims at providing so far five categories of professionals with an easier and fast electronic procedure for requesting recognition of professional credentials.<sup>13</sup> This new introduction takes away some of the administrative burden which lay on the professionals when they seek recognition of their qualifications. It is an interesting development and tool, which effect and potential require time in order to be evaluated properly.

On this background, the present general report has the aim of providing an overview of the national systems set up in support for the removal of the barriers that professionals face in four selected Member States with the main emphasis put on the barriers to recognition of EU Citizens’ professional qualifications, but also certain related issues such as legal, administrative, linguistic, digital and other practical barriers that professionals face in gaining access to the services markets in other Member States. It is based on a questionnaire developed for that purpose.

Five specific professions, namely practising lawyers (i.e. ‘advocates’), midwives, hairdressers, care givers/in-home nurses, and tourist guides have been selected for more detailed treatment. The criteria for their selection are tied to the objective of examining different types of regulated and non-regulated professions: respectively, a profession regulated outside of the Professional Qualifications Directive (lawyers); a regulated profession within the scope of the Directive (midwives); and three professions that are regulated differently across Member States (hairdressers, care givers, and tourist guides). Moreover, the objective is to achieve interdisciplinary cooperation with the professional categories analysed in WP9.

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<sup>12</sup> MPI Project on ‘Brain Waste & Credential Recognition’ at <[www.migrationpolicy.org/topics/brain-waste-credential-recognition](http://www.migrationpolicy.org/topics/brain-waste-credential-recognition)> mentioned in Desiderio, *ibid*.

<sup>13</sup> See <[ec.europa.eu/growth/single-market/services/free-movement-professionals/policy/european-professional-card/](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/policy/european-professional-card/)> and <[europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index\\_en.htm](http://europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index_en.htm)>.



The participating countries are Denmark, Netherlands, Greece, and Spain.<sup>14</sup> Correspondingly, the aim of the questionnaire has been to stimulate reports from those countries. These national reports constitute the basis for the present general report, which aims at providing a synthesis of the main findings. The style and content of the national reports unsurprisingly differ fairly considerably and thus the present report mainly provides a more patchy account of the issues at stake. It may be pointed out that it has been deliberately chosen to keep the structure of the questionnaire intact. It should also be stressed that this general report does not aspire to provide an all-embracing account of the issues of relevance to the area, an account also already being limited by the few countries which were practically possible to include in the study. Also, it has not always necessarily been possible to deal exhaustively with all issues raised in the national reports and references thereto have had to be selective.

Generally, what follows is naturally based on the four national reports and continuous specific references to these have therefore been left out. It may be emphasised that the depth of findings naturally are dependent – and thereby somehow limited - on the choice of method, i.e. in particular the use of the abovementioned questionnaire (and thereby the concrete formulation of questions therein and how these have been replied by the national rapporteurs).

### **Main findings:**

- Availability of relevant information on the process of recognition of professional qualifications varies greatly across Member States.
- Lack of effective procedures of recognition, excessive bureaucracy and local resistance create practical barriers to the mobility of professionals and impair the reach of the Professional Qualifications Directive.
- There is also a general lack of help and/or support from host countries (both at the level of institutions and private bodies) to professionals who want to get their qualifications recognized.
- Very little data is collected by the national institutions administering the directive on the matter of mutual recognition of professional qualifications.
- Linguistic barriers are the first barrier to overcome as a mobile professional.
- There seem to be a paradox between, on the one side a national regulatory zeal in regulating professions and, on the other side, the promotion of

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<sup>14</sup> The national reports are included in the Annex to this general report. The authors of the reports were as follows: Adamo, S. (2016), Country Report: Denmark; Hatzopoulos, V. (2015), Report for Greece; De Vries, S. and Binder, T. (2016), Country Report for The Netherlands; González Pascual, M. (2016), Country Report for Spain.



liberalisation of access to another Member States services market by foreign professionals.

- There is a difficult balance between the public interest's need for certifying the qualifications achieved in another Member States, and the burden and financial costs that the professionals have to sustain in order to produce the documentation required for obtaining recognition of their qualifications.
- An easy and quick procedure is of key importance for a successful relocation of professional in another Member State. In this context, the national authorities have to assist in an active way the professionals who want to have their qualifications recognised. The size and reach of the national administrative support varies greatly across Member States.
- The Greek report shows that barriers in this country appear as particularly grand.

**Policy recommendations (see also concluding part):**

- Up-to-date information in more than one language should be available on the relevant authorities' website in every Member State, not only in few virtuous ones.
- Information can be made easier to find for the professional and the employer: for example providing one webpage with links to all the regulated professions, relevant authorities, and related application forms. Information shall be regularly updated and also available in other languages, or also in English as a minimum.
- Develop and set up applications for recognition in an electronic form, and actively sustain the Member States which have yet failed to do so.
- Allocate resources and/or operational support from the European Commission to the Member States to support the use and knowledge of IMI and the development of effective e-government.
- Support courses for acquisition of foreign national language(s) and closely monitor the issue of plurality of national official languages and the linguistic requirements enforced in order to gain recognition.
- Introduce harmonisation of legalisation and certification of papers that could ease the administrative burdens of professionals.
- Possibly rely on IMI to solve the issue of translation of documents, certificates, etc.
- Acknowledge and address the issue of portability of social security benefits as an element influencing the mobility of professionals across borders.





- A general check on the Greek situation, where the system of mutual recognition seems to be most in lack of specific support, as the national authorities have not been particularly attentive at implementing the system.

## 2. LEGAL CONTEXT, PROCEDURES, AUTHORITIES, AND ASSISTING BODIES

### 2.1 LEGAL BASIS AND SET-UP

The first question *firstly* aimed at clarifying the legal basis for the set-up of regulated professions in the countries in question. In that regard, among the findings are:

In *Denmark* there are around 120 regulated professions as well as a number of regulated professions governed by special rules. Given this fairly high number it seems unsurprising that there is not a single body of legislation that deals exhaustively with them all. Rather, particular/sectoral regulation has been enacted for each profession, dealing with the educational and professional requirements that have to be complied with in order to exercise a particular profession.

Also in the *Netherlands*, there is no general act governing the whole of the body of the regulated professions. Generally, the legal basis for the set-up of regulated professions consists of wide range of specific laws for the different professions.

About the situation in *Greece*, the national rapporteur explains that in an effort to properly implement the Services Directive (2006/123), the Ministry of Economy promoted Law 3919/2011, 'Principle of Professional Freedom, abolition of unjustified restrictions to the access the exercise of professions'. A rather long list of all regulated professions is to be found on the webpage of the Greek Ministry of Finance. The national rapporteur stresses that although there is *a legal basis for abolishing* regulated professions, there is *a multitude* of legal bases *for establishing* restrictions to professions and these are still today not available in any systematic manner.

In *Spain*, the legal basis is simply said to be: Article 36 of the Spanish Constitution and LO 5/2002, de 19 de junio, de las cualificaciones y de la formación profesional (i.e. the *Qualifications and professional training Act*).

*Moreover*, the first question focused on the legal basis for the recognition of professional qualifications acquired in another Member State or third countries. In that regard, the most important findings are:

In *Denmark*, the legal basis for recognition of professional qualifications comprises of: the Act and Executive Orders on the Assessment of Foreign Qualifications and the Qualifications Board; the Act and relative Executive Order on the Access to the Exercise of Certain Professions in Denmark (the Recognition Act), which together implement the Professional Qualifications Directive; and a number of specific orders applicable to various regulated professions.

In the *Netherlands*, the Professional Qualifications Directive (2005/36/EC) was implemented by the General Act on the Recognition of EC-Professional Qualifications in 2007, which subsequently has been amended several times. The amendment in 2015 sought to adapt the General Act to some substantive additions Directive 2013/55/EU made to the Professional Qualifications Directive and its provisions among others relate to the European Professional Card. In the Dutch report it is stated that the ‘...Dutch legislature deemed this method of implementation “most optimal” in light of the aforementioned multiform character of the existing legal basis for the set-up of regulated professions... Indeed, a practical virtue of the selected method is that it eludes the need to amend all existing acts governing the regulated professions’.<sup>1</sup>

In *Greece*, it is mentioned by the rapporteur that there are two pathways for recognising qualifications acquired abroad, namely the one concerning the *academic* recognition of degrees, diplomas, etc., and the one for the mutual recognition of *professional* qualifications under the relevant EU Directives (currently: Directive 2005/36). The procedures of recognition are rather different in nature. Directive 2005/36 is the sole legal basis for recognising professional qualifications acquired in another Member State.

In *Spain*, the following are mentioned: ‘Real Decreto 1837/2008, de 8 de noviembre, por el que se incorporan al ordenamiento jurídico español la Directiva 2005/36/CE, del Parlamento Europeo y del Consejo, de 7 de septiembre de 2005, y la Directiva 2006/100/CE, del Consejo, de 20 de noviembre de 2006, relativas al reconocimiento de cualificaciones profesionales, así como a determinados aspectos del ejercicio de la profesión de abogado (*Royal decree introducing into the Spanish legal order the Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005, and the Directive 2006/100/EC of Council of 20 November 2006, concerning the recognition of professional qualifications, and certain aspects related to the exercise of the profession of lawyer*)’.<sup>2</sup>

In sum, a comparison reveals that different solutions have been chosen in the different countries, which largely is due to different legal traditions and cultures which have required the different approaches.

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<sup>1</sup> Dutch report, De Vries and Binder at p. 4

<sup>2</sup> Spanish report, González Pascual at p. 1.

## **2.2 AUTHORITIES**

The second question *firstly* asked which is/are the relevant authority/authorities in charge of the administration of regulated professions in the country at study. In that regard, the findings are in particular:

In *Denmark*, the authority in question is the Danish Agency for Higher Education (*Styrelsen for Videregående Uddannelser*), under the Ministry of Higher Education and Science, which is also the national contact point as regards the regulated professions in Denmark. It runs a website that informs on the rules of relevance.

In the *Netherlands*, the Ministry of Education, Culture and Science is responsible for the coordination of the system of recognition of professional qualifications as the responsibility for the recognition of professional qualifications is divided among different ministries. In turn, these ministries have charged different authorities with the competence to administrate the specific regulated professions. Also of importance is the fact that the Netherlands University Foundation for International Cooperation (NUFFIC) has been appointed as contact point within the meaning of Article 57 of the Professional Qualifications Directive (2005/36/EC). The website of the NUFFIC provides detailed information in Dutch and English.

In *Greece* access to most regulated professions has traditionally been regulated and overseen by the relevant professional bodies, which are typically set up in the form of public bodies and may enjoy several special privileges and may even enjoy legislative powers. They tend to decide discretionarily and on their own on whom to grant membership, and therefore most of the professionals who have successfully had their qualifications recognised by the main body responsible for the recognition may nevertheless face the refusal of the competent professional bodies to enrol them. The National Organisation for the Certification of Qualifications and Vocational Guidance, which is a statutory private body overseen by the Ministry of Education, is responsible with respect to those regulated professions which do not require higher-education degrees and which are not overseen by any specific professional body. Although it does not have any powers in relation to mainstream University degrees, it is the National Coordination Point for the European Qualifications Framework.

In *Spain* there are several authorities in charge and there is not a pre-established rule for all professions but the authority in charge is determined on an almost case by case basis. The authorities of relevance may either be situated at the state level or the regional level.

The second question *also* enquired whether the same authority was also in charge of the recognition of professional qualifications that have been attained in another Member State. In that regard, among the findings are:

In *Denmark*, the Agency for Higher Education works in close cooperation with 21 competent authorities, which are in charge of admitting Danish nationals as well as foreigners to the regulated professions. It is also in charge of the assessment of foreign qualifications gained via educational courses (such as diplomas etc.). The Agency receives the applications for recognition of foreign qualifications in Denmark and then forwards them to the competent authority for carrying out the procedure leading to authorisation; among these authorities, the Danish Patient Safety Authority deals with authorisation of health professionals, handling applications uploaded directly to its website and issuing authorisations directly without previous referral to the Agency for Higher Education.

In the *Netherlands*, the authority in charge of the administration of regulated professions is also in charge of the recognition of professional qualifications that have been attained in another Member State.

In *Greece*, the transposition of Directive 89/48, which was the predecessor of Directive 2005/36, into Greek law has led to the creation of a special body within the Ministry of Education, which is currently known as SAEP (*Symvoulío Anagnorisis Epaggelmatikon Prosonton* – Council for the recognition of professional qualifications). At present, it is the main body responsible for the application of Directive 2005/36 and the recognition of regulated professions. However, SAEP's catch-all horizontal competence is in particular evaded by those professions which are subject to 'automatic' recognition according to Directive 2005/36, where the five regulated health professions are recognised by the Health Directorate of the Prefecture of their establishment and architects are recognised by the Technical Chambers of Greece.

In *Spain* it is the same authority which is in charge in both situations, i.e. it would also be in charge of the recognition of professional qualifications that have been attained in another Member State.

In sum, as before a comparison reveals that rather different solutions have been chosen in the different countries, which may be explained by differences in traditions and cultures, and thus not necessarily constituting a problem.

### **2.3 ADMINISTRATIVE PROCESSES**

The third question *firstly* aimed at clarifying how the administrative process is set up in practice, when a foreign professional wants to have his/her professional qualifications recognised in another Member State. In that regard, among the findings are:

In *Denmark* the Agency for Higher Education or the competent authority in question (see previous section) provides an official decision, where the official statement/permit to pursue a given profession is called an authorisation. It is reported that in practice, it is possible to identify three different categories of procedures for the assessment and evaluation of foreign qualifications, as different rules apply in Denmark for Union Citizens, Nordic citizens and TCNs. Also, there is a difference between freedom of establishment and provision of services on a temporary or occasional basis in Denmark.

In the *Netherlands*, a common characteristic to all the competent bodies in the area is that they constitute administrative authorities within the meaning of the General Administrative Law Act (GALA) and therefore substantive administrative law is applicable to the decisions made by these competent authorities.

In *Greece*, the foreign professional would have to apply to the abovementioned body, SAEP, either directly at the Ministry of Education or through the different points of single contact. The level of information and the procedures are described by the national rapporteur as rather critical.

In *Spain*, the process is described in the following manner: 'All the documentation has to be sent to the assigned department depending on the profession. The Chief Administrative Office of the department checks the documentation. Afterwards, the documentation is sent to the Evaluation Commissions. Such Commission Members are nominated either by the Department Secretary or even by the Professional Associations or Professional Bodies, if the latter exist in the specific profession. The Commission must decide within four months and they must give a reasoned answer. If they deny the accreditation, they must explain whether further training or professional experience is required, and also the existing ways to achieve it. The administration in charge will depend on the profession. In any case, the university degrees are recognized by the Education department of the State. If the education is not at university level and the foreigner's place of residence is in Spain, a Regional administration is the one entitled to decide on the recognition. The administrative process is quite similar when the profession is not regulated, although not only can

the paperwork be harder, but there can be a compulsory counselling from the administration at the beginning of the process'.<sup>3</sup>

*Secondly*, it aimed at examining the possibility to complain/appeal about a decision, possibly with an indication of the involved authorities.

In *Denmark* a decision regarding foreign professional qualifications can result in a positive decision; a conditional decision; or a negative decision. In that regard, the following is indicated in the national report: 'In case of a positive decision, the foreigner can undertake work in Denmark on an equal footing with Danish citizens. However the authorisation can contain time limitations, and indicate when the authorisation has to be renewed. In case of a conditional decision, the access to the labour market is conditional upon the meeting of certain qualification requirements, as e.g. an aptitude test or a trial period (option to be chosen by the applicant). This is though only valid for cases decided according to EU-rules; in the cases decided by Danish rules on the access to a regulated profession by TCNs, a conditional decision can entail a requirement to complete supplementary education. In case of a negative decision, the foreigner cannot take up work in Denmark according to his/her foreign qualifications. Both the conditional and negative decisions have to give a reason for the decision and indicate the ways of appeal... The case handling time is set not to exceed three months from the time of application'.<sup>4</sup>

In the *Netherlands*, should the competent authority deny the recognition of professional qualifications, subsequent actions can be taken. Depending on the relevant competent authority, firstly either objection can be made or an administrative appeal can be lodged. Should the decision on an objection or administrative appeal still be unfavourable, an appeal can be lodged to an administrative court and ultimately, the judgment by the administrative court can reviewed by the Administrative law department of the Council of State.

In *Greece*, an applicant may bring an action before the Athens Administrative Court of Appeals within sixty days from the date of knowledge of the content of an unfavourable decision. However, as the national rapporteur explains, before bringing a case to Court, an applicant has to bring an administrative recourse before the very SAEP (Council for the recognition of professional qualifications) mentioned above, which will have to take place within a month from the date of knowledge. If applicant fails on doing that, any action brought to the courts will be inadmissible. Again, the rapporteur is very critical of the system.

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<sup>3</sup> Spanish report, González Pascual at pp. 2-3.

<sup>4</sup> Danish report, Adamo at p. 5.

In *Spain*, a decision can be appealed before the superior administrative authority as well as ultimately being challenged before an administrative court.

In sum, a comparison reveals that rather different solutions have been chosen in the different countries.

#### **2.4 CASE LAW**

The fourth question had as its purpose to get an overview of the case law, which has dealt with the issue of recognition of foreign professional qualifications in the national legal system in question, and thereby in fact also getting an impression of possible barriers. The national rapporteurs were in that regard invited to report the most important rulings and their possible consequences for similar cases in the future. None were reported from *Denmark* including cases at the Court of Justice of the European Union (CJEU). From the *Netherlands* altogether five judgements are mentioned, namely: 1) District Court Oost-Nederland, 15 January 2013, ECLI:NL:RBONE:2013:BY9269; 2) CBB, 21 March 2013, ECLI:NL:CBB:2013:BZ7802; 3) ABRvS, 3 September 2014, ECLI:NL:RVS:2014:3307; 4) District Court Arnhem, 6 June 2010, ECLI:NL:RBARN:2010:BM6837; and 5) ABRvS, 25 September 2013, ECLI:NL:RVS:2013:1229. In contrast, in *Greece* quite a rich body of case law both before the Greek courts and the CJEU exist which is explained by the rapporteur by reference to the many problems prevailing in the Greek system. In *Spain*, the case law is scarce.

In sum, a comparison reveals that in Denmark, the Netherlands and Spain, the case law generally appears as rather limited, which is in contrast with the situation in Greece.

#### **2.5 USE AND KNOWLEDGE OF THE INTERNAL MARKET INFORMATION SYSTEM (IMI) AND E-GOVERNMENT**

##### *USE AND KNOWLEDGE OF THE IMI SYSTEM*

The Internal Market Information System (IMI) is a tool for national authorities aiming at improving their cooperation and sharing of information in several areas covered by the internal market such as the recognition of diploma. The IMI is also used in other contexts for example within the Services Directive, the posting of workers, patients' rights and SOLVIT. In the following, we will shed light on the use and knowledge of IMI system by the national authorities dealing with professional qualifications in the 4 countries under study. The reports show that with the exception of Greece where the system is virtually unknown, the IMI system is generally well-known and used.



Yet, the extent of the knowledge varies between the States concerned. The IMI-coordinator for the Netherlands stated that the system was relatively well known and used in the field of professional qualifications, but less in other areas of the internal market where alternative means of communication were preferred (pp. 8-9). In Denmark, the IMI system is implemented by the Danish Business Authority (*Erhvervsstyrelsen*) which works closely with the Danish Agency for Higher Education on the coordination of the recognition Directive (p. 6). The Business Authority informs on its website about the possibilities within the IMI and explains how the system works in practice and can be used by national authorities. This is illustrated by way of giving the example of a foreign electrician or doctor applying for an authorisation to work in Denmark. Furthermore, the application for a European Professional Card shall be submitted via the IMI (at p. 6). The IMI system is also frequently used in Spain which was recognised by the European Commission in 2013 as a good performer despite the high number of incoming requests (p. 4).

#### *AN ELECTRONIC SYSTEM FOR RECOGNITION OF QUALIFICATIONS?*

The national reports document with the exception of Greece that the States under study had set up an electronic system for recognition of foreign professional qualifications which was user-friendly but not always easy to find. As just mentioned such system did not exist in Greece and more importantly the required documents for recognition of qualifications were mentioned nowhere.

In the Netherlands, an independent body is responsible for recognition of foreign credentials in general, the International Credential Evaluation (IDW), which assesses applications made by mail or online. The procedure of recognition of qualifications as such is spread over different entities and varies depending on the area (p. 9). The Danish system for recognition is digital, easy to access and clear with information and application in English also. The regulated professions are listed in English on the webpage of the Danish Ministry of Higher Education and Science and of the Danish Business Authority, where the applicant can click on the relevant profession to gather further information about recognition, authorisation, and application requirements.<sup>5</sup> Thereafter, like in the Netherlands, the procedures for recognition may vary according to the profession (pp. 6-7). The same is true in Spain where applications are electronically set-up and user-friendly, but it might be difficult to find where the application is located in the first place. Unlike Denmark, the information provided only exists in the official languages of Spain (p. 4).

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<sup>5</sup> <[danishbusinessauthority.dk/permits-licenses-authorisations](http://danishbusinessauthority.dk/permits-licenses-authorisations)>.

With the exception of Greece, the countries under study all used the IMI system and had set up an electronic system for recognition of diplomas but not always easy to access.

## **2.6 ASSISTING BODIES/ASSOCIATIONS/UNIONS**

### *ASSISTING 'PRIVATE' BODIES IN THE HOST STATE*

This question aimed at finding out whether there are any bodies/associations/unions that can assist a foreign professional that is seeking recognition of his/her qualifications in another Member State. The reports show that there is generally little help to get from private bodies or organisations for the foreign nationals who is seeking recognition of their qualifications in another Member State.

In Greece, no direct assistance to the foreign professional existed except from a few websites which only provide information in Greek. If not helped by an employer, a research institute or the like, the professional can thus be forced to hire a lawyer which constitutes an important barrier for the freedom of establishment even though fees are not high (p. 17).

In Denmark, help can be obtained by joining a trade union or a professional body (p. 7) whereas in Spain neither trade unions nor professional bodies are especially concerned about foreigners attempting to work in Spain but they might help them upon request (p. 5).

An interesting finding in the Dutch report is the reference to the Social and Economic Council of the Netherlands (SER) which is an advisory and consultative body of employers' and unions representatives and independent experts aiming at 'creating social consensus on national and international socio-economic issues'. In 2014, it published an extensive study highlighting important aspects on EU labour mobility which can indirectly affect positively the mobility of professionals<sup>6</sup> (p. 9).

### *HELP TO WORK IN ANOTHER MEMBER STATE?*

With the exception of Spain the unions were not promoting the recognition of certain categories of professionals that intended to move to another Member State.

In Greece, no organised help from the unions could be identified (p. 17). The same is true for the Netherlands. Yet, a specialised institution representing numerous unions, the Trade Union for Federation for Professionals, or VCP (*Vakcentrale voor Professionals*) which is involved in various deliberate bodies on *inter alia* the recognition of professional qualifications, will upon request attempt to resolve the

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<sup>6</sup> See < <https://www.ser.nl/en/> > accessed 24 December 2015.

matter on an administrative level (p. 10). In Denmark, Unions and the Unemployment Funds may help professionals moving abroad.

In the light of the high unemployment rate in Spain, trade unions such as for example the Civil Servants Trade Union (CSI-F) and professional bodies are actively engaged in fostering the recognition of Spanish professionals who are willing to move abroad. In many instances, activities are targeted at specific countries such as Germany, the United Kingdom and France. This is also replicated at the national level with ‘the Ministry of Employment and Security and the Ministry of Education providing plenty of information and facilities to gain access to other Member States’ markets’.<sup>7</sup>

#### *HELP FROM THE NATIONAL CONTACT POINTS*

Furthermore, the analysis looked at how the national contact points are functioning in the Member State under study, in terms of accessibility of information and guidance to professionals who are trying to achieve recognition of qualifications in these countries.<sup>8</sup> The national reports essentially focused on the points of single contact established under the Services Directive.

The Greek report found that the Point of Single Contact under the Services Directive, had a well-presented and user-friendly website, but there was no study to document whether its various centres worked efficiently (p. 18). According to the Commission’s score-board for the internal market, the Dutch Point of Single Contact ([www.answersforbusiness.nl](http://www.answersforbusiness.nl)) performs above EU average where the actual information provided is considered as been ‘very good’. In contrast, SOLVIT needed to improve its handling-time and could provide statistics and a brief work report upon request (p. 10). Concerning Spain, the national contact point seems to be mostly supporting Spanish people who want to move abroad and there is no specific information directed at foreign professionals intending to settle in Spain. No statistic or analysis on the work of the single point of contact is reported (p. 5).

#### *HOW EFFICIENT ARE THE VARIOUS ORGANISATIONS AND BODIES?*

The rapporteurs were also asked to identify the insufficiencies of the various organisations dealing directly or indirectly with professional qualifications and/or

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<sup>7</sup> Spanish report, González Pascual at p. 5.

<sup>8</sup> By national contact points, the question was essentially targeting the contact points established under the Professional Qualification Directive (2005/36/EC) and the points of single contact established under the Services Directive (2006/214). The new directive on professional qualifications (2013/55/EU) retains this duality of contact points, but encourages Member States to transform the national contact points on qualification into assistance centres, cf. point 28 of the preamble.

whether they are optimised with regard to minimisation of barriers to the recognition of qualifications.

The Greek rapporteur regrettably acknowledged that the problem with the recognition of the professional qualifications lied with the central body responsible of this issue, the SAEP. By December 2015, it was not functioning as no members had been appointed following the restructuring of the various ministries in charge of its operations (p. 8).

In contrast, only minor insufficiencies were identified concerning the Netherlands, such as the understaffing of SOLVIT or the lack of indication of redress procedure on the flowchart of NUFFIC (Netherlands University Foundation for International Cooperation) which is one of the two contact points within the meaning of Art. 57 of the Professional Qualifications Directive (2005/36) (p. 11). The Danish report emphasised that in case of problems with the recognition of qualifications, the Danish Agency for Higher Education informs that professionals can reach the national contact point by telephone or by email (p. 7).<sup>9</sup> The Spanish report focused essentially on the negligence of the unions and professionals bodies in assisting incoming professionals (p. 4).

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<sup>9</sup> <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/applications-under-eu-rules](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/applications-under-eu-rules)>.

### 3. BARRIERS AND GOOD PRACTICES

#### 3.1 BARRIERS

The analysis in what follows focuses on other barriers than those mentioned above dealing more specifically with the process of recognition of qualifications itself. It starts with the investigation of what types of barriers professionals typically face when accessing the selected Member States under study. These barriers will be further specified in the case-studies below.

##### *NATIONAL REGULATORY ZEAL*

The European Commission has set up a database listing the regulated professions in the various Member States covered by Directive 2005/36.<sup>10</sup> It provides a hint to potential barriers that professionals might encounter. According to this database, all 4 countries under study had a high number of regulated professions with Spain topping at 185, followed by Denmark (161), Greece (153) and the Netherlands (144).

The Spanish report counted 200 professions which require specific academic titles and enrolment in a professional organisation is mandatory for the exercise of 80 professions. The Commission and the Troika recommended Spain to eliminate excessive regulation and the country had indeed made (unsuccessful) attempts in this regard (p. 6). According to the Greek report, despite the liberalization zeal resulting from the economic crisis and the pressure from the Troika, the list of regulated professions is still impressively long (p. 4-5). Furthermore barriers seem to be endemic to the Greek system of professional recognition.

##### *LANGUAGE AS A SERIOUS (BUT NECESSARY?) BARRIER*

Language has been identified as a serious barrier in *communicating with national authorities* for the purpose of recognition of qualifications in Greece. The Greek language is indeed a difficult language to master as it is rare and non-Latin. In addition, English is not well-mastered by Greek officials (p. 19). In contrast, the Netherlands and Denmark are the typical examples of efficient systems with informative bilingual websites and application forms.

Language can also be an important barrier in *accessing the professions*. The Dutch report points to recent reforms introducing a language requirement for all professionals and the possibility of checking the proficiency in the Dutch language in case of doubt. Whether those two measures could in the future constitute barriers to free movement remains to be seen (p. 12).

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<sup>10</sup> Regulated Professions Database, available at <[ec.europa.eu/growth/tools-databases/regprof/](http://ec.europa.eu/growth/tools-databases/regprof/)>.

Similar issues concerning the proficiency in the official language find place in Denmark, specifically in the health sector where many foreigners have been recruited (p. 8). An intensive introduction course including Danish lessons, as well as proper language lessons are proposed to newcomers who want to work or establish themselves in the country (p. 9). Language is also considered as a barrier in Spain, where knowledge of Spanish is generally a requirement but where knowledge of any of the other official languages can also be requested. The language requirements do not seem to be always justified. Furthermore, employers might be fined if their employee is not able to answer in the specific language used by the customer and language requirements can also prevent professionals from moving throughout Spain (p. 7).

#### *ACCESS TO INFORMATION*

Problems in accessing reliable information have been identified in Greece and Spain. While all public authorities are obliged to have a website and do have one, information in Greece is randomly updated thereby misleading the professional. This is especially true in times of crisis with successive short-time governments (p. 19). There is a lack of coordination and transparency which impairs access to information in Spain (p. 7).

#### *DOCUMENTATION, COSTS AND DELAYS*

Barriers linked to documentation and costs have been explicitly identified only in Spain. Even if the required documentation is not complex, it seems to be excessive (p.7). Documents have to be translated into Spanish and in most cases the translation must be a sworn one. It is pointed out that the enrolment fee as well as the yearly fee to a professional organisation which is mandatory is high and can be prohibitive (p. 6 -7).

Only the Greek report points at delays as a major barrier to the free movement of professionals. Delays both concerning the recognition of the qualifications and in the delivery of justice are considered unduly long (p. 20).

### **3.2 INFORMAL BARRIERS**

The focus of this question was on the existence of any other types of barriers, which may be informal or cultural 'unspoken rules', which in some way affect the access of foreign professionals to the services market of the Member States under study.

Informal barriers or cultural 'unspoken rules' were identified in Denmark and the Netherlands. Various studies made by the Dutch Social and Cultural Research Institute conducting independent research in the social field showed that the weak social network of Polish workers contributed to their unemployment. Still concerning

Polish unskilled workers in the Netherlands, another study by the Assembly of Human Rights in 2013, demonstrated that they were in some cases treated unequally in respect of salary, working hours and conditions (p. 14-15). In Denmark, knowledge of the Danish language, even if not necessary at the workplace, is essential for a successful integration in the country and is encouraged by the authorities (p. 9).

Greece seems to be a special case in respect of informal barriers as they are especially affecting their own nationals. Indeed, only a few EU nationals are working as independent professionals in Greece and they are generally positively accepted. In contrast, most holders of foreign diploma are themselves Greek and those who have obtained diplomas through Greek colleges offering franchised studies from abroad are subject to a kind of discrimination (p. 21).

### **3.3 EVALUATION STUDIES**

As regards studies that evaluate the difficulties that foreign professionals face in accessing another Member State, providing empirical evidence as regards recognition of their qualifications (reports, statistics, surveys, etc.), the rapporteurs could generally not find a great deal of information on the topic at stake.

In Spain, no evidence of such studies was found (p. 14). The Dutch report remarked that no specific study on the topic of recognition of professional qualifications has been carried out. Nevertheless, the Dutch government has published a report on the implementation of the professional qualifications directive that contains statistics on the number of request put forward in the Netherlands (p. 15).

Similarly, in Denmark, The Ministry of Higher Education and Science publishes yearly a report on the evaluation and recognition of foreign qualifications etc., while also publishing key figures on the Ministry's website. Moreover, a chapter on Denmark appeared in a 2013 International Migration Organization report on the 'Recognition of qualifications and competences of migrants'. This last study remarked the need for an updated user study to evaluate and measure the experience of applicants for recognition of their qualifications, but also of employers and job consultants (p. 10).

Finally, no data is available in Greece, although a number of parliamentary questions have been directed to the function of SAEP (Council for the recognition of professional qualifications); only anecdotic data circulate on the media and among lawyers (p. 20).

### **3.4 MAIN ISSUES TO BE ADDRESSED**

In this question the rapporteurs were asked to describe and identify the *major problem* as regards the mutual recognition of professional qualifications in their country.

In Denmark, a 2008 evaluation study by International Migration Organization highlighted that the Danish Agency for Higher Education (the main authority of reference in cases on recognition of foreign professional qualifications) has low visibility among the companies which could also benefit from its help. Also, and more generally speaking, the authorities involved in the procedures not only for the assessment of foreign qualifications, but also for immigration may render the process cumbersome (this is though especially valid as regards third-country professionals seeking to work in Denmark, p. 11-12).

In Greece, the major problem is of a political nature, since the system for mutual recognition is not operational due to the ideological opposition of the Ministry of Education to the recognition system and also, in the educational area, to the Bologna process. Thus, the Ministry has not nominated the members of the SAEP, which is the body responsible for the application of the directive on mutual recognition of professional qualifications, as abovementioned (p. 20). The SAEP was created in 2000, and when it did operate, very few cases had a straightforward decision on recognition, while the rest of the applicants had to undergo either an apprenticeship period or additional exams. The SAEP's processing time in most cases was 'slow, unforeseeable as to its duration and outcome and difficult to challenge'.<sup>11</sup>

No major problem as regards the efficiency of the system of recognition of foreign professional qualifications was reported by the Dutch report. This conclusion was based on the evidence that there is not much case law on the matter, nor evidence of complaints directed to institutions such as NUFFIT (Netherlands University Foundation for International Cooperation) and SOLVIT (p. 15). The requirement of knowledge of Dutch language for certain regulated profession has been the object of ongoing debate. This could possibly create obstacles for foreign professionals and may also constitute indirect discrimination (although it is not clear whether this would be justified by the exceptions provided by Directive 2013/55/EU, see p. 16).

In Spain, the lack of coordination and transparency can be said to constitute the major problem as regards the recognition of foreign professional qualifications. There is not one single website providing an overview over the many regional authorities in charge of the recognition of foreign professional qualifications, nor of the specific authorities of the Spanish state, which refers to designated departments.

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<sup>11</sup> Greek report, Hatzopoulos at p. 21.



Moreover, there are still hindrances to the automatic and full mutual recognition among regions (albeit this has been improved by the Unity Market Act, see the Spanish report at pp. 8-9).

Moreover, the analysis looked into whether in general, once a foreign professional has his/her professional qualifications recognised by the national authorities, the possibility to concretely exercise the profession is *real and effective*.<sup>12</sup>

The Danish report answered the question positively (p. 12). On the contrary, the Greek report highlighted that in order to start a business of any kind in Greece, the bureaucracy and chaotic administration of the national authorities is a major road-block for pursuing economic activity in this Member State. As such, the procedure before SAEP was characterised as a 'kind of natural selection'<sup>13</sup> of those determined to exercise an economic activity in Greece. In the Netherlands, apart from a report indicating that Romanian migrants have 'often experienced a loss of professional prestige'<sup>14</sup> when relocating to the country, no further indication of impediments to the effective exercise of a profession after recognition has been found. Finally, the Spanish report drew on data that regard Spanish professionals, which have remarked that a third of the working force (both male and female) does exercise a lower profession than the one it is trained for. It is thus expected that foreign professionals face similar challenges in performing at their expected professional level (p. 9).

### **3.5 GOOD PRACTICES**

This question asked for the highlighting of *any good practice* that the Member States under study had put into place in this area.

Denmark can be mentioned for its well-organised, up-to-date, and electronically set-up system providing information to potential mobile professionals who want to settle in Denmark. The Ministry of Higher Education and Science has recently updated its website and a new, user-friendly platform for finding the relevant authority has been launched by the Danish Competition and Consumer Authority during the spring of 2016. The short case-handling time (where the majority of cases are handled within 1-3 months) is another good practice to be noted (p. 12). Also in

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<sup>12</sup> According to the SOLVIT report (<[ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/solvit/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm)>) the major barrier that professionals typically face is the difference between the profession the professional is entitled to exercise in the home country and the one he or she intends to exercise in the host country.

<sup>13</sup> Greek report, Hatzopoulos at p. 21.

<sup>14</sup> Dutch report, De Vries and Binder at p. 16.

the Netherlands the information regarding recognition of foreign professional qualification is provided in both English and Dutch, and both the relevant authorities and legislation are made public in English (p. 16).

A good practice mentioned in the Greek report has been the extension of the system of Directive 2005/36 to also cover non-regulated professions, a modality that has eliminated the difficult points of interpretation of the Directive (p. 22).

In the Spanish system, the administrations' websites enables professionals to ask questions and requests for information via a dedicated inbox, which provides swift replies (p. 9).

### **3.6 EFFECTIVENESS AND ORGANISATION**

The rapporteurs were asked to evaluate the level of *effectiveness and organisation* of the national system of recognition of foreign professional qualifications in their country.

The Danish report notes that the system on paper appears efficiently set up, with readily available information in English and short case-handling times. However, it is difficult to evaluate its efficiency in practice, as regards whether foreign professionals make use of the national contact points, or if private companies are aware of the possibility to get assistance while recruiting professionals from abroad from the Ministry of Higher Education and Science (p. 13).

The Dutch report reaches the same conclusion, where the lack of complaints and questions that reach NUFFIT and SOLVIT can be interpreted as a sign of efficiency of the system. However, there is no empirical data to exclude the possibility that there are indeed problems and insufficiencies, which are never addressed to NUFFIT or SOLVIT (p. 17).

The lack of empirical data was also noted by the Spanish report. Presumably, the lack of a structured cooperation may lead to a lower performance on the level of effectiveness. It is not clear how the functions are allocated and how the authorities are coordinated, thus the lack of transparency may be impairing the organisation and effectiveness of the system for recognition of foreign professional qualifications in Spain (p. 9).

Regrettably, the Greek rapporteur labelled the level of effectiveness of the system implemented in Greece as 'deplorable' (Hatzopoulos at p. 22).

#### 4. SECTORAL CASE STUDIES

Five particular professions namely that of (1) practising lawyers (i.e. ‘advocates’), (2) midwives, (3) hairdressers, (4) care givers/in-home nurses, and (5) tourist guides have been selected for more detailed treatment. As mentioned above, the criteria for their selection are tied to the objective of examining different types of regulated and non-regulated professions and to achieving interdisciplinary cooperation with the professional categories analysed in WP9.

##### 4.1 LAWYERS

The case-study on lawyers takes as starting point the situation of a Union citizen who is qualified as a lawyer in a Member State and wishes to pursue his profession in one of the four Member States under study (Denmark, Greece, the Netherlands and Spain). The establishment and provision of services by EU lawyers in another Member State than the home country is regulated by two specific directives.<sup>15</sup> From the analysis carried out, it results that the application of the directives is quite uniform, and that conclusion can perhaps be ascribed to the long period of enforcement of these directives.

###### *CASE 1: ESTABLISHMENT USING THE HOME COUNTRY’S TITLE AS LAWYER*

In this first case we asked the rapporteurs to analyse whether lawyers can practice in a host Member State using their title as lawyer from their home country.

The Danish, Greek, and Dutch reports referred to the national legislation implementing Directive 98/5 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.

In all of the countries under examination, the rapporteurs could inform that it is possible for professionals to establish themselves and practice as lawyers in a host Member State. However, when not applying for recognition of title/degree/qualification, professionals may only use their home country’s professional title. This means that, e.g., the Danish title of ‘*Advokat*’ or the Dutch title of ‘*Advocaat*’ are only reserved to those professionals obtaining their title in Denmark/the Netherlands, respectively, or who have applied and achieved recognition of their foreign professional qualifications in the host country. It is

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<sup>15</sup> Directive 98/5/EC of the European Parliament 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 and Council Directive of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (77/249/EEC).

interesting to notice that after practising for three years in Greece, a foreign professional can obtain the Greek title of lawyer as he/she 'shall be fully integrated and titled "*Dikigoros*" (δικηγόρος).<sup>16</sup>

#### **PROCEDURAL AND PROFESSIONAL RULES**

In Greece, lawyers practising under their home country professional title may be required by any Bar Association to indicate the professional body of affiliation, or the judicial authority before which they are entitled to practice. A foreign lawyer may also be required to register at the Records of the Greek Bar Association (24). The same is true in Denmark and in Spain where a lawyer who has obtained the title in a foreign country must register in the national Bar Association.

In order to practice in Denmark, lawyers including foreign lawyers have to respect the special conditions stated in the Code of Conducts – the official guidelines on the rights and duties of lawyers. In addition to that, a number of requirements are listed in the Administration of Justice Act, and in bye-laws and rules of the Danish Bar and Law Society (p. 14). Also in the Netherlands, the same professional and customary codes applicable to Dutch lawyers shall be respected (p. 19). Similarly, in Greece lawyers holding their title from another Member State upon registration in a Greek Bar Association are subject to the same professional, ethical, and disciplinary rules as national lawyers. These rules are to be found in the Lawyers Code, the Code of Conduct, internal rules of the Bar Association and other rules governing the profession in Greece (p. 25). In Greece, lawyers are also subject to the rules providing mandatory insurance to a number of funds; consequently, foreign professional who want to exercise in Greece have to register to these funds (Lawyers Insurance Fund, etc.) and prove that they have professional indemnity insurance or membership in a professional guarantee fund (p. 26). The obligatory membership to insurance fund could be a point to further explore in order to ascertain, whether it can constitute a barrier.

In Spain, a foreign lawyer has to register in a bar association, providing a number of certificates and documents that must be translated (by sworn translation) into Spanish and legalised (refer to the Spanish report, p. 10-11). The cost of the various certificates, translations, and registration to the bar may add up to a significant amount, which in turn may create a barrier for foreign professionals to access the Spanish labour and services market.

#### **CONDITIONS OF PRACTICE**

Foreign professionals acting as lawyers in Denmark can practice their profession individually under the title from their home country. However, in those cases where

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<sup>16</sup> Greek report, Hatzopolous at p. 24.

the law prescribes the representation of a lawyer, a foreign professional who wants to practice in Denmark under their home-country professional title must cooperate with a lawyer who has already been admitted to the Danish Bar Society and Association and holds a right to appear before court (p. 15). The same is valid in all the other Member States under examination. In the Netherlands, in order to proceed and represent clients in court lawyers from another Member State have to cooperate with a national *Advocaat* when the representation is prescribed by law (p. 19). The same requirement of collaboration with a national lawyer in a judicial setting is enforced in Greece, while for giving advice on Greek law, EU and international law, and the law of his/her home country a foreign professional may practice in an individual law office (pp. 26-27). In Spain, a period of three years of registration in a Spanish bar and active practice as a lawyer are requested in order to be able to exercise the profession individually. After this period, it is also requested to show proof of having practiced Spanish law and not only international law in order for a foreign professional to be able to start a professional activity individually (p. 11).

#### ***'BEGINNERS' – RECENTLY GRADUATE LAWYERS***

When a foreign professional has just recently obtained a law degree and has not yet been admitted to a Bar Association, a trial period of a maximum of three years is requested in Denmark. During this period, he/she may be employed by a national lawyer; the trial period is meant to ensure that the foreign lawyer holds the necessary knowledge of Danish procedural law and proficiency in Danish language in order to conduct oral proceedings (p. 14). After the trial period, he/she can be declared to be able to appear in court, and become an assistant attorney-at-law. Three further years must pass (though this period can be reduced) and a mandatory exam has to be sustained, before the assistant attorney-at-law can obtain the title of *Advokat* and thus the possibility to enrol in the Danish Bar Association (p. 14). In the Netherlands, holders of a law degree may put forward a request to the General Council, providing proof of EU nationality, a copy of the credentials obtained abroad, and a list of the course followed during the legal education. After an initial assessment, the General Council may require him/her to pass additional examination on Dutch civil law, criminal law and/or administrative law. After passing the examination, the foreign professional may enrol in the bar association and begin a three year period of traineeship/internship (p. 19). In Greece, when professionals have obtained a law degree in another Member State, they may register for a traineeship after a positive assessment by an Evaluation Committee established by decision of the Council of Presidents of the Greek Bar Associations (for composition and meetings of the Evaluation Committee see pp. 27-28). In case the Evaluation Committee deems the applicant's qualifications as inequivalent to those of Greek holders of a law degree, the case is referred to a Permanent Committee for an

Aptitude Test on selected subjects. Thus the qualification of a foreign applicant will undergo first a review of the formal requirements and then a review of the substantive requirements (p. 28). After successfully passing the aptitude test, an applicant shall register with the Bar Association of his/her choice and after an 18 month period as a trainee lawyer and passing the bar exam, he/she can obtain the title of lawyer.

#### **EXTRA-JUDICIAL PRACTICE**

As regards the possibilities to practice in an extra-judicial setting, this possibility is available in Denmark, the Netherlands (e.g. as mediators), and Spain (though with the limitation of not providing assistance to people accused of having committed a crime or who have been detained, p. 11). In Greece, aside from giving advice on Greek law, EU and international law and the law of his/her home Member State, a lawyer acting under his/her home country professional title can practice as a salaried lawyer in for a public or private entity, or in a law firm. Limitations to the extrajudicial practice are set in place as regards the exercise of certain acts or duties that under Greek law constitute expression of public authority (p. 30).

#### *CASE 2: ESTABLISHMENT AND MUTUAL RECOGNITION*

In this scenario we asked rapporteurs about the possibilities for EU lawyers to obtain recognition for professional qualifications obtained in another Member State for the purpose of practising as a lawyer in the host State using its title, and what would impact the effective carrying out of the work as a lawyer in the host country.

#### **PROCEDURES FOR RECOGNITION**

In Denmark, an EU lawyer can obtain recognition for his/her qualifications due to experience with the Danish legal system or due to activity in Denmark. Moreover, a lawyer who has been practising in Denmark under his/her home country professional title for at least three years may obtain admission to practising the profession of lawyer under the Danish title (p. 15).

In the Netherlands, a request must be filed to the General Council of the Dutch Bar Association, providing a list of credential and documentation of professional experience, declaration of good conduct, etc. In some cases, an additional test of proficiency may be required in order to practice the profession under the title of *Advocaat* (p. 21). Also in the Netherlands, after recognition, a professional can actually exercise the profession as lawyer.

In Greece, an aptitude test that evaluates the applicant's ability to practice the legal profession is required. The test is a written exam (in Greek) on six subjects of Greek law. A series of certificates and documents have to be provided in order to be admitted to the aptitude test (p. 31). After passing the aptitude test and registering

with the Bar Association as lawyer, it would be possible for an applicant to practice according to the Greek Lawyers Code.

In Spain, recognition of foreign qualification as a lawyer is granted by the Spanish Ministry of Education. Besides providing certification of title and studies conducted, further training in any subject could be required to be passed in a Spanish law school. After recognition, an EU lawyer must pass a test set annually by the Ministry of Justice, before being able to actually work as a lawyer in Spain. The test holds both a practical and theoretical part. After successfully passing the test, enrolment in a bar association is required (p. 12).

#### ***APPEARING IN COURT***

As regards the possibility to appear before higher courts, all lawyers in Denmark are required to pass a test in litigation (p. 16). Also in the Netherlands an additional examination is required in order to practice before the Dutch Supreme Court (p. 21). While in Spain it is also possible to appear before higher courts for lawyers whose professional qualifications have been recognised, in Greece this possibility depends on the total years of law practice. Following a 2010 law change, after recognition of foreign professional qualifications, a lawyer will be admitted to the Courts of First Instances. After 4 years of practice, according to the provisions of the Greek Lawyers Code, a lawyer will be admitted to practice before the Courts of Appeal, and after 4 supplementary years, it will be possible for him/her to appear before the Supreme Courts (p. 32).

#### ***GEOGRAPHICAL LIMITATIONS***

In Greece, lawyers are organised in 63 local bar associations. Thus, although lawyers may practice law in the entire countries, they must be based within the geographical jurisdiction of the bar where they are registered. In order to move to a different city, a lawyer must file an application to transfer to a different bar association (pp. 33-34). Also a lawyer practicing under his/her home country professional title must maintain a registered office within the geographic jurisdiction of the Bar Association where he/she is registered (p. 26). On the other hand, no geographical limitations are set in place in Denmark, Spain, or the Netherlands, where admission to the bar association gives the opportunity to practice throughout the entire countries.

#### ***LIMITATIONS***

No specific limitation or professional rules regarding the participation in law firms were noted in Denmark, in the Netherlands, or in Spain. In Greece, having an active lawyer status is the only precondition for partnership in a law firm. Although there are specific rules for establishing a law firm according to the Greek Lawyers Code, also in Greece no specific limitation for professional who had their qualifications recognised could be noted (pp. 34-35).

### **NON-LEGAL BARRIERS**

As regards other, non-legal barriers, the Dutch report highlighted the lack of information in English on the website of the bar association (NOvA) as regards the procedure for recognition of professional qualification. Also, no information on the procedures applicable in case of denial of recognition was provided (p. 22). Linguistic requirements were highlighted in the Danish and Spanish report, which also added that the Spanish regions with another official language may also have the language of the proceedings changed to another official language than Castellán/Spanish (pp. 13-14). The Greek report, besides the same language barriers, also reported the very concrete barrier of unemployment rates (reaching more than 40% among new lawyers in 2013), which are due to the current financial crisis (p. 35).

#### *CASE 3: PROVIDING SERVICES AS A LAWYER*

In this case the rapporteurs were asked to analyse the conditions for provision of services by EU lawyers in their respective Member State. Council Directive 77/249/EEC is the legislation of reference seeking to facilitate the effective exercise by lawyers of freedom to provide services.

### **FORMAL REQUIREMENTS**

Following the rules on freedom of provision of services, in Denmark no requirement for authorisation or registration is set in place for lawyers established in another Member State, EEA country, or Switzerland in order to provide services under their home-country professional title (p. 16). Nonetheless, Danish authorities and Courts can request documentation that proves that a lawyer has a right to provide services in Denmark. The relevant national legislation also provides that in cases where after Danish law there exists a duty to appear by one's attorney, a lawyer providing services in Denmark can appear in court only if together with a lawyer holding a Danish licence to practice and appear before the court treating the case (p. 17).

In the Netherlands, professionals seeking to pursue their activity on a temporary basis may do so under their home country title, having stated their professional organisation of affiliation or to which judiciary in their home country they have been admitted. Apart from having to cooperate with a person holding the title of *Advocaat* in a judicial setting when the law so prescribes, EU lawyers may provide services independently (p. 23). Dutch law prescribes that provider of legal services remain subject to the professional rules of their home country, in addition to being subject to the Dutch professional rules. The code of conduct for European lawyers is also referred to and relevant to mention. Finally, an EU lawyer providing services in the Netherlands may be exempted from specific dress code requirements valid for Dutch lawyers, and judges may allow that proceedings may be conducted in another language (pp. 23-24).



In Greece, legal representation before judicial or public authorities in general must comply with the terms, conditions, and obligations prescribed for Greek lawyers. Also, a lawyer temporarily pursuing his professional activity in Greece must comply with the Greek and his/her home country professional rules (pp. 36-37). The same obligation to collaborate with a lawyer competent to practice before a judicial authority is enforced in Greece in case an EU lawyer seeks to represent or defend a client in court, or when providing legal services before other public authority or public body. In addition to that, the President of the relevant bar association must be informed of the legal services offered, their duration, address, the collaborating Greek lawyer and the bar association where he/she is enrolled, and documentation of no status incompatibilities or disciplinary penalties against him/her (p. 36). Similar duties of information to the Dean of a Bar Association must be provided in Spain (p. 14).

#### **4.2 MIDWIVES**

In this case we asked the rapporteurs to analyse what requirement would be directed to a professional who had obtained the degree of midwife in their country of origin, but had never practiced. We also asked to list which requirements and fees could be expected, and if there were any gender bias or specific health prerequisites to be respected.

The profession of midwife is regulated via Directive 2005/36/EC on the recognition of professional qualifications (Annex section 6, Articles 40-43b) where automatic recognition applies. The minimum training requirements for midwives were harmonised at the European level by means of directives already in the 1980s (see Greek report at p. 38).

#### **PROCEDURE FOR RECOGNITION**

In Denmark, a midwife must apply for recognition at the Danish Patient Safety Authority. As documentation, an applicant must enclose evidence of formal qualification and a certificate from the competent health authorities specifying which requirements of Directive 2005/36/EC are fulfilled by the applicant's education and subsequent professional experience. Moreover, it is required to send a certificate of good standing (confirming that the applicant is legally entitled to work within the profession of midwife, i.e. that she has not been suspended, disqualified or prohibited from practicing). The certificate must either be in English or translated by a certified translator. The certificate must be less than 3 months old and sent directly from the respective competent authority to the Danish Patient Safety Authority. All copies of original documents must be certified true copies, as to say confirmed to be true copies of an original document by Embassies, police,

university/educational institution or notary public. The documentation has to be accompanied by an English or Danish translation, which has been performed by either the educational institution or the authority that issued the document, or a state-authorized translator. After the evaluation of the application, there is a fee for registration of DKK 313, approx. 42 € (pp. 18-19).

To obtain recognition of professional qualifications as a midwife in Greece, an applicant must prove to hold the qualifications attesting the minimum training requirements as provided for by Directive 2005/36. Depending on the training received, a midwife can enjoy automatic recognition of her professional qualifications if he/she undertook full-time training for at least three years as a midwife, certified by a diploma or other certificate. Automatic recognition can also be achieved in the case that a midwife as practiced as a midwife and holds formal qualifications as a nurse in general care (p. 38). The application must be filed providing translated documents bearing an apostille, and the administrative fee required amounts to 38 €. In case the midwife cannot benefit from the automatic recognition system, because the degree he/she holds does not meet the requirements on minimum training conditions, it would be possible to apply for recognition under the general system for recognition against paying an administrative fee of 110 € (p. 39).

In the Netherlands, a midwife trained in another Member State can obtain recognition of their professional degree by providing a sworn translation of the diploma, including a list of the subjects passed and the relative results. The credentials are assessed by the Information Centre for Credential Evaluation (IDW), an institution assisting foreign workers with the verification of their credentials (p. 5 and 24).

In Spain, the recognition of the profession of midwife can happen by three modalities. If in the midwife's country of origin the profession is regulated and the requirements in Directive 2005/36 are fulfilled, the qualification will be 'easily and almost automatically recognized'.<sup>17</sup> If the profession is not regulated in the midwife's country of origin, the applicant must provide a certificate that confirms working full-time as a midwife for at least two years within ten years from the achievement of the professional certificate. In case the degree does not fulfil the Directive's requirements (Chapter 2, Title 3), the midwife has to provide evidence of full time work for at least three consecutive years within the last five years. No administrative fee is requested, but the application must also contain a certificate of good standing and sworn translations of all of the documents attached (p. 15).

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<sup>17</sup> Spanish report, González Pascual at p. 15

### **CONDITIONS FOR PRACTICE**

After recognition of the diploma/professional qualifications, midwives can work in the Netherlands both in public and private facilities (p. 25). The same is valid in Spain (p. 15) and Denmark (p. 19). Also in Greece, midwives can practice in the public as well as the private sector, independently or in collaboration with other professionals, providing antenatal and postnatal care for mothers and new-borns in both the hospital and at home (p. 40). A midwife holding a recognized degree can also work as self-employed in Greece, provided that he/she has practiced for two years in a hospital or other institution, and that he/she has a midwife licence from the Greek Ministry of Health (p. 40).

No distinction is made between male and female midwives in the Netherlands (p. 25), Denmark (p. 19), or Spain, where 5% of the midwives are in fact males (p. 16). There are no gender distinctions in Greece either, although in practice there are very few male midwives (89 out of 2300 practising the profession, by a 2000-study), and some reserve against male midwives in breastfeeding sections of large hospitals in Athens (p. 41).

No particular prerequisite regarding health could that could impede the exercise of the profession of midwife are present in the Netherlands (p. 25), Denmark (p. 19), in Spain (p. 16) or Greece, where it is normally requested from other professions bearing a more remote connection to health services, e.g. hairdressers (p. 42).

### **4.3 HAIRDRESSERS**

In this case study we asked the rapporteurs to consider the case of a hairdresser who had been carrying out the profession for some years in her home country. Also, we asked to consider the case of a hairdresser who had gained a diploma via attending professional education and training courses. We asked the rapporteurs to particularly examine any other element that could render difficult the effective exercise of the profession in their country, especially as regards any possible language requirement.

Since the profession of hairdresser is not a regulated profession in Denmark, there is no requirement for recognition of qualifications to meet. A national trade union exists, which could help foreign hairdressers who work as employees in various work-related matters connected to establishment in Denmark (p. 20). A similar scenario exists in the Netherlands, where the profession is not regulated either and thus a hairdresser can freely open up a business or practice as an employee. An evaluation of foreign credentials by the IDW may be useful in order to work as employee (pp. 25-26).

On the other hand, in Spain, three years of professional experience are required in order to get official accreditation as a hairdresser, which are provided by the regional authorities. Any diploma obtained in another Member State may be evaluated by the Spanish Education Department. The language requirement is important to notice in the Spanish context: since the accreditation is given by regional authorities, a hairdresser must prove to master not only Spanish, but also any official language in the Region in question. Moreover, consumers have a right to be attended in Catalan or Spanish in Cataluña: the Catalan Consumer Protection Code states that failure to attend consumers in the language they require may amount to a fine for the owner of the business between 10.000 and 100.000 €. Various fiscal and registration obligations, licenses and/or planning permissions for self-employed hairdressers may also occur (pp. 16-17).

In Greece, the national legislation regulating the profession as hairdresser has recently been amended, in an effort to modernize the profession according to European standards. Thus, it is nowadays required a diploma attesting the completion of a course of secondary education or equivalent qualification from another Member State. Recognition of this type of qualification falls under the general system for recognition enforced in Greece (p. 43). Although no formal requirement of language knowledge exists, basic proficiency in Greek is indeed required and considered a basic skill in order to practice as a hairdresser. Besides the requirement of obtaining recognition for the formal qualifications, a foreign professional will have to, *inter alia*, pay the administrative fee and costs of any official translation; apply for license to practice; sign a sworn declaration of good conduct/absence of criminal record; provide a health certificate for business with sanitary interest (verifying by medical tests the absence of any contagious disease); and enroll with the municipality. In case a hairdresser wants to set up a salon, it is also required to obtain a certificate for the use of the title by the Professional chamber, gain a license, register with the Social Insurance Organisation of Freelance Professionals, obtain a certificate for commencing a business activity (including obtaining a VAT number) and finally gain a license of establishment and function as a business of sanitary interest, for a ca. total cost of 500 € (pp. 43-44).

#### **4.4 CAREGIVERS, IN-HOME NURSES**

In the case of caregivers we were interested in examining the legal-economic conditions that could protect the professionals in this sector in the countries under examination. We asked the rapporteurs to describe any rule regulating the professional qualifications and prerequisites related to this profession, and to focus also on possible non-legal barriers.

In Denmark, the figure of in-home care giver is relatively unknown, due to the fact that care of the elderly and other persons with reduced capabilities is normally provided by the municipality, also when they live at their homes. A provider of this type of care services are called social and healthcare assistant (*social- og sundhedsassistent*). The profession is regulated in Denmark and the workers have to undergo a two year full time educational program. They are normally employed by public hospitals, municipalities etc. All social and healthcare assistants must hold Danish authorisation to be able to use the title; those educated in another Member State will thus have to apply for Danish authorisation before being employed in that capacity. Citizens can of course also employ caregivers, if they so wish, but in order to be employed under the protected title, a foreign professional would have to apply for authorisation. If the Danish Patient Safety Authority assesses that a foreign social and health assistant holds an education which is essentially equivalent to the Danish one, the foreign professional will be granted a Danish authorisation. However, compensation measures (tests or adaptation period) can be required to fill out any substantial difference in the educational background (p. 20). Moreover, the linguistic requirements for the exercise of health work with the elderly are very high, as foreign professionals holding equivalent qualifications as Danish social and health assistants are required to pass the highest Danish language proficiency test.

In the Netherlands, the profession of care giver (*thuiszorg*) is not regulated and the market is thus privatised. No legal requirements are enforced, but an employer may possibly require previous experience or language skills. While care givers assist the elderly in daily household activities, professionals who have followed specific education related to the professional care of the elderly are in-home nurses, whose profession is regulated. In-home nurses are also trained in providing emotional support and perform minor medical actions. Thus, in order to become in-home nurses in the Netherlands, foreign professional must apply for recognition of their qualifications. Linguistic requirement may imposed on professionals working with the elderly as in order to assist them in their needs it is necessary to be able to communicate with them (pp. 27-28).

In Greece, the notion of domestic workers (*oikiakoi voithoi*) covers both care givers and in-home nurses, where for care givers there is no regulation or protection stemming from labour law provisions as there is for nurses. The pay of domestic employees is established by private agreement between the domestic worker and the employer. Although there are provisions indeed set in place in order to entitle domestic workers to a paid leave, holiday bonus and compensation, and recently also to guarantee social security contributions (through the introduction of a specific paycheck known as *Ergosimo*), the Greek report highlighted that in practice, the rights of domestic workers are often violated (pp. 45-48). Four elements contribute

to this conclusion: the home work environment is difficult to monitor; the contract for domestic work agreements are seldom drafted in writing; the Greek financial crisis has only but worsened the domestic workers' pay and allowances; and surveys show that domestic workers who live with their employers work more than other domestic workers. Thus, although initiatives have been taken in order to further the registration of domestic workers, the regulation of this type of professionals can still be considered 'insufficient'.<sup>18</sup> For in-home nurses, the regulation prescribes *inter alia* a nursing license in order to exercise the profession; specific qualifications, registration at the Exclusive Nurses Record; a series of documents, including for foreign professionals a certificate of knowledge of the Greek language and documentation for equivalence of their qualifications (p. 50). In summary, for domestic care givers, no legal requirements are enforced, but only the criteria required by the employer, for example a language requirement; for nurses providing care in private homes, training and education requirements have to be fulfilled, with the ensuing legal and administrative obstacles they may imply (pp. 50-51).

In Spain, the labour conditions for care givers regulate their working and resting hours and the collective bargaining agreement for care givers also established a minimum monthly salary for full-time employed workers. In practice however trade unions report that the profession is mostly held by women aged 40-64, under quite poor working conditions. The profession of care giver is conditional upon having a 'suitability accreditation' by the regional authorities.<sup>19</sup> The accreditation is given on the basis of working experience of at least three years or alternatively, a minimum of 300 hours training. One of the barriers highlighted in the Spanish report is the fact that there is an annual cap on the number of professional accreditations given to care givers. Reserve list are set up, but criteria such as previous work or study in a particular region may exclude non-locals from the profession. Finally, the Spanish report remarked that most care givers are irregular migrants, and that harsh budget cuts in assistance to the elderly and the disabled may have worsened the working conditions of care givers in Spain (p. 19).

#### **4.5 TOURIST GUIDES**

In this case we investigated the conditions under which tourist guides with professional experience could exercise the profession in the Member States. We asked the rapporteurs to consider any geographic limitation that could exist; whether the notion of tour leader/tour manager could be compared to that of tourist guide, and whether a relatively short professional experience in a Member

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<sup>18</sup> Greek report, Hatzopoulos at p. 49.

<sup>19</sup> Spanish report, González Pascual at p. 18.

State where the profession of tourist guide is not regulated could give access to the services market of their Member State.

The profession of tourist guide is not regulated in Denmark, but one university offers a one year full time/two-year part-time study to obtain a diploma as *turistfører* (tourist guide). Guides holding the diploma are organised in an association of authorised guides, although no formal authorisation is required in order to perform the profession. As such there are no restrictions to perform the profession of tourist guide in Denmark. Tour leaders/tour manager can follow another educational path, which is a short higher education in order to become *serviceøkonom med specialer i turist-, hotel-, eller servicemanagement* (pp. 21-22).

Similarly, in the Netherlands, the profession of tourist guide is not regulated. Hence, no limitations to accessing the profession or geographical restriction are imposed on foreigners who want to exercise this profession in the Netherlands. The profession of tour leader is not regulated either.

In Greece however the profession of tourist guide is regulated by law, giving access to the profession to those holding relevant qualifications obtained in Greece or, alternatively, in another Member State, after recognition by the SAEP (Council for the recognition of professional qualifications). In 2012 the law was amended in order to recognize the right to access and exercise the tourist guide profession not only to those holding a degree from one of the official Greek tourist guide schools, but also qualifications from another Member State. In the latter case, in order to gain recognition through the general recognition system, an applicant may be imposed compensation measures in the form of a training period or aptitude test to be held at the Greek tourist schools. Unfortunately though, these schools have remained closed due to financial constraints and budget cuts since 2010, making recognition a practical impossibility (p. 52). A complaint was lodged at the European Commission and in its aftermath a 2014 ministerial decision has established alternative venues for undertaking training periods and aptitude tests. Moreover, Member State citizens holding a degree from a higher education institution are not required to show proof of previous work experience in order to gain professional recognition/equivalence of professional qualifications. From 2012 there have not been any geographical limitations to the practice of tourist guide in Greece. The profession of tour leader/tour manager is not regulated in Greece (p. 55).

In Spain, accreditation from regional authorities is required in order to perform work as a tourist guide in museums and places of interest. A foreign professional can get accreditation on the basis of a former accreditation in another Member State; if he/she holds a diploma as a tourist guide from another Member State, achieved after completing secondary education; in case the profession is not regulated in the

home country, if he/she has carried out the profession for at least two years within the last ten years; or if he/she has a higher degree education certificate, upon passing a further test. Besides knowledge of Spanish, in the region of Galicia and Catalonia, tourist guide must also master Galician or Catalan, respectively (p. 19). Geographical restrictions to mobility of tourist guides are not allowed, as the Unity Market Act enforced a principle of mutual recognition of professions among Spanish regions. It is possible for tourist guide to become tour leaders/tour managers in Spain (p. 20).



## 5. CONCLUSIONS: TRENDS, FUTURE DEVELOPMENTS AND POLICY RECOMMENDATIONS

Finally, the national rapporteurs were asked to describe the trends in terms of future policy directions in their country as regards recognition of foreign professional qualifications, and on whether they see any disadvantage or, conversely, a positive angle in the current development.

The Danish report highlighted the importance of a well-functioning system of mutual recognition of professional qualifications, in light of the challenges lying ahead for all of the Member States as regards the need of recruiting qualified (mostly highly skilled) workers to the Union (p. 23). In Denmark, there is a need to further promote the tools already set in place among potential employers and employees. The Danish websites on authorisation and recognition of qualifications are a good example of a well-arranged information database that also offers the possibility to file applications online.

The Dutch report remarked that a future trend in the Netherlands could be the requirement of language assessment as a constitutive element of the recognition of some regulated profession. This development could constitute a barrier to professionals' mobility. Although the requirement may be justified and indeed permitted by the exceptions in Directive 2013/55/EU, the legislators could interpret their discretion too broadly (pp. 30-31). Monitoring the implementation of the latest amendments in Directive 2013/55/EU could prevent possible infringements procedures relating to language requirements imposed for recognition of professional qualifications.

The Greek report concluded that the system of recognition of professional qualifications has had very limited positive outcomes so far, and that procedural rules have left it to be 'more a legal fiction than an actual reality'.<sup>20</sup> The political and ideological opposition to the opening of the Greek labour market to foreign educated professional is backed up by local professional bodies and associations. The delay in nomination of the members of the SAEP (Council for the recognition of professional qualifications) can be interpreted as a conscious move to avoid to effectively realising the system of recognition of qualifications. If members of the SAEP were only to be appointed within the Ministry of Education staff, which could perhaps motivate a more timely appointment of its members. The SAEP's functioning and effectiveness should be under the Commission's scrutiny, among the many other areas where resistance against foreign professional arise in Greece (p.

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<sup>20</sup> Greek report, Hatzopoulos at p. 56.

57). The Greek report suggested three elements that could increase the streamlining of the system of mutual recognition of professional qualifications; see (pp. 56-57:

1. The committee of national representatives set up according to Article 58 in Directive 2005/36/EC could set and monitor quantitative standards (number of cases to deal with within a given timeframe; number of negative and positive decisions expected; etc.) for the relevant national authorities involved in the process of recognition of qualifications, and request justification for any deviation from the standards set.
2. The tacit approval logic from the Services Directive could be transposed in the area of mutual recognition of professional qualifications, as to say, in case of non-response after the prescribed time in which the authorities have to handle an application for recognition the outcome should be unconditional recognition of equivalence.
3. A designated body (or the Article 58 committee with an extended mandate) could be set up in order to deal with the appeals of national authorities' decisions in a swift and integrated way.

The Spanish report remarked that there is no tangible policy on the matter of recognition of foreign professional qualifications, leading to presume that this is currently not a high priority issue for the public administration in Spain. The need to enhance information accessibility online in more than one language was also reported. Possible infringement cases could arise as regards the role of professional bodies; the linguistic barriers especially at the regional level; and the limitation/cap on annual professional accreditation which would constitute a barrier in all those cases where accreditation is required in order to perform a specific profession (pp. 20-21).

The overall policy recommendations that may be given for the EU's future regulation of the field so far could be summarised as follows:

- Up-to-date information in more than one language should be available on the relevant authorities' website in every Member State, not only in few virtuous ones.
- Information can be made easier to find for the professional and the employer: for example providing one webpage with links to all the regulated professions, relevant authorities, and related application forms. Information shall be regularly updated and also available in other languages, or also in English as a minimum.
- Develop and set up applications for recognition in an electronic form, and actively sustain the Member States which have yet failed to do so.

- Allocate resources and/or operational support from the European Commission to the Member States to support the use and knowledge of IMI and the development of effective e-government.
- Support courses for acquisition of foreign national language(s) and closely monitor the issue of plurality of national official languages and the linguistic requirements enforced in order to gain recognition.
- Introduce harmonisation of legalisation and certification of papers that could ease the administrative burdens of professionals.
- Possibly rely on IMI to solve the issue of translation of documents, certificates, etc.
- Acknowledge and address the issue of portability of social security benefits as an element influencing the mobility of professionals across borders.
- A general check on the Greek situation, where the system of mutual recognition seems to be most in lack of specific support, as the national authorities have not been particularly attentive at implementing the system.

## BIBLIOGRAPHY

- Adamo, S. (2016), Country Report: Denmark
- Desiderio, M. V. (2014), Qualifications, Skills and Integration, in Carrera, S., Guild, E. and Eisele, K. (eds.) *Rethinking the Attractiveness of EU Labour Immigration Policies. Comparative Perspectives on the EU, US, Canada and Beyond*, Centre for European Policy Studies, pp- 37-42
- De Vries, S. and Binder, T. (2016), Country Report for The Netherlands
- González Pascual, M. (2016), Country Report for Spain
- Hatzopoulos, V. (2015), Report for Greece
- Hatzopoulos, V. (2012), *Regulating Services in the European Union*, Oxford University Press
- Hatzopoulos, V. (2005), A (More) Social Europe: A Political Crossroad or a Legal One Way? Dialogues between Luxembourg and Lisbon, *Common Market Law Review* 42: 1599-1635
- Heremans, T. (2012), *Professional Services in the EU Internal Market - Quality Regulation and Self-Regulation*, Hart Publishing
- Plimmer, F. (2002), Mutual recognition of professional qualifications, *Property Management*, Vol. 20 Issue 2, pp. 114-136
- van Riemsdijk, M. (2013), Obstacles to the Free Movement of Professionals: Mutual Recognition of Professional Qualifications in the European Union, *European Journal of Migration and Law* 15 (2013) 47–68

## **ANNEX: NATIONAL REPORTS**

1. DENMARK
2. GREECE
3. THE NETHERLANDS
4. SPAIN



**BEUCITIZEN**  
BARRIERS TOWARDS EU CITIZENSHIP



## **Deliverable 5.3**

### **The Barriers that Professionals Face in Gaining Access to Other Member States**

### **Country Report: Denmark**

**Rapporteur: Silvia Adamo**

## Question 1 – Legal Basis and Set-Up

- ✓ What is the legal basis for the set-up of regulated professions in your country?
- ✓ What is the legal basis for the recognition of professional qualifications acquired in another Member State or third countries?

There are around 120 regulated professions in Denmark, according to the information provided by the Ministry of Higher Education and Science.<sup>1</sup> There are also a number of regulated professions governed by special rules.<sup>2</sup> The Regulated Professions Database of the European Commission thus indicates that there are 161 regulated professions in Denmark that are covered by Directive 2005/36/EC.<sup>3</sup> Consequently, given their high number, there is not a single body of legislation that deals exhaustively with all of the regulated professions. Instead, each profession refers to a particular/sectoral regulation for each profession, dealing with the educational and professional requirements that the workers have to comply with in order to exercise a particular profession.

The legal basis for recognition of professional qualifications in Denmark (as explored in the national contribution<sup>4</sup> to D5.2) comprises of:

- the Act and Executive Orders on the Assessment of Foreign Qualifications and the Qualifications Board;<sup>5</sup>
- the Act and relative Executive Order on the Access to the Exercise of Certain Professions in Denmark (the Recognition Act), which together implement the Professional Qualifications Directive;<sup>6</sup>
- a number of specific orders applicable to various regulated professions.<sup>7</sup>

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<sup>1</sup> A list with a name and description (in English and in Danish) can be found on the Ministry's website at <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/list-of-regulated-professions](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/list-of-regulated-professions)>.

<sup>2</sup> See a list at <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/list-of-regulated-professions/professions-governed-by-special-rules](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/list-of-regulated-professions/professions-governed-by-special-rules)>.

<sup>3</sup> Regulated Professions Database, available at <[http://ec.europa.eu/internal\\_market/qualifications/regprof/](http://ec.europa.eu/internal_market/qualifications/regprof/)>.

<sup>4</sup> Contribution towards Deliverable 5.2: Country: Denmark, p. 5.

<sup>5</sup> Consolidated Act on the Assessment of Foreign Qualifications etc. LBK no. 579 of 01/06/2014 (*Bekendtgørelse af lov om vurdering af udenlandske uddannelseskvalifikationer m.v.*), Executive Order no. 602 of 25/06/2003 on the Assessment of Foreign Educational Qualifications etc. (*Bekendtgørelse om vurdering af udenlandske uddannelseskvalifikationer m.v.*) and Executive Order the Qualifications Board BEK no. 447 of 10.05.2007 (*Bekendtgørelse om Kvalifikationsnævnet*).

<sup>6</sup> Act on the Recognition of Certain Educational and Professional Qualifications, Lov no. 1871 of 29/12/2015 (*Lov om anerkendelse af visse uddannelses- og erhvervmæssige kvalifikationer - anerkendelsesloven*) and Executive Order on the Recognition of of Certain Educational and Professional Qualifications, BEK no. 53 of 14/01/2016 (*Bekendtgørelse om anerkendelse visse uddannelses- og erhvervmæssige kvalifikationer m.v.*). Earlier regulation was established by *Lovbekendtgørelse nr. 334 af 20.03.2007 om adgang til udøvelse af visse erhverv i Danmark*; *Lov nr. 476 af 09.06.2004 om adgang til udøvelse af visse erhverv i Danmark*, and *Lov nr. 291 af 08.05.1991 om adgang til udøvelse af visse erhverv i Danmark for statsborgere i De Europæiske Fællesskaber og de nordiske lande*.

<sup>7</sup> See e.g. the order concerning the Executive Order on the Employment as Technical Responsible within the Areas of Gas, Water, and Drainage, BEK no. 57 of 13/01/2016 (*Bekendtgørelse om udøvelse af erhverv som fagligt ansvarlig inden for gas-, vand- og afløbsområdet på baggrund af udenlandske erhvervmæssige kvalifikationer*).

## Question 2 – Authorities

- ✓ What is/are the relevant authority/authorities in charge of the administration of regulated professions in your country?
- ✓ Is the same authority also in charge of the recognition of professional qualifications that have been attained in another Member State?

The authority<sup>8</sup> in charge of coordinating the assessment of foreigners' qualifications when they are seeking to work in a regulated profession in Denmark is the Danish Agency for Higher Education (*Styrelsen for Videregående Uddannelser*), under the Ministry of Higher Education and Science.<sup>9</sup> The Agency is the national contact point as regards the regulated professions in Denmark, and it also runs a website that informs on the rules enforced.<sup>10</sup>

The Agency works in close cooperation with 21 competent authorities, which are in charge of admitting Danish nationals as well as foreigners to the regulated professions. E.g. the Danish Patient Safety Authority deals with authorisation of health professionals.<sup>11</sup> In order to enhance the coherence in the area of regulated professions, since 2010 the Agency has been in charge of receiving all applications for recognition of foreign qualifications in Denmark. These applications are then forwarded to the competent authority for carrying out the procedure leading to authorisation.

The Agency is also in charge of the assessment of foreign qualifications gained via educational courses (such as diplomas etc.). The Agency promotes the evaluation by spreading information in job centres, language centres, municipality based integration centres, and so on, in order to support the use of foreign qualifications in Denmark. Yet, one study has argued that even among large companies in Denmark, many are not aware of the Agency's work as regards the recognition of foreign professional qualifications.<sup>12</sup>

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<sup>8</sup> The following is an abridged and adapted version from the Contribution towards Deliverable 5.2: Country: Denmark, pp. 5–6.

<sup>9</sup> See <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions)>.

<sup>10</sup> See <[ufm.dk/le](http://ufm.dk/le)> (in Danish).

<sup>11</sup> See <[stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet/laege](http://stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet/laege)>.

<sup>12</sup> International Organization for Migration (IOM) (2013), *Recognition of qualifications and competences of migrants*. Independent Network of Labour Migration and Integration Experts, p. 49.



### Question 3 – Administrative Process

- ✓ How is the administrative process set up in practice, when a foreign professional wants to have his/her professional qualifications recognised in your country?
- ✓ Is there a possibility to complain/appeal about a decision?
- ✓ Please specify which authorities are involved in the processes.

The assessment<sup>13</sup> that the Agency or another competent authority provides is an official decision that indicates e.g. how a foreign qualification matches a corresponding Danish education/profession, thus giving the foreigner access to the labour market.<sup>14</sup> The official statement/permit to pursue the profession is called an authorisation.

In practice, it is possible to identify three different categories of procedures for the assessment and evaluation of foreign qualifications, as different rules apply in Denmark for Union Citizens, Nordic citizens and TCNs.

Moreover, in line with the provisions of Directive 2005/36/EC, there is a difference between freedom of establishment and provision of services on a temporary or occasional basis in Denmark. For temporary or occasional provision of services in Denmark the procedure is fairly straightforward and only requires a declaration/written notification by the worker to the relevant authority that the applicant meets the criteria listed for the exercise of the regulated profession. The declaration/notification has to be renewed annually. An exception to these rules is if the applicant is a TCN. In case of TCNs, or professional qualifications gained in a country outside the EU, the possibility to present a declaration so as to exercise a regulated profession on a temporary basis is admitted only in those cases where the national legislation for the regulated profession at stake allows it.

For establishment and access to regulated professions in Denmark, the rules are different in case the applicant is a Union citizen, or a citizen of Iceland, Norway, Liechtenstein, or Switzerland (and qualified to access a regulated profession in another Member State), or if the applicant is a TCN. In case of a Union Citizen, the qualifications directive will apply. Nordic citizens (citizens of Finland, Norway, Iceland, and Sweden) are reserved a preferential treatment. Due to the agreements among the Nordic countries, it is possible to grant automatic recognition of professional qualifications for the exercise of some medical and teaching professions in Denmark.

However, EU-rules according to the professional qualifications directive do not apply for TCNs.<sup>15</sup> The Danish opt-out on Justice and Home Affairs (cooperation on matters of visa, asylum, immigration and

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<sup>13</sup> The following is based on the study presented in Contribution towards Deliverable 5.2: Country: Denmark pp. 6, 8–9.

<sup>14</sup> Styrelsen for Videregående Uddannelser (2015a), *Udenlandsk uddannelse? Start vejledningen med en vurdering*. Uddannelses- og Forskningsministeriet.

<sup>15</sup> See <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/access-to-regulated-professions-authorisation-etc](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/access-to-regulated-professions-authorisation-etc)>.

other measures for the free movement of people) entails that the professional qualifications directive does not apply to persons having a nationality outside the EU, EEA and Switzerland. An exception to this is applied to persons that have been granted a residence permit in Denmark according to the Residence Directive 2004/38/EC, which has been transposed into Danish law.<sup>16</sup> For the recognition of qualifications from a third country, the worker or his employer has then to seek recognition within areas or trades which require training in Denmark.<sup>17</sup> This procedure is lengthier and does not foresee automatic recognition of qualifications; it can both involve costs and further education or training requirements in order to access a regulated profession.

Finally, some categories of professionals are regulated by international conventions (mainly within the maritime industry) that take precedence over the professional qualification directive as well.<sup>18</sup>

The decision on foreign professional qualifications can result in a positive decision; a conditional decision; or a negative decision. In case of a positive decision, the foreigner can undertake work in Denmark on an equal footing with Danish citizens. However the authorisation can contain time limitations, and indicate when the authorisation has to be renewed.

In case of a conditional decision, the access to the labour market is conditional upon the meeting of certain qualification requirements, as e.g. an aptitude test or a trial period (option to be chosen by the applicant). This is though only valid for cases decided according to EU-rules; in the cases decided by Danish rules on the access to a regulated profession by TCNs, a conditional decision can entail a requirement to complete supplementary education.

In case of a negative decision, the foreigner cannot take up work in Denmark according to his/her foreign qualifications. Both the conditional and negative decisions have to give a reason for the decision and indicate the ways of appeal.<sup>19</sup> The case handling time is set not to exceed three months from the time of application.

#### Question 4 – Case Law

- ✓ Is there case law in your national legal system, which has dealt with the issue of recognition of foreign professional qualifications? If so, please briefly indicate the most important rulings and their possible consequences for similar cases in the future.

To the best of our knowledge there is no case law which has dealt with the issue of recognition of foreign professional qualifications in a Danish context. Also, so far, no national courts have referred

<sup>16</sup> Styrelsen for Videregående Uddannelser (2015b), *ibid.* p. 27.

<sup>17</sup> The Danish Working Environment Authority (2010), *Want to work in Denmark?*, p. 7.

<sup>18</sup> Styrelsen for Videregående Uddannelser (2015b), *ibid.* p. 27.

<sup>19</sup> The Ministry for of Higher Education and Science has the competence to establish rules on the access to complain about decisions on recognition, and also to establish in which cases a complaint cannot be brought forward. See Article 18 (2-3) in the Act on the Recognition of Certain Educational and Professional Qualifications.

cases to the Court of Justice of the European Union (CJEU) on the topic of recognition of foreign professional qualifications, nor any cases involving Denmark have been brought in front of the CJEU.

**Question 5 – Use and Knowledge of the Internal Market Information System (IMI) and E-Government**

- ✓ Is the Internal Market Information System (IMI) used and well-known by the national authorities in your country?
- ✓ Is the system for recognition of foreign professional qualifications set up electronically in your country? If so, how user-friendly/easily accessible is it and/or could its design rather be considered as a barrier to recognition of qualifications?

The Internal Market Information System is indeed known and implemented by Danish national authorities. The main national authority coordinating the IMI system in Denmark is the Danish Business Authority (*Erhvervsstyrelsen*), which works closely with the Danish Agency for Higher Education on the coordination of the Recognition Directive. The IMI is implemented in Danish law by means of executive order.<sup>20</sup>

The Business Authority informs on its website about the possibilities within IMI and its objective of improving the administrative cooperation and sharing of information among EU Member States authorities.<sup>21</sup> The Business Authority's website also explains how the IMI database works in practice, and how national authorities can use IMI (giving the example of a foreign doctor or electrician who is applying for authorisation to work in Denmark). The IMI-cooperation takes place within the Services Directive, the Directive on Recognition of Professional Qualifications, posting of workers, engine drivers' licenses, SOLVIT, patient rights, transport of Euro notes and coins, and also, from 2016, the European Professional Card.

The Danish Recognition Act from 2016 implements at Article 4 that the application for a European Professional Card (in Danish, *Europæisk Erhvervspas*) shall be submitted to the competent authority via IMI. Although the Act recognizes the possibility for authorities to allow applications to be presented in another form, as a starting point, applications not submitted via IMI will be rejected.<sup>22</sup>

The Internal Market Centre (*Indre Markeds Center*<sup>23</sup>), a division of the Business Authority which normally helps Danish businesses with queries on accessing the internal market, is the Danish IMI coordinator. The centre has the responsibility to disseminate the information on IMI to Danish authorities and also the responsibility to train and guide the authorities in their use of IMI.

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<sup>20</sup> BEK no. 1363 of 15/12/2009, *Bekendtgørelse om administrativt samarbejde med kompetente myndigheder i andre EU/EØS-lande*.

<sup>21</sup> See <erhvervsstyrelsen.dk/myndighedssamarbejde-i-eu-imi-0>.

<sup>22</sup> Recognition Act, Article 4 (subsection 3 and 5).

<sup>23</sup> <erhvervsstyrelsen.dk/boost-nethandel-til-andre-eu-lande>.

The system for recognition of professional qualifications is set up electronically on the website of the Danish Business Authority.<sup>24</sup> The system appears to be easy to navigate and clearly set-up; the application material and related information are provided in English. As a first step, the applicants for recognition have to address the competent authority within their professional field. From there, the procedures may vary according to the requirements listed for the exercise of a particular profession.

#### **Question 6 – Assisting Bodies/Associations/Unions**

- ✓ Are there any bodies/associations/unions that can assist a foreign professional that is seeking recognition of his/her qualifications in your country?
- ✓ Are the unions as stakeholders promoting the recognition of certain categories of professionals that from your country would like to move to another Member State?
- ✓ How are the national contact points for the internal market functioning in your country, in terms of accessibility of information and guidance to professionals who are trying to achieve recognition of qualifications in your country? Are the national contact points able to provide statistics or analysis on their activities?
- ✓ What are the insufficiencies regarding these various organisations and/or are they optimised with regard to minimisation of barriers to recognition of qualifications?

Foreign professionals can register with a union that takes care of the interests of a particular professional group (e.g. there are unions especially dedicated to lawyers, economists, and others; doctors; engineers; teachers; etc.). There are both unions for employers and unions for employees. Membership in a union is voluntary in Denmark, but almost 70% of the workforce is member of a union. Membership may cost around 25-40 € a month and the fee can be claimed as a tax allowance.

Upon joining, the union may assist a professional in various aspects related to employment such as legal counselling on contracts, salary and wage negotiations, leaves of absence, etc.; advice on job search; introduction to networking in the Danish labour market; career coaching, etc. The unions may then also assist foreign professionals in accessing the Danish labour and services market.

The unions are associated with specific unemployment insurance funds (*A-kasser*) which can help Danish professionals who want to establish themselves in another Member State in dealing with the necessary administrative formalities. There is no obligation to be a member of both the union and the unemployment insurance funds; foreign professionals can join on an equal footing as Danish citizens.

In case of problems with the recognition of qualifications, the national contact point at the Ministry of Higher Education and Science can provide information and assistance. The Danish Agency for Higher Education informs that professionals can reach the national contact point by telephone or email.<sup>25</sup>

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<sup>24</sup> <[danishbusinessauthority.dk/permits-licenses-authorisations](http://danishbusinessauthority.dk/permits-licenses-authorisations)>.

<sup>25</sup> <[ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/applications-under-eu-rules](http://ufm.dk/en/education-and-institutions/recognition-and-transparency/regulated-professions/applications-under-eu-rules)>.

### Question 7 – Further Barriers

- ✓ What types of barriers do professionals typically face when accessing your country? For instance, are there barriers:
  - Generally to the recognition of qualifications;
  - Of a linguistic character;
  - Of any other kind including e.g. access to information;
  - Consisting in lack of guidance from authorities;
  - Consisting in complexity of documentation/administrative procedures;
  - Consisting in financial costs attached to the process of recognition of qualifications;
  - Consisting in delays/long processing times in case handling;
  - Consisting in other kinds?
- ✓ Please provide as many examples as possible; in particular with regard to possible infringements of EU law.

The linguistic barrier is strongly felt by professionals coming to work in Denmark, also when they are highly skilled. The Danish language is often considered to be a very difficult language to learn, with a number of peculiar sounds that foreigners find hard to learn and master. Danish citizens are generally speaking quite fluent in English and thus they will address a foreigner in English when they sense that he/she does not master Danish perfectly. Although at first sight this may be a considerate approach, it may actually hinder the foreigners in practicing their spoken Danish knowledge, which is essential for improving the pronunciation and eventually for being understood by natives.

For example in the health sector, many foreign professionals have been recruited in the past years in Denmark (since 2005, 1.757 foreigners out of a total of 7.631 have been recognized as specialist doctors, approximately one in four doctors).<sup>26</sup> Many are from Germany, but recently also Southern European doctors have been recruited, from Spain and Portugal (and also France and Poland). Although they are capable of learning the technical language, the receiving hospitals have noticed that the foreign doctors experience difficulties in learning the basic Danish language in order to 'small talk' with the patients and to participate in the daily life with their Danish colleagues.<sup>27</sup> The approach taken has been to intensify the language training for doctors. Moreover, the strict requirement to Danish language proficiency, which has to ensure that the doctors communicate with patients in a meticulous, diligent, and caring way, is at times a requirement that professionals seeking authorisation as doctors fail to meet.<sup>28</sup>

From 2010 the Danish state offers Union citizens an intensive introduction course, which also includes Danish language lessons, which aims at preparing them for insertion in the labour market.<sup>29</sup>

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<sup>26</sup> <dr.dk/nyheder/indland/sygehuse-bruger-udenlandske-laeger-til-udfyldte-tomme-stillinger>.

<sup>27</sup> See article from September 2015, <dr.dk/nyheder/regionale/syd/udenlandske-laeger-har-svaert-ved-laere-dansk>.

<sup>28</sup> See Network for Collegiality at the Danish Medical Association: <laeger.dk/portal/page/portal/LAEGERDK/Laegerdk/R%C3%A5dgivning%20og%20regler/R%C3%A5dgivning/Kollegialt%20Netv%C3%A6rk/Netv%C3%A6rksr%C3%A5dgivere/H%C3%A5ndbog%20for%20netv%C3%A6rksr%C3%A5dgivere/Netv%C3%A6rksh%C3%A5ndbog%20side%208>.

<sup>29</sup> Integration Act, Articles 24c-24d.

Also, Union citizens are allowed to start following a Danish course (and the municipalities have a duty to offer this possibility) as soon as they can prove that they have moved to Denmark in virtue of the EU freedom of movement and establishment. This amendment to the Act on Danish Education for Adult Foreigners was introduced in order to align Danish law to the requirements in the Citizenship Directive, thus eliminating the requirement of having to gain a residence permit and CPR-number first in order to enrol in Danish classes.<sup>30</sup>

There seems not to be high costs associated with an application for authorisation. In some cases, no fee is required, for instance when applying for recognition for practising as a lawyer in Denmark. In other cases, e.g. for health professionals an application would entail an administrative fee of 313 DKK, around 42 €. Moreover, additional fees may be imposed for the expenses related to the completion of an aptitude test or trial period, and in connection with the obtaining of the European Professional Card.<sup>31</sup> The fees may not exceed the actual costs held in connection with the aptitude test, trial period, or European Professional Card, and the competent authorities for these matters are allowed to set and charge the fees.

#### **Question 8 – Informal Barriers**

- ✓ Are there any other types of barriers, which may be informal or cultural ‘unspoken rules’, which in some way affect the access of foreign professionals to the services market of your country?

The Danish workplace, as all other national labour markets, has unspoken cultural rules that may block the access and also integration of foreign professionals in the services market. Knowledge of the national language can be one of the means to break these barriers, and thus employers and the state (via legislation and policies) encourages foreigners and foreign professionals who establish themselves in Denmark to make a serious effort to learn the Danish language.

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<sup>30</sup> Act on Danish Education for Adult Foreigners, Article 2, as amended by Act no. 571 of 31.05.2010 om ændring af integrationsloven og forskellige andre love (Udvidelse af personkredsen, styrket indsats over for ægtefælleforsørgede m.v.).

<sup>31</sup> Recognition Act, Article 12.

### Question 9 – Evaluation Studies

- ✓ Have there been studies that evaluate the difficulties that professionals face in accessing your country, providing empirical evidence as regards recognition of their qualifications (reports, statistics, surveys, etc.)?

The International Organization for Migration (IOM) has compiled a report on the recognition of qualifications and competences of migrants in 2013, where a chapter on Denmark was also included.<sup>32</sup> The study remarked the need for an updated user study to evaluate and measure the experience of applicants for recognition of their qualifications, but also employers and job consultants.<sup>33</sup>

The Ministry of Higher Education and Science publishes yearly a report on the evaluation and recognition of foreign qualifications etc. (*Beretning for 2014 om vurdering og anerkendelse af udenlandske uddannelseskvalifikationer m.v.*).<sup>34</sup> In addition to the report the Ministry publishes key figures on its website.

From the most recent numbers published it results that the top 7 nationalities that at this moment most often apply for recognition of professionals qualifications are (in parentheses the numbers for 2015): Syrians (346); Danish (211); Iranians (135); Polish (129); Romanians (119); Ukrainians (106); and Germans (60).<sup>35</sup> The following figure shows the number of applications in the most recent years.

See below in figure 1 the numbers for professionals who have obtained an ordinary evaluation in the last five years in Denmark.

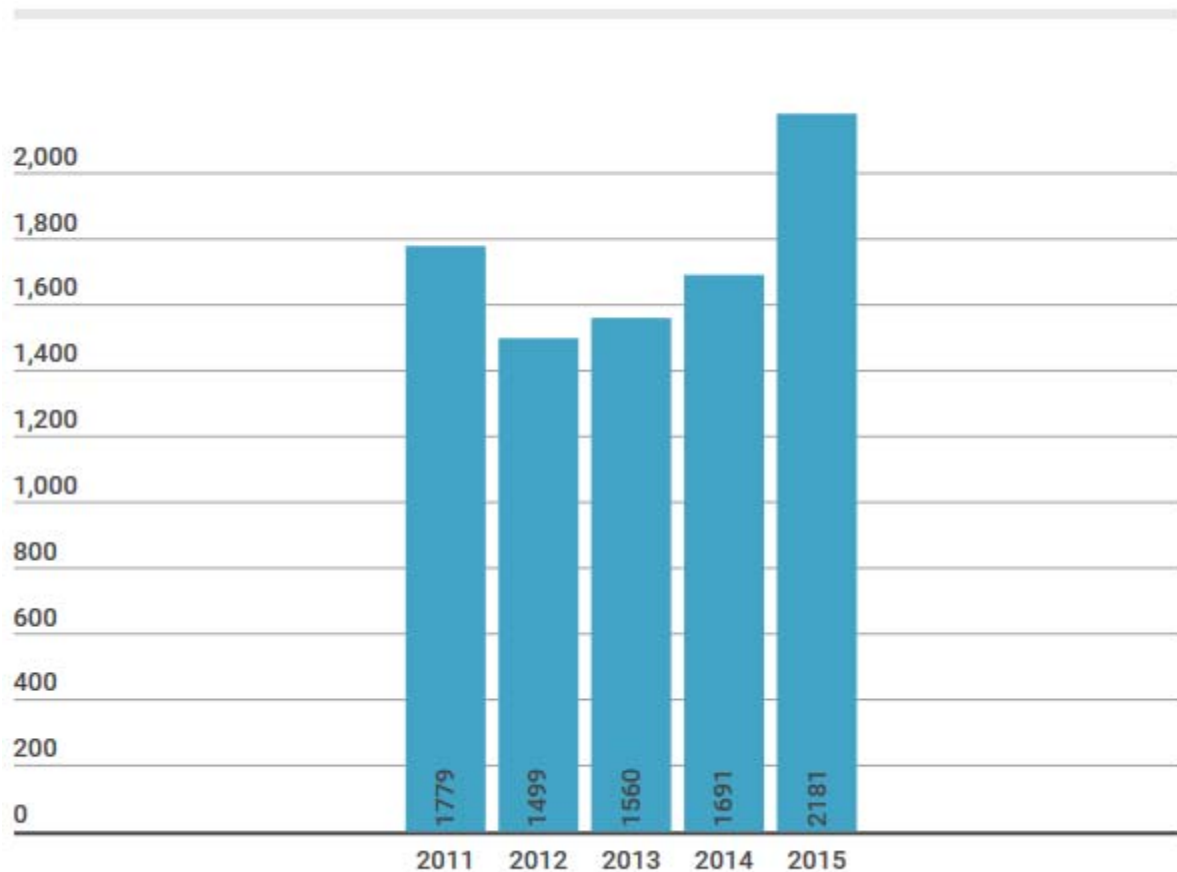
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<sup>32</sup> International Organization for Migration (IOM) (2013), *Recognition of qualifications and competences of migrants*. Independent Network of Labour Migration and Integration Experts.

<sup>33</sup> International Organization for Migration (IOM) (2013), p. 64.

<sup>34</sup> Available on the Ministry's website at <[ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/beretninger](http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/beretninger)>.

<sup>35</sup> <[ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/beretninger/noegletal](http://ufm.dk/uddannelse-og-institutioner/anerkendelse-og-dokumentation/mere-om-anerkendelse/beretninger/noegletal)>.



Source: Ministry of Higher Education and Science's website (see footnote 34 for full reference)

#### Question 10 – Main Issues to be addressed

- ✓ What would you identify as being the major problem as regards the mutual recognition of professional qualifications in your country?
- ✓ In general, once a foreign professional has his/her professional qualifications recognised by the national authorities, is the possibility to concretely exercise the profession real and effective in your country?<sup>36</sup>

The IOM study highlighted, among others, two challenges to be addressed that are relevant to the present study. First, the main administrative authority in charge of the recognition of professional qualifications (the now the Danish Agency for Higher Education) has low visibility among companies as regards their role in the assessment of foreign qualifications. Second, there are too many authorities involved in the process of immigration, assessment, and recognition of foreign

<sup>36</sup> According to the SOLVIT report the major barrier that professionals typically face is the difference between the profession the professional is entitled to exercise in the home country and the one he or she intends to exercise in the host country.  
See <[ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/solvit/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm)>.



qualifications.<sup>37</sup> However, these considerations are perhaps better understood in a general context for recognition of foreign professional qualifications that include workers from third countries, who often experience difficulties, delays, and administrative costs when they seek to immigrate to Denmark to work.

In general, once foreign professionals achieve recognition of their professional qualifications, they are treated on an equal footing as Danish nationals as regards working conditions; salary levels; unemployment benefits; parental leaves; holiday schemes; etc. The recognition entails that they can enter the labour market and they can concretely exercise their profession.

#### Question 11 – Good Practices

- ✓ Can you highlight any good practice that your country has put into place in this area?

The Danish Agency for Higher Education has dedicated a new and well-organized website to the information for recognition of professional qualifications. It has also published some brochures meant to inform the professional about the recognition procedure. The information on the website is updated and easy to understand. Yet, the end-users of this information on recognition of professional qualifications have stated that they lacked more detailed information from the authorities, also regarding the assessment conducted as far as specific competencies, courses, and relevant experience were concerned. This lack of clear and detailed information was highlighted in a study conducted in 2008; the study being a bit dated, this flaw may have been rectified.<sup>38</sup>

The Danish Patient Safety Authority, which is the competent authority in charge of authorisation of health professionals, also provides comprehensive and detailed information on their website, in English, to foreign professionals who seek authorisation to work in Denmark.<sup>39</sup>

Another good practice to highlight is the short case handling time. The applications from professionals holding EU qualifications are in 75% of the cases handled in less than a month, while the 12% between 1-2 months, 7% between 2-3 months, 4% between 3-4 months, and only 1% between 4-5 months.<sup>40</sup>

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<sup>37</sup> International Organization for Migration (IOM) (2013), pp. 63–64.

<sup>38</sup> International Organization for Migration (IOM) (2013), p. 55.

<sup>39</sup> See [stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet](https://stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet).

<sup>40</sup> Styrelsen for Videregående Uddannelser (2015b), p. 29.

### Question 12 – Effectiveness and Organisation

- ✓ How would you and/or others evaluate the level of effectiveness and organisation of the national system of recognition of foreign professional qualifications in your country?

On paper, the system set up in Denmark seems efficiently set up. Yet it is difficult to evaluate whether foreign professionals are aware of the possibility to contact the national contact point in order to get further assistance with their application. Also, it is not clear if the procedures are known and used by private enterprises which are in the process of recruiting foreign professionals to Denmark.<sup>41</sup>

### Question 13 – Sectoral Case Studies

- ✓ **Lawyers**

Mr. Smith is qualified as a lawyer in a Member State of the European Union. He decided to pursue his profession in Denmark [the reference Member State in the report's national context, hereinafter 'host country']. He therefore intends to continue his activity as a lawyer in the new national context also.

#### Case 1.

- A) *Mr. Smith does not apply for recognition of his title/degree/qualification as lawyer, but since he can practice as a lawyer in his Member State of origin, he wishes to make use of the title of lawyer in the language of the host country to which he wants to move. Is this admissible in your Member State? What is the legislation of reference?*

Case 1 deals with lawyers who wish to use their title in Denmark.

Mr Smith has a right to establishment and to practice as a lawyer in Denmark on a permanent basis. However, he can practice under his home-country professional title, but the right to establishment does not include the right to use the Danish professional title "Advokat".

The Danish legal basis for EU lawyers establishment in Denmark is to be found in an Executive Order, BEK no. 1431 of 11.12.2007 (*Bekendtgørelse om EU-advokaters etablering her i landet m.v.*), with subsequent amendments. The legislation of reference is Article 2 in Directive 98/5/EC and section 1 in Declaration number 276 of April 14th 2000 regarding EU lawyers' establishment in Denmark.

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<sup>41</sup> International Organization for Migration (IOM) (2013), Recognition of qualifications and competences of migrants, p. 49.

*B) Are there specific procedures to be followed and professional rules to which Mr. Smith is subject?*

The specific requirements regarding certificates, documentation of qualifications etc. are specified on the website of the Danish Business Authority.<sup>42</sup> There is no fee involved in an application for registration with the Danish Bar and Law Society in order to permanently pursue the profession of lawyer in Denmark under their home-country professional title.

Mr. Smith shall respect the special conditions that all lawyers in Denmark must respect. These conditions are stated in the Code of Conduct, which contains the guidelines on rights and duties of lawyers. There are also bye-laws and rules of the Danish Bar and Law Society on the education of (future) lawyers, mandatory continuing training and obligation to disclose certain information.

The actual pursuit of the profession of lawyer is also subject to a number of requirements, as stated in Parts 12-16 of Consolidation Act no. 1255 of 16.11.2015 on the Administration of Justice (*Retsplejeloven*).

*C) Can Mr. Smith start his professional activity individually (not in an associated firm or in agreement with a colleague qualified in the host country)?*

Yes, Mr. Smith can start his professional activity individually.

*D) If Mr. Smith had just recently obtained his law degree, without going through a training period to become a lawyer, would he be able to directly enrol in the bar association of your country as a lawyer?*

In this scenario, a candidate holding a law degree and not yet admitted to a lawyer Bar Association is under exam.

According to Danish law, Mr. Smith shall undergo a trial period of maximum three years, during which time he shall be employed by a lawyer, e.g. as legal consultant.<sup>43</sup> The trial period serves to ensure that M. Smith has the necessary knowledge of Danish procedural law and master the Danish language at a level, that enables him to conduct oral proceedings in a proper manner.

When the trial period has ended the employer must declare that Mr. Smith is qualified to appear before Court in Denmark. Afterwards, Mr. Smith will be able to work as an assistant attorney on the same terms as an assistant attorney-at-law with a Danish master's degree in

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<sup>42</sup> <danishbusinessauthority.dk/lawyers-who-have-been-appointed-lawyers-admitted-bar-another-eu-member-state-eea-country-or>.

<sup>43</sup> Information gathered at the website of the Danish Bar and Law Association, see <advokatsamfundet.dk/Service/English/Practise/EU%20member%20state%20citizens%20and%20non%20EU%20member%20state%20citizens.aspx>.

law, including access to the mandatory basic training and exams. In Denmark you are in general required to be an assistant attorney-at-law for three years in order to become a lawyer. However, the requirement of three years employment as assistant attorney-at-law may be reduced with a part of the trial period (normally half of the trial period).

After the conclusion of your nominal three years employment as assistant attorney-at-law and the passing of the mandatory exams Mr. Smith's employer must provide a statement as to the obtained practical experience upon which the Ministry of Justice shall decide whether you fulfill all legal requirements necessary for the granting of the title of "Advokat" in Denmark.

*E) Can he practice in a court/judicial setting?*

Mr. Smith must be registered with the Danish Bar and Law Society in order to appear before court. In those cases where the law prescribes the representation of a lawyer, a foreign professional who wants to practice in Denmark under their home-country professional title must cooperate with a lawyer who has already been admitted to the Danish Bar Society and Association and holds a right to appear before court. Specific procedural exams and other requirements have to be fulfilled in order to appear before the Maritime and Commercial Court (*Sø- og Handelsret*) and the Supreme Court (*Højesteret*).<sup>44</sup>

*F) Can he practice out of court/in an extrajudicial setting?*

Yes.

## **Case 2.**

*G) Can Mr. Smith, as an alternative, obtain recognition for his qualification in the host country? Which procedures have to be followed in that case?*

Case 2 deals with recognition of the qualification of a foreign lawyer in Denmark.

Mr. Smith can obtain recognition for his qualifications due to experience with the Danish legal system or due to activity in Denmark, pursuant to Article 10 (1) in Directive 98/5.

A lawyer practicing under his/her home-country professional title who certifies to having effectively and regularly pursued a professional activity in Denmark for a period of at least three years, may obtain admission to the profession of lawyer in Denmark and the right to practice under the Danish professional title without having to meet the condition of a trial period.

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<sup>44</sup> Article 4 in the Executive Order, BEK no. 1431 of 11.12.2007 (*Bekendtgørelse om EU-advokaters etablering her i landet m.v.*).

An application for obtaining admission to the profession of lawyer in Denmark due to your experience with the Danish legal system or due to your activity in Denmark shall be filed electronically with the Danish Business Authority, and is handled by Danish Bar and Law Society.<sup>45</sup>

*H) Once recognition has been obtained in the host country, can Mr. Smith actually work as a lawyer?*

Yes.

*I) Can Mr. Smith practice as a lawyer in the higher courts?*

Yes, but he will have to meet the same requirements as Danish lawyers who apply to practice in the higher courts, as to say after passing a test in litigation (Articles 133-134 in the Danish Administration of Justice Act).

*J) Once he has obtained the recognition of his qualification in the host country, Mr. Smith decides to move to a different city and start practicing as a lawyer. Is that allowed in the host country? Does he have to register to a local bar association? Can Mr. Smith actually practice as a lawyer?*

Yes, moving to another country to practice as a lawyer is allowed in Denmark. There is only one Danish Bar and Law Society in Denmark, and that covers the entire country.

*K) Are there specific limitations or professional rules concerning the participation in law firms/or: Could he become a partner in an existing law firm in the host country? Are there specific limitations or professional rules?*

There are no specific limitations or professional rules concerning the participation in law firms.

*L) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?*

The requirement for knowledge of Danish procedural rules and proficiency in the Danish language is stated in Article 135a of the Danish Administration of Justice Act.

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<sup>45</sup> A full list of requirements to the application can be found online at <[danishbusinessauthority.dk/appointment-danish-lawyer-lawyers-who-have-been-appointed-lawyers-another-eu-member-state-eea](http://danishbusinessauthority.dk/appointment-danish-lawyer-lawyers-who-have-been-appointed-lawyers-another-eu-member-state-eea)>.

**Case 3.**

*M) Mr. Smith intends to pursue his professional activity in the host Member State on a temporary basis. What is the legislation of reference and which procedures have to be followed? Can he exercise the profession independently?*

Case 3 deals with the provision of services of EU lawyers in Denmark/a host Member State. Mr Smith, as any lawyer who is established in another EU Member State, an EEA country or in Switzerland may provide services as a lawyer in Denmark under their home-country professional title. There are no requirements for authorisation or registration.

*N) Are there specific conditions or professional rules to which he is subject?*

The specific conditions related to the provision of services in Denmark are stated in an Executive Order on EU lawyer's provision of services in Denmark, BEK no. 1429 of 11.12.2007 (*Bekendtgørelse om EU-advokaters tjenesteydelser her i landet*). The Executive Order at Article 2 refers explicitly to the conditions included in Article 3 and Article 4 (1, 2, and 4) in the Council Directive of 22 March 1977 on the facilitation of the effective exercise by lawyers of freedom to provide services. At Article 3, the Executive Order establishes that Danish authorities and courts can request documentation for proving that a lawyer has a right to provide services in Denmark. At Article 3 (2) the Executive Order states that in the cases where after Danish law it exists a duty to appear by one's attorney, a lawyer that provides services in Denmark can only appear in court if she/he appears together with a lawyer holding a Danish license to practice as a lawyer and the right to appear in the court which is treating the case. It is the Council of the Danish Bar and Law Association which supervises the conduct of EU lawyers providing services in Denmark (Article 5 of the Executive Order).

*O) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?*

The requirement for knowledge of Danish procedural rules and proficiency in the Danish language is stated in Article 135a of the Danish Administration of Justice Act.

✓ **Midwives**

Mrs. Johnson has obtained the degree of midwife in her country of origin, but has never practiced.

- A) Can Mrs. Johnson obtain the recognition of her professional degree in your Member State (host country)? Does she have to provide a sworn translation of her qualifications/diplomas? Does she have to pay any administrative fees for her application?

Yes, Mrs. Johnson can obtain the recognition of her professional degree in Denmark. In order to apply for recognition, she will have to enclose to her application documentation as evidence of her education either in the form of certified true copies or in the form of original documents.

Beside evidence of formal qualifications, Mrs. Johnson will also have to provide a certificate from the competent health authorities specifying which requirements of Directive 2005/36/EC Mrs. Johnson's education and subsequent professional experience fulfill. A translation of the certificate may be required. Moreover, she will have to include a certificate of Current Professional Status Standing (certificate of good standing) from the competent health authorities in the most recent country of work and residence. The certificate must confirm (in English) that Mrs. Johnson is legally entitled to work within the profession of midwife, i.e. that she has not been suspended, disqualified or prohibited from practicing. If the certificate is not issued in English, it will be returned to Mrs. Johnson for translation, if needed. The translation must be performed by a certified translator. The certificate must be less than 3 months old and sent directly from the respective competent authority to the Danish Patient Safety Authority.<sup>46</sup>

All copies of original documents must be certified true copies. The Danish Patient Safety Authority informs on its website that Embassies, police, university/educational institution or notary public can certify copies. The authority in question must stamp and sign each copy and confirm that the copy is a true copy of the original document. Private individuals cannot certify copies. The Danish Patient Safety Authority may in some cases require original documents.<sup>47</sup>

The documentation has to be accompanied by an English or Danish translation. It is also possible to wait to send a translation until the Danish Patient Safety Authority has considered an application and assessed which documents must be translated. In this case, a

<sup>46</sup> Information provided on the website of the Danish Patient Safety Authority, at <[stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet/noedvendigdokumentationeusygjord](http://stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet/noedvendigdokumentationeusygjord)>.

<sup>47</sup> Information from <<http://stps.dk/en/sundhedsprofessionelle-og-myndigheder/autorisation,-anerkendelser-og-selvstaendigt-virke/soeg-autorisation-udenlandsk-uddannet/noedvendigdokumentationeusygjord>>

longer processing time will occur. Translation into Danish or English must be performed by either a) the educational institution or the authority that issued the document; or b) a state-authorized translator. The translator's name and stamp must be legible. Should the stamp not be in Danish or English, a state-authorized translation of the stamp is required. The translator must seal the translation together with the document in the original language. The Danish Patient Safety Authority may in some cases accept other translations. Documents in English, Norwegian or Swedish need not be translated.

There is a fee of DKK 313 (approx. 42 €) for registration to be paid when the Danish Patient Safety Authority has evaluated the application.

B) Can she practice her profession in the host country in a hospital and in private homes, as well as in a private facility/hospital?

Yes, in principle midwives can practice their profession in hospital, private homes and private facilities/hospitals.

C) If Mrs. Johnson were a Mr. Johnson, as to say a man qualified as a midwife, would that be an impediment to the recognition of his degree? Would that be an impediment to the practice of his profession in the host country?

Both men and women qualified as midwives can practice in Denmark, so gender is not in itself an impediment to the recognition of the degree and practice of the profession.

D) Are there particular health prerequisites in your country, which could impede the actual exercise of the profession?

To the best of our knowledge, there are no particular health prerequisite which could impede the actual exercise of the profession.



✓ **Hairdressers**

- A) Mrs. Rossi has carried out the profession as a hairdresser for ten years in her country of origin. In order to do so she has obtained the registration at the Roll of artisan businesses. In 2015 she decides to move to your Member State (host country) to expand her professional experience and acquire new techniques for hairstyling and haircutting. Can Mrs Rossi obtain the recognition of her qualification in the host country?
- B) Mrs. Bianchi has attended some professional educational and training courses, at the end of which she has gained the diploma of professional hairdresser. In 2015 she decides to move to your Member State (host country) to start her professional experience and to acquire the techniques for hairstyling and haircutting. Can Mrs. Bianchi obtain recognition for her professional qualifications in the host country?
- C) Are Mrs. Rossi and Mrs. Bianchi required to show knowledge of the official language of the host country in order to obtain the recognition of the professional qualification?
- D) Are there elements that can render difficult or impede the effective exercise of the profession in the host country (licences, authorisations, high cost of lease/rent, health requirements, others?)

The profession of hairdresser is not a regulated profession in Denmark. Hairdressers and cosmeticians are though organized in a Danish association, which in 2011 could celebrate 100 years of existence, the '*Dansk Frisør & Kosmetiker Forbund*'.<sup>48</sup> The association has among its objectives to gather all hairdressers and cosmeticians in Denmark, who are not employers; to seek collaboration with sister organisations abroad; to carry out the interests of its members via the conclusion of collective agreements; to provide economic and other support to its members in accordance with the regulations; to improve the workers' working conditions; and to strengthen the members' professional and political activity through education and information.<sup>49</sup>

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<sup>48</sup> <dfkf.dk> (in Danish).

<sup>49</sup> <dfkf.dk/side.asp?ID=3334>.

✓ **Care givers, in-home nurses**

Mrs. Verdi works as a caregiver in a private home. Her daughter Andrea decides to move abroad for professional reasons and she decides to follow her together with her family. Her intention then is to work as a caregiver in a private home in the host country.

A) What are the legal-economic conditions that protect Mrs. Verdi in the host country?

The professional figure of caregiver in a private home, which is known from other EU Member States, is not particularly widespread in Denmark. This is partly explained by the fact that the notoriously generous and well-established welfare state provides for assistance for elderly and other persons with reduced capabilities by sending nurses and house help professionals who are employed by the municipality and not by the citizens themselves. In this optic, in this study the analysis will focus on the professional figure of social and healthcare assistants (*'social- og sundhedsassistent'*), which is a regulated profession in Denmark.

B) Are there rules in the host country that regulate the eventual professional qualification of this type of activity, establishing prerequisites and suitability?

From 1 October 2008 all social and healthcare assistants must hold Danish authorisation to be able to use the title social and healthcare assistant in Denmark. Social and healthcare assistants educated outside Denmark must therefore apply for Danish authorisation in order to use the title social and healthcare assistant. The educational program for social and health assistant is a two year full-time program, or a four year part-time program. The authorisation requirement is stated in the Act on Authorisation of Health Professionals.<sup>50</sup>

Union citizens, who are educated in an EU member state, are covered by Chapter 1 of Directive 2005/36/EC. This means that if the Danish Patient Safety Authority assesses that the foreigner's education is essentially equivalent to the corresponding Danish education, the foreign professional will be granted permanent Danish authorisation.

However, the Danish Patient Safety Authority may impose compensation measures in the form of a test or an adaptation period, if we estimate that there are substantial differences between the education completed by the applicant and the requirements for the education in Denmark.

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<sup>50</sup> *Bekendtgørelse af lov om autorisation af sundhedspersoner og om sundhedsfaglig virksomhed*, LBK no. 877 of 04.08.2011. The relevant section for social and healthcare assistants is chapter 24a, article 70a.

C) Are there non-legal barriers (i.e. linguistic, presence of a public service which replaces the examined professional figure, necessity of a specific training, others) which can impede the exercise of the professional activity in the host country?

A large number of foreigners are employed as social and healthcare assistants in Denmark, and it has been portrayed in the media that it is very important for professionals working in the health care and support of especially elderly citizens, that they master the Danish language at a proficient level of knowledge. This is also evident from the requirement to non-EU nationals who want to practice as social and healthcare assistants. If their education is considered equivalent to the Danish education, professionals educated outside of the EU/EEA have to pass a language test, Danish 3 Examination (*Prøve i Dansk 3*), which is the highest proficiency test for Danish language. The applicant must pass the test in oral communication with the grade 10 (second highest grade in Danish ranking). The written test and the test in reading comprehension must both be passed with the grade 7 (third highest grade in Danish ranking).

✓ **Tourist guides**

Mr. Giallo has been a tourist guide in a Member State of the EU for many years. Tired of the same routine, he decides to exercise his professional activity in a different environment and he moves to your Member State.

A) Under which conditions can Mr. Giallo exercise his profession as a tourist guide in the host country?

The profession of tourist guide is not regulated in Denmark. There is however a university which offers a diploma for the qualification of '*turistfører*': Roskilde University.<sup>51</sup> The length of the study programme is a two year part-time study, equivalent to one year full-time study (60 ECTS). Entry requirements are: completion of a post-secondary education programme of at least two years' duration; language competence at B2 + level (or higher) in the working language according to the European Language Portfolio; Language competence at B2 level in Danish according to the European Language Portfolio; and minimum of two years of work experience relevant to the guiding profession. The content of the course for tourist guides includes Danish history, cross-cultural understanding, guiding techniques, tour planning skills and storytelling.<sup>52</sup> Guides holding the diploma are organised in an Association of Authorised Guides (*Turistførerforeningen*).<sup>53</sup>

<sup>51</sup> See information at <[www.ruc.dk/turist](http://www.ruc.dk/turist)>.

<sup>52</sup> A description of the programme of study and of the University of Roskilde can be found at <[ruc.dk/uddannelse/efter-og-videreuddannelser/diplomuddannelse/turist/uddannelsens-maal-og-opbygning/](http://ruc.dk/uddannelse/efter-og-videreuddannelser/diplomuddannelse/turist/uddannelsens-maal-og-opbygning/)> and in English, in the diploma supplement, at

The Danish Travel Bureau Association (*Danmarks Rejsebureau Forening*) informs that also larger charter companies offer courses for becoming a tourist guide.<sup>54</sup>

B) Mr. Giallo does not intend to work as a tourist guide in a specific place of the host country, but move from place to place regularly. Is this modality of exercising the profession of tourist guide allowed in the host country? (Please see the pre-infringement procedure against Italy of the EU Commission (EU PILOT No 4277/12/MARK), on the basis of a breach of Directive 2006/123/EC. The rule at stake was the stipulation under Italian law that accreditation to exercise the profession of tourist guide is valid only in the region of issue).

To the best of our knowledge, there are no geographical restrictions to the exercise of tourist guide in Denmark.

C) The irrepressible restlessness of Mr. Giallo leads him, after a couple of months, to the decision of exercising the professional activity of 'tour leader/tour manager' and no longer to be a tourist guide. Is it a possible choice and a legitimate activity in the host country?

Yes - although the two are distinct professional activities. A person who would like to become a tour leader/tour manager can follow a specific education for '*Serviceøkonom med specialer i turist-, hotel-, eller servicemanagement*'. The education is a shorter higher education of 2 years, of which three months are spent doing an internship in either Denmark or abroad.

D) If Mr. Giallo had only been a tourist guide for one year in a Member State where this profession is not regulated, would he be able to work as a tourist guide in your country?

Yes.

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<[ruc.dk/fileadmin/assets/imt/Diplomuddannelser/Turistfoereruddannelsen/2015\\_og\\_tidligere/Diploma\\_Supplement\\_til\\_hjemmeside.pdf](http://ruc.dk/fileadmin/assets/imt/Diplomuddannelser/Turistfoereruddannelsen/2015_og_tidligere/Diploma_Supplement_til_hjemmeside.pdf)>.

<sup>53</sup> <[guides.dk/uk/About-Guides.dk/Qualifications-and-Training.html](http://guides.dk/uk/About-Guides.dk/Qualifications-and-Training.html)>.

<sup>54</sup> <[travelassoc.dk/437/uddannelse](http://travelassoc.dk/437/uddannelse)>.

#### Question 14 – Trends, Future Developments and Policy Recommendations

- ✓ What are the trends in terms of future policy directions in your country as regards recognition of foreign professional qualifications? Do you see any disadvantage or, conversely, a positive angle in the current development?
- ✓ Which policy recommendations may be given for the EU's future regulation of the field?
- ✓ Which priorities could be suggested to the Commission with regard to initiation of cases regarding possible infringements in your country?

The Danish labour market will be, as the majority of the European Union, in dire need of qualified, highly skilled workers in the next twenty years.<sup>55</sup> In this perspective, a system of mutual recognition of professional qualifications that works efficiently and is easily accessible for professionals, companies, and authorities can be of tremendous help in supporting the mobility of workers across borders in the EU.

The Danish system for recognition of professional qualifications is up-to-date and at first sight user-friendly. The legislation is implemented in due time and the information available on the dedicated website is easily accessible. The authorities clearly do their best in trying to promote Denmark as a good place to live and work. Yet, the numbers of professionals seeking the recognition of their professional qualifications is rather small, and thus needs further promotion and support.

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<sup>55</sup> Wind, M. & Adamo, S. (2015) Is Green Better than Blue? The Danish JHA Opt-out and the Unilateral Attempt to Attract Highly Skilled Labour' (with Marlene Wind), *European Journal of Migration and Law* 17 (2015).

## Annexes

### National provisions

- Act on the Recognition of Certain Educational and Professional Qualifications, Lov no. 1871 of 29/12/2015 (*Lov om anerkendelse af visse uddannelses- og erhvervsmæssige kvalifikationer - anerkendelsesloven*)
- Executive Order on the Recognition of of Certain Educational and Professional Qualifications, BEK no. 53 of 14/01/2016 (*Bekendtgørelse om anerkendelse visse uddannelses- og erhvervsmæssige kvalifikationer m.v.*)
- Consolidated Act on the Assessment of Foreign Qualifications etc. LBK no. 579 of 01/06/2014 (*Bekendtgørelse af lov om vurdering af udenlandske uddannelseskvalifikationer m.v.*)
- Executive Order no. 602 of 25/06/2003 on the Assessment of Foreign Educational Qualifications etc. (*Bekendtgørelse om vurdering af udenlandske uddannelseskvalifikationer m.v.*)
- Executive Order the Qualifications Board BEK no. 447 of 10.05.2007 (*Bekendtgørelse om Kvalifikationsnævnet*)
- BEK no. 1363 of 15/12/2009, *Bekendtgørelse om administrativt samarbejde med kompetente myndigheder i andre EU/EØS-lande*
- Consolidation Act no. 1255 of 16.11.2015 on the Administration of Justice (*Retsplejeloven*), Parts 12-16
- BEK no. 1431 of 11.12.2007, *Bekendtgørelse om EU-advokaters etablering her i landet m.v.*
- BEK no. 1429 of 11.12.2007 (*Bekendtgørelse om EU-advokaters tjenesteydelser her i landet*)
- LBK no. 877 of 04.08.2011, *Bekendtgørelse af lov om autorisation af sundhedspersoner og om sundhedsfaglig virksomhed*

### Bibliography

- International Organization for Migration (IOM) (2013), *Recognition of qualifications and competences of migrants*. Independent Network of Labour Migration and Integration Experts
- Styrelsen for Videregående Uddannelser (2015a), *Udenlandsk uddannelse? Start vejledningen med en vurdering*. Uddannelses- og Forskningsministeriet
- Styrelsen for Videregående Uddannelser (2015b) Styrelsen for Videregående Uddannelser (2015b), *Beretning for 2014 om vurdering og anerkendelse af udenlandske uddannelseskvalifikationer m.v.* Uddannelses- og Forskningsministeriet
- The Danish Working Environment Authority (2010), *Want to work in Denmark?*
- Wind, M. & Adamo, S. (2015) *Is Green Better than Blue? The Danish JHA Opt-out and the Unilateral Attempt to Attract Highly Skilled Labour'* (with Marlene Wind), *European Journal of Migration and Law* 17 (2015).

**TABLE OF CONTENTS**

General Introduction .....	2
Question 1 – Legal Basis and Set-Up .....	2
Question 2 – Authorities .....	6
Question 3 – Administrative Process .....	9
Question 4 – Case Law .....	13
Question 5 – Use and Knowledge of the Internal Market Information System (IMI) and E-Government.....	16
Question 6 – Assisting Bodies/Associations/Unions .....	17
Question 7 – Further Barriers .....	19
Question 8 – Informal Barriers .....	20
Question 9 – Evaluation Studies .....	21
Question 10 – Main Issues to be addressed .....	21
Question 11 – Good Practices.....	22
Question 12 – Effectiveness and Organisation .....	23
Question 13 – Sectoral Case Studies .....	23
Question 14 – Trends, Future Developments and Policy Recommendations.....	55
Annexes.....	58

## **General Introduction**

The recognition of professional qualifications of EU nationals in Greece is a topic of great controversy, an area where the self-interest of the various professions has met with the left-wing ideology of national protectionism and opposition to anything European. As a result, twenty-five years after the first general system of mutual recognition was supposed to apply, and despite multiple condemning judgments by the CJEU, Greece is still resilient to the proper application of recognition of EU (trained) professionals.<sup>1</sup>

Hence, it is extremely topical for this Deliverable 3 to focus on recognition of professional qualifications in Greece, a topic already discussed – in a much briefer manner – in Deliverable 2. The present (third) Deliverable draws on the second, which it details and renders more concrete. Developments already made in Deliverable 2 are supposed to be known to the reader and are only restated here to the extent necessary for the present demonstration.

### **Question 1 – Legal Basis and Set-Up**

#### **1. What is the legal basis for the set-up of regulated professions in your country?**

Modern Greece's political system has been based on clientelism. This, in turn, has led to the progressive grant of privileges to numerous professions; so much so that some commentators talk of the 'democratisation of rent seeking'.<sup>2</sup> Thus, in the wake of the 2008 financial and economic crises, most professions and/or activities in Greece enjoyed some level of protection, in the sense that they were 'reserved' or 'closed'; these broadly correspond to 'regulated professions' under Directive 2005/36. Protection

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<sup>1</sup> As already stated in Deliverable n. 2, there are relatively few EU nationals seeking independent work in Greece, but there are many Greeks who have studied in other EU Member states and are facing problems with the recognition of their degrees.

<sup>2</sup> See Th. Moutos and L. Pechlivanos 'The Democratization of Rent Seeking in Greece', CESifo WP n. 4331/2013, available at <https://ideas.repec.org/p/ces/ceswps/4331.html> ; see also P. Evangelopoulos 'Rent Seeking in the Greek Economic Drama' (2012) *The Independent Review*, available at <http://www.independent.org/publications/tir/article.asp?a=893>.



was enjoyed not only by ‘bourgeois’ professions such as medical doctors, lawyers and the like, but also by kiosk owners, vegetable sellers in ambulant markets, bakers etc.

In an effort to properly implement the Services Directive (2006/123) otherwise than by the adoption of a mere transposition law (Law 3844/2010,<sup>3</sup> which merely copied the text of the Directive), and under pressure from the Troika of international lenders to introduce structural reform, the Ministry of Economy promoted Law 3919/2011<sup>4</sup>, ‘Principle of Professional Freedom, abolition of unjustified restrictions to the access the exercise of professions’.

As already explained in Deliverable 1, Law 3919/2011 consists of two parts, the second stipulating profession-specific exceptions to the rules of Part I.<sup>5</sup> The first ‘general’ part of Law 3919/2011 foresees two very important rules. First it states that after the lapse of a transitional period of four months from the publication of the law (i.e. as from July 2, 2011), all restrictions to the access and to the exercise of any economic activity are abolished. New restrictions in relation to specific professions may be introduced by fresh acts, in the form of Presidential Decrees proposed by the Ministerial Council (thus curtailing unilateral actions by individual Ministries) only during this same transitional period; such restrictions need be justified by reasons of general interest, be proportional and may not introduce any direct or indirect discrimination based on nationality. A list of ten prohibited kinds of restrictions is provided: a) numerous clausus, b) economic needs test, c) geographical restrictions, d) territorial restrictions, e) single seat requirements, f) restricted activities, g) specific corporate form or reservation of given activities only to natural persons, h) shareholding restrictions, i) minimal prices/fees, j) tying of various activities.

The second important rule of Law 3919/2011 is that, at the end of the four-month transitional period, it abolishes all prior authorization requirements in all the circumstances where the authorization delivered does not entail the exercise of administrative discretion (but is limited to the verification of various documents). According to the new system put into place professionals may ‘announce’ their activity

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<sup>3</sup> FEK A 63.

<sup>4</sup> FEK A 32.

<sup>5</sup> The only professions for which special rules are foreseen are: notaries, lawyers and law firms, engineers and legal purveyors.

and submit the relevant paperwork to the competent authority and, unless opposed, start operating within three months; the authorization thus ‘delivered’, however, may be revoked at any time by the competent authority if it appears that it should not have been issued at the first place.

This law, which clearly draws inspiration from the Services Directive, has a virtually unlimited material scope of application – but for the four professions specifically excluded in Part II thereof. The wide material scope of the Law combined to the highly disperse, overlapping and often contradictory content of accumulated restrictive legislation and regulatory measures, has created great uncertainty as to the applicable rules. This has been alleviated first by a long series of circulars issued by the competent Ministries and,<sup>6</sup> at a later stage, by a so called ‘omnibus law’ which contains the freshly adopted restrictions for several – though not all – the professions.<sup>7</sup> The restrictions newly imposed in accordance with the above rules a) are more rational and, hence, less restrictive than those previously applicable b) are easier to identify since they are not spread over an indefinite number of texts adopted over an long period of time<sup>8</sup> and c) have been, for their larger part,<sup>9</sup> evaluated as to their restrictive effects and risks in a pragmatic way according to the principles of economic analysis.

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<sup>6</sup> The issuance of all these circulars has raised the question whether these could prevail over prior laws and regulations, to which the Legal Service of the State replied in the affirmative in Opinion n 145/2012.

<sup>7</sup> Law 4093/2012 (FEK A 222). Other laws which are relevant for the application of Law 3919/2011 (FEK A 32) are, in chronological order: Law 4038/2012 (FEK A 14) which confirms that all measures contrary to Law 3919/2012 have been abolished and contains rules on Engineers; Law 4046/2012 (FEK A 28) which contains rules for 20 professions such as accountants, temporary employment agencies, tourist guides, real estate agents etc; Law 4070/2012 (FEK A 82) which contains rules for taxi services; Law 4111/2013 (FEK A 18) which contains rules for Energy Efficiency Inspectors and tourist guides; Law 4152/2013 (FEK A 107) which contains rules on some of the professions above.

<sup>8</sup> It is worth noting that an important mass of restrictions to economic activity had been imposed by the military junta which governed Greece during the 1934-1941 period and remained into force until the adoption of Law 3919/2011.

<sup>9</sup> Many of the freshly imposed restrictions have had their effects evaluated by the Competition Authority; all these opinions which are legally non-binding but have been followed to a very large extent are available in Greek at <http://www.epant.gr/gnomodotiseis.php?Lang=gr&id=31>

Despite the above liberalisation zeal, nowadays a list of all regulated professions is to be found on the webpage of the Ministry of Finance, at <http://www.minfin.gr/?q=en/node/6488>. The list is impressively long – in view of the above mentioned liberalisation efforts - and professions are being classified according to the Ministry which has asked for them to be re-regulated. Many of the professions listed on the webpage serve as hyperlinks to the applicable piece of legislation, but this is not systematic. Hence, although there is *a legal basis for abolishing* regulated professions, there is *a multitude* of legal bases *for establishing* restrictions to professions and these are still today not available in any systematic manner.

## **2. What is the legal basis for the recognition of professional qualifications acquired in another Member State or third countries?**

As already mentioned in Deliverable 2, there are two pathways in Greece for recognising qualifications acquired abroad, one for the *academic* recognition of degrees, diplomas etc and one for the mutual recognition of *professional* qualifications under the relevant EU Directives (currently: Directive 2005/36). These two procedures of recognition – academic vs professional - are completely separate as to their logic, legislative origin, procedural requirements, body carrying them out and material outcome. Most EU graduates are likely to opt for the procedure foreseen by the EU Directive, since this procedure is more flexible as to the qualifications to which it applies and (supposedly)<sup>10</sup> more efficient in terms of deadlines and transparency; they can, if they wish, opt for academic recognition, but this is quite exceptional.<sup>11</sup> Holders of degrees from third countries (outside the EU and EEA) may only apply for academic recognition. Academic recognition is wider than, and includes, professional recognition; not only does it give professional rights<sup>12</sup> but it also opens up the way for the pursuance of further studies or an academic career in Greece.

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<sup>10</sup> But: see below, under Question 3, for the actual lack of effectiveness of this procedure

<sup>11</sup> Academic recognition is indispensable, however, if one is to enrol for a higher, follow-up, degree in Greece or to apply for becoming a University Professor.

<sup>12</sup> With an exception recently created in relation to lawyers, for which see below under Question 13, Case 1 (D).

Directive 2005/36 has been transposed into Greek law, with great delay and only after Greece got condemned by the CJEU,<sup>13</sup> by Presidential Decree (p.d.) 38/2010.<sup>14</sup> Nowadays, this is the sole legal basis for recognising professional qualifications acquired in another Member State.

## **Question 2 – Authorities**

### **1. What is/are the relevant authority/authorities in charge of the administration of regulated professions in your country?**

Access to most regulated professions has traditionally been regulated and overseen by the relevant professional bodies (e.g. the Bar Association for lawyers, the Technical Chamber of Greece for engineers, architects and the like, the Economic Chamber of Greece for economists and accountants, the Medical Society of Greece for medical doctors, the Physiotherapists Society of Greece for physiotherapists, etc). Most of the abovementioned professional bodies are set up in the form of public bodies and typically enjoy special privileges and immunities, have mandatory affiliation, have the right to raise a levy on all professionals and/or all professional acts (typically proportional to the fees of the professional), enjoy legislative powers (either directly or by proposing legislation to the relevant Minister) and exercise disciplinary control over their members.

Despite a provision in p.d. 38/2010 transposing Directive 2005/36, according to which professional bodies/associations should immediately enrol as members the holders of SAEP's recognition,<sup>15</sup> often these bodies tend to decide discretionary and on their own on whom to grant membership. Hence, most of the (relatively few)<sup>16</sup> professionals who

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<sup>13</sup> *Commission v Greece (Directive 2005/36)*, C-465/08, EU:C:2009:424.

<sup>14</sup> FEK A 78.

<sup>15</sup> P.d. 38/2010, Article 57 para 5.

<sup>16</sup> It is worth noting that although Article 60 of the Directive requires Member States to provide a report on the application of the system every two years, and despite the fact that both the Commission and the Troika have asked the Ministry of Education for statistics concerning the results of SAEP's work, to the best of our knowledge, the data provided concerned the number of cases pending/dealt with and were much less clear about the outcomes; see also a relevant parliamentary question

have successfully had their qualifications recognised by the main body responsible for the recognition of their professional qualifications (SAEP), often face the refusal of the competent professional bodies to enrol them. Most vocal in this direction has been the Technical Chamber of Greece (TEE) which not only has constantly refused to enroll as members holders of SAEP's recognition,<sup>17</sup> but occasionally it has even introduced annulment proceedings against individual recognition decisions.<sup>18</sup> Other bodies, such as the Economic Chamber of Greece have followed more low-profile practices, by systematically postponing any contested enrollment.<sup>19</sup>

For those regulated professions which do not require higher-education degrees and which are not overseen by any specific professional body, responsible is the National Organisation for the Certification of Qualifications and Vocational Guidance (Ethnikos Organismos Pistopoihsis Prosontwn kai Epaggelmatikou Prosanatolismou, EOPPEP), a statutory private body, overseen by the Ministry of Education.<sup>20</sup> This body is responsible for proposing legislation and for recognising professional rights stemming from technical and vocational training programmes, as well as from 'atypical' (or non-formal) education institutions, such as the Institutes of Professional Training, (Institouta Epaggelmatikhhs Katartishs, IEK) and Colleges. It has no power in relation to mainstream University degrees, but is the National Coordination Point for the European Qualifications Framework (EQF).

## **2. Is the same authority also in charge of the recognition of professional qualifications that have been attained in another Member State?**

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<http://www.esos.gr/arthra/40405/erotisi-sti-voyli-gia-ta-provlimata-sti-leitoyrgia-toy-saep>. No answer has been issued until the time of writing.

<sup>17</sup> See e.g. CE 249/2009, 4881/2012 and 4882/2012; Athens Administrative Court of Appeal 1454/2013; TEE's practice still today is that it refuses to enrol holders of SAEP's recognition; against such refusal they have to bring annulment proceedings and TEE will only accept to conform to the judicial decision, delivered 3-10 years later and following considerable expense.

<sup>18</sup> CE 2636/2011; CE 3741/2009

<sup>19</sup> See e.g. the case of Ms Spiliotopoulou whose application for enrolment with the Chambers of Economists (*Oikonomiko Epimelitirio Elladas*) is pending since 2011 and has not advanced despite her serving a writ and threatening criminal action against its president.

<sup>20</sup> <http://www.eoppep.gr/index.php/en/>.

The transposition of Directive 89/48 (the predecessor of Directive 2005/36) into Greek law, has led to the creation of a special body within the Ministry of Education. This body has changed composition and names several times since its creation in 2000 and is currently known as SAEP (*Symvoulío Anagnorisis Epaggelmatikon Prosonton*).<sup>21</sup> It is currently the main body – subject to the exceptions described in the following paragraphs - responsible for the application of Directive 2005/36 and the recognition of regulated professions.<sup>22</sup> At the time of writing SAEP was non-operational as it is composed by representatives of the various Ministries overlooking the different professions and these have to be freshly appointed each time the Ministries in question change their names and competencies (which basically happens after every national election). Such nomination by the Ministries has not taken place four months after the latest elections and the Minister of Education has, so far, not been able (or willing) to formally set up SAEP as an operational body.<sup>23</sup> This situation has prompted some reaction by the European Commission, but no formal procedure has been initiated as yet.<sup>24</sup>

The only higher education professions which evade SAEP's catch-all horizontal competence are the ones which are subject to 'automatic' recognition according to Directive 2005/36: the five regulated health professions are recognised by the Health Directorate of the Prefecture of their establishment, while architects are recognised by the Technical Chambers of Greece (TEE). TEE is extremely parsimonious with recognition as it refuses to enrol any architect who has followed a somehow atypical curriculum, such as by 'late entry'.<sup>25</sup>

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<sup>21</sup> The current composition of the SAEP is foreseen in Art 56 of the Presidential Decree 38/2010, as amended by Law 4205/2013, Chapter II Article 2.

<sup>22</sup> P.d. 38/2010, Article 54; SAEP's functioning has, so far, been far from satisfactory, see Deliverable 2, paras C.1 and C.2.

<sup>23</sup> <http://www.esos.gr/arthra/41041/sto-simeio-miden-saep-gia-tin-anagnorisi-ton-ptyhion-ton-apofiton-ton-kolegion>

<sup>24</sup> <http://www.esos.gr/arthra/40326/eyro-kampana-sto-yp-paideias-gia-saep-kollegia>

<sup>25</sup> People making a 'late entry' in any specific field of study are those who have previously studied something else and/or have some professional experience and are admitted at an advanced semester of the new study programme; see e.g. TEEs decision in the case of Ms Papatoma, appealed before the Athens Administrative Court of Appeals (pending), under no. AK500/7-3-2013.

It may be worth mentioning that in its initial form, p.d. 38/2010 (Article 54) foresaw that after a transitional period of three years (i.e. as of 1-1-2013) recognition of all professions would lie with the relevant professional bodies/associations and that SAEP would only recognise these professions for which such bodies/associations do not exist. The certain cacophony of this solution has prompted the Troika to react and the relevant provision has been abolished by virtue of Law 4093/12,<sup>26</sup> thus confirming SAEP's core role.

A further exception to SAEP's all-encompassing powers is foreseen in relation to people who have graduated from a law school but have not yet qualified as lawyers. This does not qualify, strictly speaking, as the recognition of professional qualifications and will be discussed further below.<sup>27</sup>

Last but not least, SAEP is not competent in regards with the recognition of rights stemming from secondary or post-secondary technical and vocational training, for which the competent body is none other than EOPPEP.

### **Question 3 – Administrative Process**

#### **1. How is the administrative process set up in practice, when a foreign professional wants to have his/her professional qualifications recognised in your country?**

The foreign professional has to lodge an application with SAEP, either directly at the Ministry of Education or through the (numerous) points of single contact (Kentra Exypiretisis Politon, KEP).

The list of documents which should be submitted used to be available online,<sup>28</sup> but after the 2014 change of Government and the ensuing change of the Education Ministry's website, the relevant page has disappeared and no list seems to be available online.<sup>29</sup>

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<sup>26</sup> FEK A 222, Art. © 16, n. 19.

<sup>27</sup> See below, Question 13.

<sup>28</sup> At the address <http://www.minedu.gov.gr/geniki-dieythynsi-eyropaikon-kai-diethnon-ekpaideytikon-thematon/dieythynsi-eyropaikis-enosis/tmima-d-anagnoriseos-epaggelmatikon-prosonton.html>

<sup>29</sup> The currently available webpage only contains general information about the recognition, see [http://www.minedu.gov.gr/index.php?option=com\\_content&view=categories&id=589&Itemid=318](http://www.minedu.gov.gr/index.php?option=com_content&view=categories&id=589&Itemid=318); it is

Hence, a first hurdle is that one does not know with any certainty, and without contacting by telephone the Ministry (which is not always an obvious task) what documents should be submitted, whether they need to be officially translated,<sup>30</sup> how many copies should be submitted etc.

This uncertainty is extremely ‘useful’ for a further bad practice of the Ministry, followed even at the time when the list *was* available online: several months after the application is submitted, the Ministry contacts the applicant stating that some document is missing (even if it is not!) and giving applicants a deadline for completing their application (if they wish); it is only after the expiration of this deadline (occasionally redrawn for yet some other missing document) that the application is deemed to be complete and only then do the four months in which SAEP has to respond<sup>31</sup> start counting! In this way the time limit set by the Directive and the p.d. is circumvented.

Even after this delayed start, the procedure is almost never completed within the prescribed four months given that each time the study programme of the foreign University does not fully correspond to that of some Greek University (which is quite typical) SAEP suspends its decision and asks a ‘special expert’ to give his/her opinion. Given that ‘special experts’ are themselves University Professors, overloaded with work (given that Universities have lost about 30% of their teaching staff and have hired zero new during the last six years) and often opposed (out of ideology or of self-interest) to

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worth noting that even the portal which has been setup in order to comply with the requirements of Directive 2006/123 <http://www.eu-go.gr/sdportal/index.jsp?lang=EN> and which supposedly contains all information relevant for professionals from other Member states, in the useful links of its first page, has a link named ‘Recognition of Professional Qualifications – Directive 2005/36/EC’ which, however, leads to the old – and nowadays blank - page.

<sup>30</sup> In this respect the Ministry’s practice has changed a myriad times: at one extreme all the documents submitted, including each University’s study programme and module description (often counting some hundreds pages) some should be officially translated by the Ministry of Foreign Affairs (or the British Council), while at the other extreme the Ministry was satisfied by a simple translation, from a qualified lawyer, of the personal documents of the applicant (degree, transcript etc); and many intermediary solutions have been applied between the two extremes.

<sup>31</sup> It is worth noting that the Directive foresees a three-month response period, exceptionally brought up to four, see Art 51(2); p.d. 38/2010 has opted to generalise the extended deadline and sets as a general rule the four-month period, see Art 57(3).



the recognition of foreign degrees, these very often do not respond within the set time (of typically two months); at the expiration of which SAEP will first give them some extra time and then appoint another one or two ‘special experts’, before deciding on its own, if none responds. Hence the procedure rarely takes less than a year, in total, but very often takes much longer. This leads to a very strong anomaly in relation to the judicial protection of applicants (see below under 2).

In the few cases where the recognition of professional qualifications is full, i.e. does not require any countervailing measures, SAEP’s decision is supposedly binding on the relevant professional bodies (but see above under Question 2(1)). Most of SAEP’s decisions, however, allow for recognition conditional on the fulfilment of some countervailing measures. For a very long time, however, such countervailing measures were not being organised for lack of any regulatory framework. This lacuna has been partly covered as late as in 2011-12, with the issuance of a series of Ministerial Decisions (m.d.) for various sector-specific professions: nurses, midwives, dentists, other health professions, engineers and other technical activities, geotechnicians, economists and accountants, art conservators, tourist guides and educational personnel.<sup>32</sup> This sector-specific approach followed for the above-mentioned regulated professions is being completed by a horizontal one, covering the recognition of all other, non-regulated, professions, and which foresees the organisation of aptitude tests twice a year.<sup>33</sup> It is worth noting, however, that despite the fact that this m.d. was published on April 2014, no such exams have been organised so far. There is no record of the sector-specific exams being organised either;<sup>34</sup> however, some adaptation traineeships have been organised for applicants.<sup>35</sup>

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<sup>32</sup> 45621/IA FEK B 1480/12 nurses; 45622/IA FEK B 1480/12 midwives; 45620/IA FEK B 1479/12 dentists; 89034/IA FEK B 20147/11 other health professions; 36650/IA FEK B 1122/12 technical activities; 50398/IA FEK B 1544/12 geotechnicians; 40965/IA FEK B 1282/12 economists and accountants; 141252/IA FEK B 3024/12 art conservators; 88985/IA FEK B 2047/11 tourist guides; 87733/IA FEK B 1847/11 educational activities.

<sup>33</sup> M.d. 48066/IA, FEK B 896/14.

<sup>34</sup> This finding is based on a personal research and may not be 100% fault-proof.

<sup>35</sup> See e.g. the case of Mr. Stathopoulos who was granted an apprenticeship framework as a physiotherapist only after having brought an action in justice, see *Stathopoulos v Panellinos Syllagos Fysikotherapefton*, pending before the AthAdmCAppeal, reg. no. AK216/2-2-2015.

## **2. Is there a possibility to complain/appeal about a decision?**

Against the explicit or the tacit rejection of an application, or against a decision which does not meet the applicant's expectations (imposing countervailing measures), the applicant may bring an action before the Athens Administrative Court of Appeals within sixty days from the date of knowledge of the content of the unfavourable decision. However, before bringing their case to Court, applicants have to bring an administrative recourse before the very SAEP, within a month from the date of knowledge; failing this administrative recourse, any action brought to the Courts will be inadmissible. Given that SAEP never gives in during this administrative review procedure, the only effect of the administrative recourse is to add up delay and cost to the, already slow and expensive, procedure of judicial protection. More importantly, by making the administrative recourse a prerequisite for access to the Courts, the reaction time left to applicants is diminished from 60 days to one month.

These short limitation periods are extremely problematic in view of the very big delays characterising SAEP's decision-making process: after the lapse of four months (after the initiation of the procedure) the lack of any decision by the SAEP constitutes a tacit rejection of the application; applicants dispose of one month to start administrative proceedings, then another sixty days for bringing their case to the Court. This means that prudent applicants are exposed to important expenses and effort, only to be on the safe side, while the SAEP is procrastinating between 'special experts' and postponed meetings, taking much longer than four months to decide. Other, less prudent, applicants are misled by oral assurances offered by SAEP's officials, that their application is being processed, and miss the limitation periods thus being foreclosed from challenging any future negative decision.

## **3. Please specify which authorities are involved in the processes.**

From all the above it becomes clear that the SAEP occupies a pivotal role in the recognition of professional qualifications. It has to be noted, however, that at the time of writing SAEP was not operational since its members had not been named by the relevant Ministries and the Minister of Education had not issued the Ministerial Decision appointing its members. Hence, at this time any application for recognition of professional qualifications would remain without any response and its tacit rejection would need to be challenged before the Courts.

#### Question 4 – Case Law<sup>36</sup>

- 1. Is there case law in your national legal system, which has dealt with the issue of recognition of foreign professional qualifications? If so, please briefly indicate the most important rulings and their possible consequences for similar cases in the future.**

In view of all the above difficulties faced by holders of EU qualifications to obtain recognition in Greece, it comes as no surprise that a rich body of case law, on top of that already mentioned, has been developed, both before the Greek courts and the CJEU.

The first wave of case law has been triggered by the very important delays (of ten years)<sup>37</sup> with which Greece transposed Directives 89/48 and 92/51. Hence, the question of the direct effect of Directives 89/48 and 92/51 has been brought by the *Conseil d'Etat* to the CJEU, in cases *Peros*<sup>38</sup> and *Aslanidou*,<sup>39</sup> respectively. Mr Peros held a title from a German *Fachschule* and was seeking to enrol as an engineer with the *Techniko Epimelitirio Elladas* (TEE, the Technical Chamber of Greece);<sup>40</sup> Ms Aslanidou held a title of occupational therapist from a German 'College' and was seeking to obtain an authorisation to practice by the relevant Ministry. Both referrals were made prior to the publication of CJEU judgment in *Beuttenmüller* which ruled for the first time on this point,<sup>41</sup> and confirmed it and enriched its reasoning. Following this series of judgments, the CJEU has been resolving similar issues by way of simple orders.<sup>42</sup>

Following the recognition of direct effect of the relevant Directive provisions, a second wave of cases reached the *Conseil d'Etat*, and after a transfer of competences, the

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<sup>36</sup> This part draws heavily on Deliverable 2, Greek Report, Section C.

<sup>37</sup> See above under [C\(1\)](#).

<sup>38</sup> *Peros v TEE*, C-141/04, EU:C:2005:472; for the final judgment in this case see CE 1684/2009.

<sup>39</sup> *Maria Aslanidou v Ypourgos Ygias & Pronoias*, C-142/04, EU:C:2005:473.

<sup>40</sup> Which was – and still is - one of the main actors blocking the transposition and proper implementation of relevant EU secondary legislation.

<sup>41</sup> *Beuttenmüller v Land Baden-Württemberg*, C-102/02, EU:C:2004:264, para55.

<sup>42</sup> See Joined Cases *Kastrinaki v Panepistimiako Geniko Nosokomeio Thessalonikis*, C-180/08 and 186/08, EU:C:2008:627.

Administrative Courts of Appeal. In these Greek nationals tend to annul SAEP's negative decisions, typically reached in violation of Directives 89/48 and 92/51 and/or 2005/36.

A further way in which the SAEP has been making recognition more difficult is by refusing to take into account any professional experience gained by applicants in Greece prior to their recognition application. According to SAEP even if the applicant has completed exactly the same functions as s/he will be completing when fully qualified, the fact that such experience was gained prior to formal recognition somehow obliterates it. This point has also been resolved by the CJEU by way of a preliminary ruling.<sup>43</sup> The issue of professional experience has also been raised in CJEU case *Toki*, where the Court upheld SAEP's refusal to take into consideration professional experience as a University researcher/lecturer while assessing the application for the title of environmental engineer.<sup>44</sup>

SAEP's refusal to recognize degrees delivered by Colleges under franchise and/or validation agreements has repeatedly been condemned by the *Conseil d'Etat*, even after the CJEU decisions on that matter.<sup>45</sup>

Holders of SAEP's recognition have not always had an easy life. Hence, employees of the state-controlled public utility for energy distribution (DEH, nowadays DEDDHE) were faced with the entity's internal regulation which (still today) only foresees academic recognition, by DOATAP, as a valid condition for hiring/upgrading holders of foreign degrees. Hence they had to go all the way up to the Court of Cassation, in a legal battle which went on from 2003 to 2011, in order to obtain hierarchical and salary adjustment corresponding to their degrees.<sup>46</sup>

In the same vein, the Technical Chamber of Greece (TEE), to which affiliation is mandatory for anybody wishing to exercise any technical profession in Greece, has systematically opposed holders of SAEP's recognition. Not only has it constantly

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<sup>43</sup> *Vandorou* C-422/09, *Giankoulis*, C-425/09, and *Askoxilakis* C-426/09 v *Ipourgos Ethnikis Pedias kai Thriskevmaton*, EU:C:2010:732, see also CE 1878/2012.

<sup>44</sup> *Toki v Ypourgos Paideias kai Thriskevmaton*, C-424/09, EU:C:2011:210.

<sup>45</sup> See eg CE 853/2010 (mechanical engineer); CE 4161/2011 (optician).

<sup>46</sup> AP 55/2011, ChrID (2011) 702.

refused to enroll them as members,<sup>47</sup> but occasionally it has even introduced annulment proceedings against individual recognition decisions.<sup>48</sup>

A further issue which has been resolved by the *Conseil d'Etat* relates to trainee lawyers to move from another MS to Greece. Following the CJEU's ruling in *Morgenbesser*<sup>49</sup> the *Conseil d'Etat* held that trainees may not be assimilated to lawyers and do not come under the category of 'regulated profession'; to the extent, however, that they offer remunerated services they come under primary law on free movement (as workers) and their applications may not be dismissed. Hence, in the absence of any formal (academic or professional) recognition, the Bar association is, nevertheless, under an obligation to examine their qualifications.<sup>50</sup> This is so even if the applicant has not followed legal studies but has become trainee lawyer following a conversion course.<sup>51</sup> What is more, if a Bar association has accepted to enrol a trainee, it may not question the grounds for such enrolment at the time when such trainee wants to sit the qualification examination.<sup>52</sup>

Last but not least, damages for breach of EU rules on the recognition of qualifications have not been forthcoming. Either the causality of damage has been difficult to prove,<sup>53</sup> or the delay for the award of damages has been extremely long, or both.<sup>54</sup>

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<sup>47</sup> See e.g. CE 249/2009, 4881/2012 and 4882/2012; Athens Administrative Court of Appeal 1454/2013; TEE's practice still today is that it refuses to enrol holders of SAEP's recognition; against such refusal they have to bring annulment proceedings and TEE will only accept to conform to the judicial decision, delivered 3-10 years later and following considerable expense.

<sup>48</sup> CE 2636/2011; CE 3741/2009

<sup>49</sup> *Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, C-313/01, EU:C:2003:612.

<sup>50</sup> CE (full chamber) 2770/2011, NoB (2011) 2209, EDDDD (2011) 972, ARM (2013) 303, PeirNom (2011) 395.

<sup>51</sup> CE (full chamber) 2771/2011, NoB (2011) 2216 = EDDDD (2011) 980.

<sup>52</sup> CE 3900/2012 and 2154/2014.

<sup>53</sup> See e.g. CE 339/2012.

<sup>54</sup> See e.g. Athens Administrative Court of Appeals 3296/2013, on a claim initiated in 1999 (!) awarding the amount of 3.000 euros (!).

## **Question 5 – Use and Knowledge of the Internal Market Information System (IMI) and E-Government**

### **1. Is the Internal Market Information System (IMI) used and well-known by the national authorities in your country?**

The IMI is virtually unknown in Greece. A brief Google search in Greek gives results concerning Cyprus, not Greece. The few Greek links essentially concern the nomination of officials, in different administrative levels, for managing the IMI. The only official body which has a full explanatory page about the IMI is the Unified Agency for Public Procurement (Eniaia Anexartiti Archi Dimosion Symvaseon);<sup>55</sup> this page constitutes a simplified and shortened translation of the relevant page from the Europa website. Hence, there does not seem to be any serious use of the IMI in Greece and if there is some, it is certainly unpublicised and unknown to the public at large.

### **2. Is the system for recognition of foreign professional qualifications set up electronically in your country? If so, how user-friendly/easily accessible is it and/or could its design rather be considered as a barrier to recognition of qualifications?**

As explained above (under Question 3(1)) the system is very far from supporting any electronic application: it does not even provide the necessary information on the documents the applicants should submit – in hard copy – to the SAEP. Clearly, electronic application and, even more, electronic processing thereof, are not forthcoming in Greece. In this sense, and in view of the parsimonious procedure described above and of the fact that all written submissions and related pieces need be submitted in Greek, one may easily conclude that the recognition procedure itself be considered as a barrier to recognition.

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<sup>55</sup> <http://www.eaadhsy.gr/index.php/m-foreis/m-systhma-plhroforhshs-gia-thn-esvterikh-agera>.

## **Question 6 – Assisting Bodies/Associations/Unions**

- 1. Are there any bodies/associations/unions that can assist a foreign professional that is seeking recognition of his/her qualifications in your country?**

Foreign professionals can seek no direct assistance from any association etc.

They may, at best, gather some information on the internet, from sites specialising on education issues, such as esos [www.esos.gr](http://www.esos.gr), [www.look4studies.com](http://www.look4studies.com) and the like, as well as from the Greek Colleges Association website ([www.hca.gr](http://www.hca.gr)). However, given that the Ministry itself does not provide updated information (see above under 3(1)) any ‘second hand’ information provided by the above mentioned sites, or by the electronic info point set-up under the Services Directive (<http://www.eu-go.gr/sdportal/>) has only limited value.

What is more, all the information provided is essentially in Greek; where, exceptionally, some English is provided, this is limited to the titles and some basic description; while any analysis and, by any means, official text is only provided in Greek.

Hence, foreign professionals seeking the recognition of their professional qualifications in Greece, if they do not have support by their employer, research institute etc, have to have recourse to some specialised lawyer; it has to be noted, however, that under the current conditions the fees of such a lawyer are far from being prohibitive.

- 2. Are the unions as stakeholders promoting the recognition of certain categories of professionals that from your country would like to move to another Member State?**

No such organised support has been identified.

- 3. How are the national contact points for the internal market functioning in your country, in terms of accessibility of information and guidance to professionals who are trying to achieve recognition of qualifications in your country? Are the national contact points able to provide statistics or analysis on their activities?**

The contact point’s (to use the technical term: points of single contact, PSCs) web page (<http://www.eu-go.gr/sdportal/>) is quite well presented and organised in a user-friendly manner. From this page one may identify all the PSCs available in his/her

area/periphery. There are several PSCs in every periphery. Indicatively, in the centre of Athens and the wider Attica Periphery, there are eight PSCs, the same as in Central Macedonia (the Periphery of Thessaloniki). These PSCs have been established on the basis of the pre-existing Citizens' Service Centres (Kentra Exypiretisis Politon, KEP) and offer a wide range of services to Greek and EU citizens alike.<sup>56</sup> Some of these PSCs have also been nominated as one-stop-shops for the set-up of several types of corporate structures (such as e.g. the Private Capital Company (Idiotiki Kefalaioxiki Etairia, IKE), a simplified form of a limited liability company).

The overall efficiency of KEPs in dealing with administrative burden is being positively recognised by Greek citizens and the media.<sup>57</sup> What is more, the fact that some KEPs serve simultaneously as PSCs and as one-stop-shops for business start-ups clearly produces positive externalities. However, to the best of our knowledge no scientific study has been published assessing their efficiency in either quantitative or qualitative terms.<sup>58</sup> Even if such study had been carried out,<sup>59</sup> it would cover all the KEPs (serving all Greek and foreign citizens) and not only those recently made into PSCs in order to comply with the requirements of the Services Directive.

#### **4. What are the insufficiencies regarding these various organisations and/or are they optimised with regard to minimisation of barriers to recognition of qualifications?**

According to the above, the problem with the recognition of foreign professional qualifications does not lie with the PSCs, but with the very body entrusted with the

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<sup>56</sup> The existence of several points of single contact is explained by the fact that Greece, well before the implementation of the Services Directive, has put into place the Citizens' Service Centres (Kentra Exypiretisis Politon, KEP) to help Greek citizens deal with the meandres of bureaucracy (this was a best practice identified during the early stages of the Lisbon Strategy); over a thousand such KEPs are scattered around Greece and several of them have been entrusted with the specific tasks of also serving non-Greek professionals.

<sup>57</sup> See e.g. <http://www.kathimerini.gr/319904/article/epikairothta/ellada/kep-o-pio-anagnwrismenos-sesmos-sthn-ellhnikh-koinwnia>

<sup>58</sup> The only study which we have been able to identify is a Master's thesis with limited data based essentially on questionnaires, see <http://195.251.38.253:8080/xmlui/handle/123456789/1960?show=full>

<sup>59</sup> It is highly likely that evaluation studies internal to the competent Ministry of Public Administration and Reform have been carried out, but they do not seem to be publicly available.



application of Directive 2005/36, the SAEP. 'Optimisation' is too optimistic a term when describing SAEP's operation.

### **Question 7 – Further Barriers**

**1. What types of barriers do professionals typically face when accessing your country? For instance, are there barriers:**

- Generally to the recognition of qualifications;
- Of a linguistic character;
- Of any other kind including e.g. access to information;
- Consisting in lack of guidance from authorities;
- Consisting in complexity of documentation/administrative procedures;
- Consisting in financial costs attached to the process of recognition of qualifications;
- Consisting in delays/long processing times in case handling;
- Consisting in other kinds?

All the above barriers are endemic in the Greek system of recognition of professional qualifications. Few words need be said in relation to the following:

1. Linguistic barriers: Greek being a non-latin and little-widespread language, and English being used only electively by the public administration (and only for information purposes), language does constitute a serious barrier to all transactions with the Greek authorities.
2. Access to information: while all public bodies are required by law to have a website, and indeed do have one, update of such websites is random, with the effect that very often disseminated information is misleading. This problem is particularly acute in Greece during the crisis years, where successive governments (with an average life of no more than a year), and with them legislation and administrative requirements are being constantly reviewed and changed.
3. Cost: the procedures themselves are not costly, but the need to consult with a specialised lawyer before applying for recognition and, most importantly, the need to bring SAEP's tacit refusal before the Courts in order to interrupt the one month limitation period, significantly raises the cost.
4. Delays: see above under Question 2(1).

5. Another very important barrier, not mentioned above, is the very significant delays in the delivery of justice. Indicatively, in a case brought to Court against SAEP's negative decision judgment won't be forthcoming for at least three years (four or five being more common delays, while several cases have been pending for more than seven years). If the case is appealed before the *Conseil d'Etat*, then one should count a minimum of another five years!

**2. Please provide as many examples as possible; in particular with regard to possible infringements of EU law.**

This question is answered throughout the present paper.

**Question 8 – Informal Barriers**

**1. Are there any other types of barriers, which may be informal or cultural ‘unspoken rules’, which in some way affect the access of foreign professionals to the services market of your country?**

The relatively few EU nationals who work as independent professionals (i.e. not employees of some multinational company) enjoy a quite positive reputation and acceptance in the labour market. Hence, at the ‘unspoken’ level they are rather well-perceived and not discriminated against. At the more formal level, however, they do face difficulties, especially in relation to their enrolment to professional bodies, to the welfare funds etc. The difficulties may be of the kind that a) they should be part of a special registry, but such registry does not yet exist, b) they have to prove prior affiliation to a social security institution but the documentary proof required is very difficult to obtain etc. In some instances, however, the ‘special’ situation of foreign nationals may also benefit them: hence, e.g., while Greek energy efficiency inspectors had to register for a trial period and then confirm their registration with the Technical Chamber of Greece (TEE),<sup>60</sup> for those registered in the foreign service-providers’ registry (created by ministerial decision after a long delay) a one-off registration was enough.

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<sup>60</sup> See Law 3661/2008 (FEK A 89) and its implementing p.d. 100/2010 (FEK A 177).

However, as stated in the introduction of Deliverable 2 of the present report, most holders of foreign (EU) degrees wishing to work in Greece are themselves Greek. Those who have actually studied abroad, especially if they have studied in some acclaimed University, enjoy strong professional recognition in Greece. On the other hand there is some kind of undercover ‘racism’ against professionals who have graduated from Greek ‘Colleges’ offering franchised studies from abroad; such ‘racism’ is especially felt in the public sector, where their qualifications tend to be systematically (directly or indirectly) neglected.

### **Question 9 – Evaluation Studies**

- 1. Have there been studies that evaluate the difficulties that professionals face in accessing your country, providing empirical evidence as regards recognition of their qualifications (reports, statistics, surveys, etc.)?**

Despite the fact that several parliamentary questions have been brought in relation to the functioning of SAEP and that the Troika of lenders supposedly monitors its results, no published data exists on this issue. Other obstacles have not been systematically studied. Of course, anecdotic cases of people who have been through the meanders of Greek bureaucracy and have managed to set up shop in Greece (or have abandoned half-way through) circulate both in the (printed and electronic) media and among lawyers.

### **Question 10 – Main Issues to be addressed**

- 1. What would you identify as being the major problem as regards the mutual recognition of professional qualifications in your country?**

The major problem, at the time of writing, is that mutual recognition is stalled and is not operational. This is so because the body responsible for the application of Directive 2005/36 (SAEP) has not had its members nominated by the Minister of Education. Other than the technicalities of finding the right members, the current Ministry is ideologically opposed to any recognition system, the Bologna process and indeed any approximation between Greek and EU Universities, as this is seen to be impairing Greece’s autonomy to organise its higher education at will. The left-wing party currently in office is also openly hostile to Colleges (although no open challenge has been made to Colleges since this party got into power).

When SAEP did operate, the procedure was extremely slow, unforeseeable as to its duration and outcome and difficult to challenge. Since the creation of SAEP (in 2000, i.e. 9 years after the expiration of the transposition period of Directive 89/48) extremely few – very clear – cases have had a straight-on recognition. Some more professionals have had decisions requiring them to sit exams or to undergo an apprenticeship period, but exams have so far not been organised and the legal framework for apprenticeship periods is lacking.<sup>61</sup> And the vast majority have their cases rejected or pending.

**2. In general, once a foreign professional has his/her professional qualifications recognised by the national authorities, is the possibility to concretely exercise the profession real and effective in your country?<sup>62</sup>**

In view of the answer to the previous question this one does not need to be answered in any extensive matter. One thing which should be highlighted is that taking-up and pursuing any economic activity in Greece is a highly bureaucratic exercise and requires regular (and repetitive) contacts with various public authorities. Hence, anyone not familiar with the chaotic way that Greek administration works, having difficulties in understanding written and/or (badly) spoken Greek or else unwilling to cope with inefficiency, micro-corruption and surrealism, is certain to face difficulties in pursuing their economic activity in Greece. In this sense the procedure before SAEP serves as a kind of ‘natural selection’ in the sense that only those seriously determined do go through; these are the ones who are likely to effectively succeed in setting up shop in Greece.

### **Question 11 – Good Practices**

**1. Can you highlight any good practice that your country has put into place in this area?**

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<sup>61</sup> See above fn 32.

<sup>62</sup> According to the SOLVIT report ([http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/solvit/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm)) the major barrier that professionals typically face is the difference between the profession the professional is entitled to exercise in the home country and the one he or she intends to exercise in the host country.

The fact that, at least in paper, the system of Directive 2005/36 has been extended to also cover non-regulated professions, thus eliminating one of the difficult interpretative points of the Directive.

### **Question 12 – Effectiveness and Organisation**

- 1. How would you and/or others evaluate the level of effectiveness and organisation of the national system of recognition of foreign professional qualifications in your country?**

Deplorable.

### **Question 13 – Sectoral Case Studies**

#### **Lawyers**

**Mr. Smith is qualified as a lawyer in a Member State of the European Union. He decided to pursue his profession in your Member State [the reference Member State in the report’s national context, hereinafter ‘host country’]. He therefore intends to continue his activity as a lawyer in the new national context also.**

#### **Case 1**

- A. Mr. Smith does not apply for recognition of his title/degree/qualification as lawyer, but since he can practice as a lawyer in his Member State of origin, he wishes to make use of the title of lawyer in the language of the host country to which he wants to move. Is this admissible in your Member State? What is the legislation of reference?**

Directive 98/5 *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*<sup>63</sup> has been transposed into Greek law by presidential decree (p.d.) 152/2000 (FEK A 130). Under article 4 of p.d. 152/2000 any lawyer, in the meaning of article 2 (a) of the aforementioned p.d. (article 1 (2) n. a, of the Directive) is entitled to practice law on a permanent basis, in Greece, under his home-country professional title, under the

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<sup>63</sup> OJ L 77, 14.3.1998, p. 36–43.

conditions of article 7.<sup>64</sup> A lawyer practicing in Greece under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner. Any Bar Association may require a lawyer practicing under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practice pursuant to the laws of his home Member State, as well as his registration at the Records of the Greek Bar Association.<sup>65</sup> Hence, Mr. Smith may only use his professional title in the language of his Member State.

It should be noted though, that after practicing law for three years in Greece, he shall be fully integrated and be titled “dikigoros” (δικηγόρος).<sup>66</sup>

**B. Are there specific procedures to be followed and professional rules to which Mr. Smith is subject?**

Under p.d. 152/2000, in order to start his professional activity as a lawyer in Greece, Mr. Smith would *firstly* have to register at the local Bar Association, where he intends to practice law and *secondly* to maintain an office located within the jurisdiction of that Bar Association.<sup>67</sup>

The decision on the registration at the local Bar Association is taken by its Administrative Council upon presentation by Mr. Smith of (a) a certificate issued by a public authority proving his citizenship of an EU Member State, (b) a copy of his criminal record and (c) a certificate attesting to his registration (and any alterations) with the competent authority in the home Member State. This certificate must mention the purpose of its issuance and include information relevant with Mr. Smith’s designation, promotions and disciplinary penalties, if any. This certificate should be issued within the last three months.<sup>68</sup>

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<sup>64</sup> See below under section C.

<sup>65</sup> Art 6(1) and (2) of p.d. 152/2000.

<sup>66</sup> *Ibid*, art. 11.

<sup>67</sup> *Ibid*, art. 5.

<sup>68</sup> *Ibid*, art. 5(2).

A negative decision concerning Mr. Smith's registration must be sufficiently reasoned and is subject to an application for annulment before the *Conseil d'Etat* within 60 days from the notification of the applicant or his legal agent.<sup>69</sup> The local Greek Bar Association informs the competent authority or the Bar Association of his home country about the approving or rejecting decision on the applicant's registration.<sup>70</sup> Each Bar Association keeps special records for members enrolled under the professional title of the home country.<sup>71</sup>

In regards with professional rules binding Mr. Smith, he would firstly be subject to the same professional, ethical and disciplinary rules as Greek lawyers. More specifically, during the exercise of legal acts and activities, all the terms, conditions and obligations concerning practicing law in Greece would apply and bind Mr. Smith as well.<sup>72</sup> Moreover, irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practicing under his home-country professional title shall be subject to the same rules of professional conduct as lawyers – members of Greek Bar Associations in respect of all the activities he pursues in its territory. In detail, he shall be subject to the obligations laid down by the Lawyers Code, the Code of Conduct and any relevant specific legislation, the internal rules of the Bar Association to which he is registered and the decisions of its Administrative Board and any rules governing the lawyer profession in Greece, particularly those referred to incompatibility and the exercise of other activities, to professional confidentiality, professional ethics, advertising, professional dignity and the proper exercise of the profession.<sup>73</sup>

Furthermore, Mr. Smith shall either take out professional indemnity insurance or become a member of a professional guarantee fund in accordance with the rules laid down for professional activities pursued in Greece. Nevertheless, he shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as

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<sup>69</sup> *Ibid*, art. 5(3).

<sup>70</sup> *Ibid*, art. 5(4).

<sup>71</sup> *Ibid*, art. 5(5).

<sup>72</sup> *Ibid*, art. 7(3).

<sup>73</sup> *Ibid*, art. 8(1).

such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Administrative Council of the local Bar Association may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.<sup>74</sup>

Last but not least, Mr. Smith shall be subject to the rules providing mandatory insurance and registration to the Lawyers Insurance Fund (TAN), the Lawyers Supplementary Insurance Fund (TEAD) and the Lawyers Welfare-Health Fund.<sup>75</sup>

**C. Can Mr. Smith start his professional activity individually (not in an associated firm or in agreement with a colleague qualified in the host country)?**

As already mentioned, Mr. Smith must maintain a registered office within the geographic jurisdiction of his preferred Bar Association. Hence, he is not obliged to join an associated law firm,<sup>76</sup> but instead can set up his individual law office in Greece.

Under article 7(1) of the aforementioned p.d., a lawyer practicing law under his home-country professional title in Greece, carries on the same professional activities as a lawyer practicing under the relevant professional title used in the host Member State and may, *inter alia*, give advice on Greek law, EU and international law and the law of his home Member State.

However, para. 2 of said article introduces an exception to that rule. It states that *“for the pursuit of activities relating to the representation or defence of a client in legal proceedings, the lawyer practicing law under his home-country professional title in Greece must work in conjunction with a lawyer who is entitled to practice before the competent judicial authority and who is answerable to that authority”*.

Therefore, Mr. Smith can start his professional activity as a lawyer in Greece under his home-country title individually. However, in regards with representation of a client in judicial fora, he must collaborate with a Greek lawyer.

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<sup>74</sup> *Ibid*, art. 8(3).

<sup>75</sup> *Ibid*, art. 8(4).

<sup>76</sup> Although he has the right to do so, under art. 10 of p.d. 152/2000.



In any case, there will be no need for conjunction with a colleague qualified in Greece after Mr. Smith practices in Greece for three years, since the above mentioned p.d. states that a lawyer practicing under his home-country professional title who has effectively and regularly pursued for a period of three years an activity in the host Member State in the law of that State including Community law shall gain admission to the profession of lawyer in Greece.<sup>77</sup>

**D. If Mr. Smith had just recently obtained his law degree, without going through a training period to become a lawyer, would he be able to directly enroll in the bar association of your country as a lawyer?**

The Greek Lawyers Code provides for a procedure of registration at the local Bar Association as a trainee lawyer, when the law degree has been acquired in a Member State and/or the person interested has commenced his traineeship in a Member State.<sup>78</sup> Graduates from foreign higher education institutions may conduct their traineeship in Greece provided that (a) they are citizens of another Member State and (b) they hold a law degree from a University of another Member State.

An Evaluation Committee decides upon the request for registration as a trainee in the aforementioned cases. It is established by decision of the Council of Presidents of all the Bar Associations of the country. The Committee consists of the Presidents of the Bar Associations: a) of Athens, as President, b) Thessaloniki, c) Piraeus or their Deputies and d) the President of another Bar Association or Dis deputy. The above Committee is appointed at the first plenary meeting of the Council of Presidents, which is convened after the elections for the Bar Associations' Presidencies and its term lasts until the end of the tenure of its members. The Committee also includes, as a fifth member, the President of the Bar Association to which the application was made, or another member of that Bar Association appointed by the President. If the applicant wishes to register to a Bar Association the President of which already participates as a permanent member (a to d above), then the President of that Bar Association designates a member of the Bar's Administrative Council and his Deputy as the Committee's fifth member.

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<sup>77</sup> Art. 11 of p.d. 152/2000.

<sup>78</sup> Art. 15 etc. of the Greek Lawyers Code.

The Committee meets at least four times a year. If the above conditions are met, i.e. Member State citizenship and law degree awarded by a Member State University, then the Committee examines whether the overall qualifications of the applicant are equivalent to those required under the Lawyers Code for the registration of someone as a trainee lawyer. The Committee shall take into account the candidate's qualifications, the courses he has been taught, any supporting documents provided and his overall experience in legal matters. The Committee also takes into account the differences of the various European legal systems. In case of inequivalent qualifications, the Committee refers to Permanent Committee for the Aptitude Test.<sup>79</sup> This Permanent Committee is responsible to decide the subjects on which the applicant will have to prove knowledge, due to the lack of equivalence on the substantive qualifications. In that case the applicant will be required to pass an aptitude test on these subjects only.<sup>80</sup>

Hence, as opposed to the previous regulation, Law 4285/2014 amending the Lawyers Code established a twofold procedure of examining the applicant's qualifications; firstly the review of fulfillment of the formal requirements and secondly the review of fulfillment of the substantive requirements. Thus, the academic recognition of a law degree awarded by a Member State University does not automatically offer registration to the Bar Association, but instead the new procedure of examination of the substantive conditions must be held.<sup>81</sup>

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<sup>79</sup> Art. 15 (1A) of the Lawyers Code, as added with Law 4285/2014 (FEK A 191).

<sup>80</sup> Art. 16 (3A) of the Lawyers Code, as added with Law 4285/2014 (FEK A 191).

<sup>81</sup> For a more detailed analysis see in Greek <http://www.dsa.gr/%CE%BD%CE%AD%CE%B1/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%8E%CF%83%CE%B5%CE%B9%CF%82/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%AF%CE%BD%CF%89%CF%83%CE%B7-%CF%84%CE%B7%CF%82-%CE%B5%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%AE%CF%82-%CE%B1%CE%BE%CE%B9%CE%BF%CE%BB%CF%8C%CE%B3%CE%B7%CF%83%CE%B7%CF%82-%CE%B5%CF%80%CE%B1%CE%B3%CE%B3%CE%B5%CE%BB%CE%BC%CE%B1%CF%84%CE%B9%CE%BA%CF%8E%CE%BD-%CF%80%CF%81%CE%BF%CF%83%CF%8C%CE%BD%CF%84%CF%89%CE%BD-%CF%80%CF%84%CF%85%CF%87%CE%B9%CE%BF%CF%8D%CF%87%CF%89%CE%BD-%CE%B1%CE%BB%CE%BB%CE%BF%CE%B4%CE%B1%CF%80%CE%AE%CF%82->

Upon success at the aptitude test, one shall be registered with the Bar Association of his choice with the status of a trainee lawyer, and shall conclude the 18-month traineeship and pass the bar examination in order to be titled a lawyer.<sup>82</sup> After he passes the bar examination, Mr. Smith shall be admitted to the Courts of First instance as a lawyer.

**E. Can he practice in a court/judicial setting?**

As already mentioned, Mr. Smith can practice law under his home-country professional title in Greece. Before he gets admitted to the profession of lawyer in Greece (which happens after at least three years of practice in Greece) Mr. Smith can practice in a court/ judicial setting only with the collaboration of a lawyer qualified to practice in Greece.<sup>83</sup>

There is no jurisprudence of Greek courts dealing directly with the issue. However, in a judgment concerning the geographical restrictions to the exercise of the legal profession and the relevant obligation of conjunction with a local lawyer, The Greek *Conseil d'Etat*<sup>84</sup> held that it would not be constitutionally legitimate for such provisions to be endorsed by the legislator through measures, which, in view of their consequences for citizens (such as the rejection of the petition as inadmissible) would undermine their right to free choice of lawyer as an individual expression of the individual right of redress. Consequently, the relevant provisions regarding the conjunction of a local lawyer should be interpreted in accordance with article 20(1) of the Constitution, in the meaning that when a lawyer, who should collaborate with a colleague, instead signs and lodges an application individually, that application should not be rejected as inadmissible.

**F. Can he practice out of court/in an extrajudicial setting?**

With the exception of the aforementioned restriction imposed regarding the legal representation of a client before a judge, a lawyer practicing in Greece under his home-country professional title, has the right to conduct the same acts and activities as a

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<sup>82</sup> Art. 17(8) of the Lawyers Code.

<sup>83</sup> Art. 7(2) of p.d. 152/2000.

<sup>84</sup> See CE 1558/2008.

Greek lawyer<sup>85</sup>, namely, give advice on Greek law, EU and international law and the law of his home Member State.

Apart from the exception of representing a client in judicial settings, a lawyer practicing in Greece under his home-country title, may not exercise certain acts or duties that constitute, under Greek legislation, expressions of public authority. These can only be exercised by a lawyer with Greek citizenship. Such acts include, the nomination as Chair of Electoral Juries (in municipal, national or European elections), Liquidator of vacant succession, Bequest Administrator or Administrator in Bankruptcy, validating and ratifying documents, as well participating in the composition of special courts<sup>86, 87</sup>.

Furthermore, he may practice as a salaried lawyer in the employ of a public or private entity or private enterprise, or in a law firm.<sup>88</sup>

Therefore, Mr. Smith can practice in extrajudicial settings, and even more, can do so individually without the collaboration of a Greek lawyer.

## **Case 2**

### **G. Can Mr. Smith, as an alternative, obtain recognition for his qualification in the host country? Which procedures have to be followed in that case?**

Greece has adopted p.d. 122/2010 *concerning the recognition of professional qualifications of lawyers, in conformity with Directive 2005/36*.<sup>89</sup> The above legislation applies to EU Member States citizens who are entitled to practice the lawyer profession under their home country title and wish to practice in Greece on the condition that they

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<sup>85</sup> Art. 7(1) of p.d.152/2000.

<sup>86</sup> As for e.g. in the case of participation of Law Professors in the Supreme Special Court (AED), when it a) resolves conflicts between the administration and the courts or between the *Conseil d'Etat* or the administrative courts and the civil or criminal courts or between the Court of Audit (Elegktiko Synedrio) and the other courts, or b) resolves a dispute about the constitutionality of a legal provision or about the real meaning of a legal provision if the *Conseil d'Etat*, the Supreme Court or the Court of Audit have issued opposite judgments, according to art. 100 (1d and e) of the Greek Constitution.

<sup>87</sup> Art. 7(4) of p.d.152/2000.

<sup>88</sup> *Ibid*, art. 10.

<sup>89</sup> FEK A 200.

haven't obtained a professional license to practice and haven't already practiced the profession in Greece.

Mr. Smith can obtain recognition for his qualification through the procedure established by p.d. 122/2010, i.e. an aptitude test. The objective of that test is to examine only the professional knowledge of the applicant in order to evaluate his ability to practice the legal profession in Greece.<sup>90</sup> The aptitude test is being conducted by a Permanent Committee responsible for the aptitude test, which takes place twice a year<sup>91</sup>, is a written exam on 6 subjects of Greek law and is given in the Greek language.<sup>92</sup> In order to participate in the aptitude test, Mr. Smith would have to submit a relevant application along with (a) document proving the nationality of a Member State issued by a public authority, b) copy of his license or any other certificate verifying that he has successfully conducted his professional training and has the required qualifications to practice law, his curriculum and, where applicable, postgraduate or doctoral work, c) any other certificates concerning qualifications and professional experience acquired in that regard and d) certificate of criminal record and, if any, a certificate attesting that his right to practice law has not been or removed due to serious professional misconduct or a criminal offense. These certificates are issued by the competent authorities of the home Member State and presented by the person who wishes to pursue that profession in Greece and cannot be submitted after three months from the date of issue.<sup>93</sup>

#### **H. Once recognition has been obtained in the host country, can Mr. Smith actually work as a lawyer?**

If Mr. Smith passes the aptitude test, he can register with the Bar Association as a lawyer.<sup>94</sup> He will be then able to practice law according to the Greek Lawyers Code.

#### **I. Can Mr. Smith practice as a lawyer in the higher courts?**

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<sup>90</sup> Art. 2 (3) of p.d. 122/2010.

<sup>91</sup> *Ibid*, art. 4.

<sup>92</sup> *Ibid*, art. 6(1).

<sup>93</sup> *Ibid*, art. 5(1).

<sup>94</sup> *Ibid*, art. 8.

In the case that Mr. Smith decides to pursue the recognition of his law qualification in Greece, following the procedure described above,<sup>95</sup> and succeeds at the aptitude test, he registers with the local bar association of his choice as a lawyer.<sup>96</sup> Under article 8 of p.d. 122/2010 *concerning the recognition of professional qualifications of lawyers, according to Directive 2005/36/EC*, if the person in question passes the aptitude test, he registers with the Bar Association as a lawyer. Upon his successful registration, he is therein forth bound by the provisions of the Greek Lawyers Code<sup>97</sup>.

Following the recognition of his professional qualification, Mr. Smith shall be admitted to the Courts of First Instance. Afterwards, he shall be promoted according to the procedure provided for by the Lawyers Code, i.e. practice as a lawyer in the Courts of First Instance and County Courts for 4 years. After 4 years, he shall be allowed to practice in the Courts of Appeal and 4 years following that, he shall be admitted to the Supreme Courts of the country.<sup>98</sup>

It is also worth mentioning that p.d. 122/2010 abolished preexisting p.d. 52/1993 (which incorporated EU Directive 89/48 into Greek law in relation to lawyers). The latter provided that successful examination at the aptitude test lead to the appointment of the person in question at the Court of First Instance as a lawyer. However, if he already had practiced law for more than 4 years in his home-country, the local Bar Association would decide his appointment directly at the Court of Appeal, and if he had previously practiced law for 8 years or more he would be directly appointed at the country's Supreme Court. Hence, the legislation previously applicable applied more fully the principle of mutual recognition as it fully took into account the practice in other Member states.

In view of the above, Mr. Smith can practice law in the higher courts, depending on his total years of practicing law.

**J. Once he has obtained the recognition of his qualification in the host country, Mr. Smith decides to move to a different city and start practicing**

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<sup>95</sup> Under G.

<sup>96</sup> Art. 8 of p.d. 122/2010 and art. 17 para. 8 of the Lawyers Code.

<sup>97</sup> Law 4194/2013 (FEK A 208).

<sup>98</sup> Art. 28 of the Lawyers Code.

**as a lawyer. Is that allowed in the host country? Does he have to register to a local bar association? Can Mr. Smith actually practice as a lawyer?**

Lawyers in Greece are organized in sixty-three (63) local Bar Associations (one for the territorial jurisdiction of each Court of First Instance) the presidents of which form the Council of Presidents (*olomeleia proedron dikigorikon sillogon ellados*), as there is no national Bar.

Hence, a lawyer must be registered with one (and only one) local Bar Association. He must also be based within the geographical jurisdiction of the bar with which he is registered,<sup>99</sup> even though he may practice law in the entire country. The recent modification of the Lawyers Code<sup>100</sup> revoked the geographic restrictions in the exercise of legal profession in the sense that lawyers may practice their profession in the entire country without any legal obstacle.

In regards with the recognition of a professional qualification acquired in another member state, it should be reminded that such a recognition is regulated by a Committee based in Athens and is housed in the Athens Bar. The Committee is comprised of a) the President of the Department of Law of the University of Athens, as President, and his deputy, b) a professor of a Law Faculty of a Greek University along with his deputy, and c) the Presidents of the Bar Associations of Athens, Thessaloniki and Piraeus, along with their deputies. If the applicant – i.e. Mr. Smith - wishes to be admitted to a Bar Association other than the Athens' one, the Committee is composed with the President of that local Bar Association or his deputy, instead of the President of the Piraeus Bar Association.<sup>101</sup>

As already mentioned above, once Mr. Smith gains access to the legal profession, he is treated as a Greek lawyer and therefore is bound by the provisions of the Greek Lawyers Code. According to article 25 para. 1 of the Lawyers Code, a lawyer may apply at the bar where he is currently registered to transfer to a different bar association. The former's Administrative Council decides on the application and the Minister of Justice issues a confirmatory decision, which allows the lawyer to register

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<sup>99</sup> Art. 23(1) of the Lawyers Code.

<sup>100</sup> *Ibid*, art. 28 para. 1.

<sup>101</sup> See art. 4 of p.d. 122/2010.

to the local bar of his choice. The Greek *Conseil d'Etat* has confirmed that a lawyer's transfer to a different district and local bar should be free and not obstructed unless there are specific exceptional reasons that substantiate the dismissal of his application.<sup>102</sup>

Therefore, Mr. Smith may apply to transfer to a different local Bar Association, if he decides to move to a different city. In any case, he is allowed to practice nationwide, provided that he is based within the geographical jurisdiction of the bar he is registered with.

**K. Are there specific limitations or professional rules concerning the participation in law firms/or: Could he become a partner in an existing law firm in the host country? Are there specific limitations or professional rules?**

Lawyers in Greece can exercise the profession by running their own office, establishing law firms or working as salaried associates with fixed remuneration/fees. According to the national legislation concerning the establishment and function of law firms in Greece,<sup>103</sup> the only precondition for partnership in a law firm is having an active lawyer status.

Any two or more lawyers may establish a law firm in Greece, with the sole purpose of providing legal services (in Greece or elsewhere) and the distribution of profits to the partners, provided that they abide by the relevant legal framework. In detail, a partner in a law firm is prohibited from participating in another law firm or performing individual law practice and generally acting on his own or foreign account, contrary to the interests of the firm. A lawyer may become partner in an existing law firm, by decision of the quorum and majority of partners stated in the bylaws, unless stated otherwise.<sup>104</sup>

A lawyer practicing in Greece under his home-country title may participate in an existing law firm as a salaried lawyer, under article 10 of p.d. 152/2000, with the limitations laid down by article 7(2) of said p.d., i.e. the need for collaboration with a

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<sup>102</sup> See CE 225/2011.

<sup>103</sup> See p.d. 81/2005 and article 49 of the Lawyers Code.

<sup>104</sup> See article 51(1) of the Lawyers Code.



Greek lawyer in regards with the representation of a client in judicial settings. In the case of a lawyer who has obtained his professional qualification in another member state and has achieved recognition of the latter in Greece, there are no *ad hoc* limitations.

Additionally, p.d. 152/2000 specifically allows lawyers who practice in Greece under their home-country professional qualification to establish together a law firm in Greece, whether they partner with a lawyer practicing under the same EU home-country title, a different one, or a Greek title.

**L. Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorization, etc.) which can prevent practicing professional activity in the host country?**

Firstly, according to p.d. 122/2010 the person interested to gain recognition of his qualification and practice law in Greece must have the necessary knowledge of the Greek language for the exercise of the legal profession in Greece. The Permanent Committee responsible for the aptitude test shall examine and issue, in every case, a fully reasoned decision on the language proficiency of the person concerned in regards with the exercise of the legal profession in Greece.<sup>105</sup>

Secondly, due to the financial and social crisis in Greece, the unemployment rates have significantly increased over the course of the last five years. In 2013, the Athens Bar Association reported that the unemployment of new lawyers in Athens reached 44,2%.<sup>106</sup> Hence, it bears the question how easily would Mr. Smith be able to actually practice the legal profession.

**Case 3**

**M. Mr. Smith intends to pursue his professional activity in the host Member State on a temporary basis. What is the legislation of reference and which procedures have to be followed? Can he exercise the profession independently?**

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<sup>105</sup> Art. 7.

<sup>106</sup> <http://www.naftemporiki.gr/story/682022/sto-442-i-anergia-gia-tous-neous-dikigorous-tis-athinas>

Directive 77/249<sup>107</sup> was transposed into Greek law by p.d. 258/1987<sup>108</sup>. These facilitate the effective exercise by lawyers of freedom to provide services. They allow a lawyer to exercise certain legal services concerning a case or certain cases in Greece. The lawyer in question may not, however, set up an office in Greece.

A lawyer qualified in another Member State practicing in Greece under the provisions of the aforementioned Directive and p.d., may only represent or defend a client in court in conjunction with a lawyer who is entitled to practice before the competent judicial authority and who is answerable to that authority. Either Mr. Smith or the associated Greek lawyer must provide the President of the relevant Bar Association with documents that prove his capacity, at least two days before providing the relevant legal service. The same obligation exists in case of providing legal services before any other public authority or public body. Moreover, Mr. Smith or the Greek lawyer with whom he collaborates shall inform the President of the Bar Association about the legal services offered in Greece, their likely duration, his address, the Bar Association to which he is enrolled and the name and address of the Greek lawyer with whom he will be collaborating. He shall also provide a declaration stating that there are no status incompatibilities or any disciplinary penalties against him.<sup>109</sup>

**N. Are there specific conditions or professional rules to which he is subject?**

Article 5 of p.d. 258/1987 provides that the activities relating to the legal representation of a client before any judicial or other public authorities in Greece shall be exercised in accordance with all the terms, conditions and obligations that the Greek legislation provides for Greek lawyers. It is not required for Mr. Smith to reside in Greece or to be registered with a Greek Bar Association.

Moreover, during the exercise of legal activities in Greece, Mr. Smith is obliged to comply with the Greek rules governing the legal profession, along with any other rules imposed in the Member State where he is based, unless the latter contradict with the applicable Greek legislation.

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<sup>107</sup> OJ L 78, 26.3.1977, p. 17–18.

<sup>108</sup> FEK A 125.

<sup>109</sup> Art. 3 of p.d. 258/1987.

In the exercise of legal activities other than the representation of a client, Mr. Smith is still bound by the terms and conditions of exercising the profession imposed by his home-country, on the condition that he observes the provisions of the Greek Lawyers Code, the internal rules of the Bar Association competent and the decisions of its Administrative Board and any rules governing the lawyer profession in Greece, particularly those referred to incompatibility and the exercise of other activities, to professional confidentiality, professional ethics, advertising, professional dignity and the proper exercise of the profession. These rules only apply if they can be observed by a lawyer who is not established in Greece and to the extent that their observance in Greece is objectively justified to ensure the proper exercise of the practice of the legal profession, professional dignity and respect for the rules concerning incompatibility.

**O. Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorization, etc.) which can prevent practicing professional activity in the host country?**

The collaboration with a Greek lawyer, as required by article 3 of p.d. 258/1987, would probably lift any obstacles (e.g. linguistic) in practicing the profession.

#### **Case 4 - Midwives**

**Mrs. Johnson has obtained the degree of midwife in her country of origin, but has never practiced.**

**A. Can Mrs. Johnson obtain the recognition of her professional degree in your Member State (host country)? Does she have to provide a sworn translation of her qualifications/diplomas? Does she have to pay any administrative fees for her application?**

Firstly, it should be noted that the midwife profession is a regulated profession in all Member States. Therefore, the minimum training requirements were harmonised at a European level and set by Directives 80/154,<sup>110</sup> 80/155<sup>111</sup> and 80/1273<sup>112</sup>, already codified as Directive 2005/36,<sup>113</sup> which was transposed into Greek law by p.d. 38/2010.

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<sup>110</sup> OJ L 33, 11.2.1980, p. 1–7.

<sup>111</sup> OJ L 33, 11.2.1980, p. 8–12.

In order to be able to obtain recognition, Mrs. Johnson must hold the qualification stipulated by the Member State concerned in Annex V to p.d. 38/2010 (and Directive 2005/36), i.e. the formal qualification and any certificate accompanying the latter. This qualification should attest to training that meets the minimum training requirements established by Directive 2005/36.

Mrs. Johnson can obtain recognition of her degree in Greece under either one of two possible recognition systems, depending on the type of training she has received, i.e. the general system the recognition of evidence of training, described in title III, chapter I of p.d. 38/2010 or the recognition on the basis of coordination of minimum training conditions (automatic recognition), described in chapter III.

In other words, whether or not she could benefit from automatic recognition depends on the type of training course she took. Hence, if she took a full-time training of at least three years as a midwife made contingent upon possession of a diploma, certificate or other evidence of qualification giving access to universities or higher education institutes, or otherwise guaranteeing an equivalent level of knowledge, then she may indeed benefit from automatic recognition.<sup>114</sup>

If the conditions above are not met, the applicant may still enjoy automatic recognition, only if she has practiced the profession of a midwife or if she has formal qualifications as a nurse responsible for general care.<sup>115</sup> In the present case, since Mrs. Johnson has never practiced, and presumably does not possess qualifications of a nurse responsible for general care, she may only enjoy automatic recognition if the training leading to her degree meets the aforementioned conditions. Otherwise, she may apply under the general system for the recognition of evidence of training.<sup>116</sup>

If Mrs. Johnson's degree meets the requirements for automatic recognition, the competent authority to decide and issue the license to practice the profession is the

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<sup>112</sup> OJ L 375, 31.12.1980, p. 74–74.

<sup>113</sup> Directive 2005/36 has been amended by Directive 2013/55. The latter has not been incorporated into Greek law yet.

<sup>114</sup> Art. 41(1) a i of p.d. 38/2010.

<sup>115</sup> *Ibid*, art. 41(1), (a) ii or b or c.

<sup>116</sup> Title III, Chapter I.

Health Directorate of the regional Prefecture, where the applicant wishes to practice.<sup>117</sup> Any document attached to the application (diploma/qualifications etc.) must be officially translated by the Translation Agency of the Foreign Affairs Ministry. The Translation Agency only accepts and translates documents that are previously fixed with an apostille. It is worth noting that the cost for translating the relevant documents amounts to 8,50-9,50 euros per page (standard procedure) or 12-14 euros per page (expedited procedure).<sup>118</sup> As far as administrative fees are concerned, along with the application and the supporting documents, Mrs. Johnson would have to pay an administrative fee and tax stamp duties, adding to a total sum of 38,00 euros.

If Mrs. Johnson's degree does not meet the above criteria, she must apply under the general recognition system. In that case, the body responsible for the recognition of Mrs. Johnson's degree is SAEP. The relevant documents supporting the application must be officially translated from any competent authority, i.e. the Translation Agency of the Foreign Affairs Ministry, the British Council, any lawyer, acting under the Greek Lawyers Code<sup>119</sup> or any competent authority of the country of origin. Mrs. Johnson would also have to pay an administrative fee of 100,00 euros.<sup>120</sup>

**B. Can she practice her profession in the host country in a hospital and in private homes, as well as in a private facility/hospital?**

The professional rights and duties of midwives are regulated by p.d. 351/1989.<sup>121</sup> Under article 2 of the aforementioned legislation, midwives may work, either independently or in collaboration with other professionals, in the private and public sector, either as self-employed or in groups on matters of their specialty. More specifically, a midwife may provide comprehensive antenatal and postnatal nursing care for the woman and the newborn, in both the hospital and at home.

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<sup>117</sup> *Ibid*, art. 54, para. 3 of p.d. 38/2010.

<sup>118</sup> [http://www.mfa.gr/images/docs/ypiresies/analytiko\\_timologio\\_eggrafon.pdf](http://www.mfa.gr/images/docs/ypiresies/analytiko_timologio_eggrafon.pdf)

<sup>119</sup> Art. 36.

<sup>120</sup> The relevant information has been drawn from the latest valid link available at the Ministry's website. See above Question 3 (1).

<sup>121</sup> FEK A 159.

They may work in the primary care sector, i.e. health centers, regional clinics, community clinics, medical facilities, gynecology clinics associated with the National Social Insurance Institute (IKA) and other public enterprises and organizations, the National Centre for Emergency Assistance (EMS), emergency transport units for gynecological, obstetric and neonatal cases and centers and departments of family planning.

Furthermore, a midwife may also work in the secondary and tertiary care sector, i.e. *inter alia*, in general and special hospitals, obstetrics departments (deliveries hall, external obstetric departments, clinics, pregnancy units, neonatal intensive care units etc.), gynecological clinics, gynecological oncology units, external gynecological surgery units and genital cancer detection centers.

According to a report prepared by the European Midwives Liaison Committee (EMLC) and Deloitte & Touche on midwifery in Europe,<sup>122</sup> in Greece ‘Most midwives (60%) work in public hospitals and public maternity clinics and 20% are employed in private maternity clinics. Only 2% of the midwives are self-employed in an independent free practice. The rest (18%) works in centres for general health care where no deliveries are conducted’.

Those with a midwife degree can exercise the profession as self-employed, on the condition that (a) they have previously practiced for a two-year period in hospitals or another health institution, designated for that purpose, and (b) they have been granted with a midwife license by the Ministry of Health.<sup>123</sup>

With the above convictions, Mrs. Smith can practice as a self-employed midwife in public or private facilities or at private homes, on the condition that she obtains the license and practices in a hospital for 2 years.

**C. If Mrs. Johnson were a Mr. Johnson, as to say a man qualified as a midwife, would that be an impediment to the recognition of his degree? Would that be an impediment to the practice of his profession in the host country?**

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<sup>122</sup>Available in English at [http://www.deloitte.nl/downloads/documents/website\\_deloitte/GZpublVerloskundeinEuropaRapport.pdf](http://www.deloitte.nl/downloads/documents/website_deloitte/GZpublVerloskundeinEuropaRapport.pdf) p.63.

<sup>123</sup> Art. 2 para. 5 of p.d. 351/1989.

The right and the procedure of the midwife degree recognition are in no way different in regard with the sex of the person of interest. P.d. 38/2010 which regulates the recognition of the qualification in Greece clearly provides for both a man qualified as a midwife (“*maieftis*”) and a woman (“*maiea*”).

In regards with any possible impediment to the practice of Mr. Johnson’s profession in Greece, it should be noted that the national regulation of the profession ever since 1989 (p.d. 351/1989) provides the same rights and duties for both men and women equally, without any distinction.

In practice, appointment to a public hospital/facility occurs through a panhellenic competition proclaimed by the competent national body (*ASEP*) without quota regarding the applicant’s sex. However, in reality the percentage of male midwives is significantly lower than that of female ones. According to the aforementioned report, in 2000, out of approximately 2,300 that practiced midwifery, only 89 were male.<sup>124</sup> Respectively, a research made in 2007 by the Career Office of the Midwifery department of the Alexander Technological Educational Institute of Thessaloniki (ATEITH), demonstrated that the absolute majority of graduates were females (98%).<sup>125</sup>

Last but not least, it is worth noting that there is in fact some prejudice against male midwives. It has been reported that in a big public maternity hospital of Athens, male midwives are not allowed in the breastfeeding sections, although they have received just the same training as their female counterparts.<sup>126</sup>

**D. Are there particular health prerequisites in your country, which could impede the actual exercise of the profession?**

There are no health prerequisites for practicing the profession of a midwife. No relevant documentation, supporting the application to gain the professional license is required. This comes as a surprise, considering that a health certificate is required in order to gain access to several other professions bearing a much more remote connection to health, such as hairdresser.<sup>127</sup>

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<sup>124</sup> See above, fn 122, p. 63.

<sup>125</sup> Available in Greek at <http://repository.edulll.gr/edulll/retrieve/4331/1239.pdf>, p.6.

<sup>126</sup> <http://www.tovima.gr/society/article/?aid=371304>

<sup>127</sup> See below Question 5 (D).

## **Case 5 - Hairdressers**

**A. Mrs. Rossi has carried out the profession as a hairdresser for ten years in her country of origin. In order to do so she has obtained the registration at the Roll of artisan businesses. In 2015 she decides to move to your Member State (host country) to expand her professional experience and acquire new techniques for hairstyling and haircutting. Can Mrs. Rossi obtain recognition of her qualification in the host country?**

The national legislation concerning the profession of a hairdresser (*kommotis*) has been recently modified. The Greek government in one (of the numerous) omnibus laws pushing through structural reform in order to comply with the Memoranda of Understanding adopted law 4281/2014<sup>128</sup>. The latter implements measures for the support and development of the Greek economy and abolishes, *inter alia*, p.d. 133/2005<sup>129</sup> which used to regulate the hairdresser profession. In an effort to achieve the modernization of the profession and to align with the European standards, the Greek government regulated the profession anew and revised the conditions for gaining access to the profession.<sup>130</sup>

The new legislation requires for the exercise of the profession the possession of a relevant diploma. Previous practice or tests that prove acquired knowledge are neither a prerequisite nor sufficient for gaining access to the profession. More specifically, law 4281/2014<sup>131</sup> requires a degree (“*diploma or ptychio*”) attesting the completion of a course of secondary education or an equivalent qualification acquired in another state.

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<sup>128</sup> FEK A 160.

<sup>129</sup> FEK A 193.

<sup>130</sup> See also the preamble of Law 4281/2014, available in Greek at <http://www.esos.gr/sites/default/files/articles-legacy-files/komotes.pdf>

<sup>131</sup> Article 239 provides for three possible degrees: a) Degree (*ptychio*) from Technical Vocational School of Secondary Education, specialty "Hairdressing and Hair Dying" or a first cycle degree (*ptychio*) from Technical Vocational Schools, specialty "Hairdressing" or an equivalent qualification acquired in Greece or abroad, b) second cycle degree (*ptychio*) from Technical Vocational Schools, specialty "Hairdressing" or an equivalent qualification acquired in Greece or abroad and c) Diploma form an



Mrs. Rossi has not acquired any degree following the completion of a secondary education course. Since, practice and/or registration at the Roll of artisan businesses are not sufficient for the access to the profession of a hairdresser, Mrs. Rossi cannot gain recognition of her qualification in Greece and consequently cannot practice her profession in Greece.

**B. Mrs. Bianchi has attended some professional educational and training courses, at the end of which she has gained the diploma of professional hairdresser. In 2015 she decides to move to your Member State (host country) to expand her professional experience and to acquire the techniques for hairstyling and haircutting. Can Mrs. Bianchi obtain recognition of her professional qualifications in the host country?**

As already mentioned above, the qualification level for gaining access to the profession of hairdressing is a degree (*“diploma or ptychio”*) attesting the completion of a secondary education course or an equivalent qualification acquired in another state.

Recognition of that qualification in Greece falls under the general system of recognition provided for by p.d. 38/2010 (title III, chapter I) and more specifically under Article 11 (b). Therefore, Mrs. Bianchi can obtain recognition of her diploma as a professional hairdresser. The competent authority to decide upon is EOPPEP.<sup>132</sup>

**C. Are Mrs. Rossi and Mrs. Bianchi required to show knowledge of the official language of the host country in order to obtain the recognition of the professional qualification?**

According to article 52 of p.d. 38/2010, basic knowledge of the Greek language that allows the applicants to practice their profession in Greece is necessary and should be examined by the competent authorities. In the case in question, EOPPEP does not require any documentation that prove the knowledge of the Greek language in the list of supporting documents.<sup>133</sup> However, EOPPEP reserves the right to ask for further supporting documents prior to granting the recognition. Accordingly, a report describing

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Institute of Vocational Training (*IEK*) of post-secondary vocational training, specialty “Hairdresser Hair Technician” or an equivalent qualification acquired in Greece or abroad.

<sup>132</sup> For which see above Question 2 (1).

<sup>133</sup> Available in Greek at <http://www.eoppep.gr/index.php/el/qualification-certificate/equivalences>

the skills and abilities necessary to practice the profession<sup>134</sup> underlines that knowledge of the Greek language is considered a basic, general skill. Hence, even though Mrs. Bianchi is not required to show knowledge of Greek in the first instance, the rule is that the applicant must possess the language skill that will allow him/her to practice the profession.

**D. Are there elements that can render difficult or impede the effective exercise of the profession in the host country (licenses, authorizations, high cost of lease/rent, health requirements, others?)**

As already mentioned, the procedure for gaining access to the hairdressing profession has been facilitated and expedited under the recent amendment of the existing legislation. Still, depending on the type of practice Mrs. Bianchi wishes to exercise, she must overcome certain administrative impediments.

Firstly, prior to obtaining the license to practice, Mrs. Bianchi needs to obtain the recognition of her qualification. For that, she must pay an administrative fee as well as the costs for the official translation of her qualifications. Afterwards, she must apply for the license to practice, for which she must pay for an administrative fee as well as tax stamp duties. She must also sign a sworn declaration that she has not been convicted for any criminal act or any act relevant to the exercise of the profession. Moreover, she must obtain and provide along with the relevant application a health certificate for those working at businesses of sanitary interest. This certificate, delivered by specialized public medical juries, verifies that the holder underwent medical tests and was found not to be suffering from any contagious or other diseases incompatible with his/her employment.<sup>135</sup> Mrs. Bianchi must consequently enroll with the municipality.<sup>136</sup>

If Mrs. Bianchi wishes merely to conduct house-visits to her clients, instead of setting up a salon, she must register at the Social Insurance Organisation of Freelance Professionals (*OAEF*) and keep accounting books, in accordance with the Greek tax laws.

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<sup>134</sup> Available at [http://www.eoppep.gr/images/EP/EP\\_17.pdf](http://www.eoppep.gr/images/EP/EP_17.pdf), p.7.

<sup>135</sup> αρ. Υ1γ/Γ.Π./οικ. 35797, FEK B 1199/11-4-2012, art. 1.

<sup>136</sup> Law 4281/2014 (FEK A 160), art. 240.

If she wishes to set up a salon, apart from the above, Mrs. Bianchi would have to, *inter alia*, a) find, rent or buy a proper space, b) obtain from the Professional Chamber a certificate permitting the use of the distinctive title which she intends to use in her business c) register at OAE d) obtain a certificate of commencing business activity from the competent tax bureau, which of course presupposes the acquisition of a VAT number e) gain a license of establishment and function of a business of sanitary interest. The above procedure will cost Mrs. Bianchi approximately 500,00 euros and may take up a couple months.<sup>137</sup>

### **Case 6 - Care givers, in-home nurses**

**Mrs. Verdi works as a caregiver in a private home. Her daughter Andrea decides to move abroad for professional reasons and she decides to follow her together with her family. Her intention then is to work as a caregiver in a private home in the host country.**

**A. What are the legal-economic conditions that protect Mrs. Verdi in the host country?**

#### ***A1. National labour legislation***

In-home employees, such as care givers and in-home nurses, fall under a special category of workers, under the name of “domestic workers” (*“oikiakoi voithoi”*). Although there is no definition for the latter, it is generally acknowledged that domestic workers are those who provide, under a salaried employment contract, services relating to domestic needs of the employer. The domestic workers could either reside in the house of the employer (*“oikositoi”*) or not.

In-home workers are not protected by the relevant provisions of labour law, unless their profession is regulated by specific provisions, e.g. nurses.<sup>138</sup> In fact, it has been

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<sup>137</sup> <http://www.newsbeast.gr/greece/arthro/680067/pos-na-anoixete-ti-diki-sas-epiheirisi-kommotiriou>

<sup>138</sup> See document 40578/898/02-01-2014 of the Ministry of Labour, Social Insurance and Social Solidarity, available in Greek at <http://www.odigostoupoliti.eu/amivi-ikiakon-ke-ikositon-misthoton-adiakatangelia>

adjudicated by the Greek Supreme Court that the exemption from these rules of labour law does not violate the Constitution.<sup>139</sup>

In detail, the pay and working conditions of domestic workers are regulated by the National General Collective Labour Agreement (E.G.S.S.E.),<sup>140</sup> along with the prescribed legal minimum wage, as defined in par. 3a. sub-paragraph IA.11 of Law 4093/2012<sup>141</sup>. The pay of domestic employees who reside in the home of the employer, however, is not subject to the above thresholds, but depends on the individual agreement they establish with each employer, and in case of absence of such agreement, the "common salary" is due. Therefore, if there is no agreement on the salary, the employer must pay the "common salary", i.e. the salary that is usually paid by other employers for similar services to other workers of the same age who provide services of the same kind in a similar place and time and under the same conditions.<sup>142</sup>

Additionally, in regards with the domestic workers that reside in the house of the employer, because of the specialized nature of the services provided and the special circumstances under which they are provided (within the home environment, under conditions of a relationship of trust and special care for the employee - article 663 of the Greek Civil Code) special provisions for employees' work time limits, work on Sundays, holidays, night, days off for overtime and overtime and the provisions on the external movements do not apply.<sup>143</sup>

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<sup>139</sup> AP 172/93. See also Appeal Court of Athens 2872/96, First Instance Court of Athens 2165/1996, Appeal Court of Athens 4793/1991, 648/1997 and 4793/1991.

<sup>140</sup> Article 1(1) of Law 1876/1990 "Free collective bargaining and other provisions" (FEK A 27) as amended.

<sup>141</sup> FEK A 222.

<sup>142</sup> First Instance Court of Athens 720/2012, 294/2011, Appeal Court of Athens 5241/2010, AP 1123/2007, Appeal Court of Ioannina 237/2005, AP 1292/2004, Appeal Court of Athens 7809/2003, AP 964/1998, Appeal Court of Thessaloniki 1714/1998, First Instance Court of Athens 2165/1996, Appeal Court of Athens 4793/1991.

<sup>143</sup> AP 783/2013, First Instance Court of Athens 720/2012, 294/2011, Appeal Court of Athens 5241/2010, First Instance Court of Athens 362/2008, AP 1955/2007, AP 1292/2004, Appeal Court of Athens 1349/2004, Appeal Court of Athens 7809/2003, AP 964/1998, Appeal Court of Athens 2872/1996, First Instance Court of Athens 2165/1996, AP 172/1993.

On the contrary, the provisions authorizing paid leave apply to domestic workers as well.<sup>144</sup> Domestic workers are also entitled to holiday bonuses,<sup>145</sup> and compensation for the termination of the employment contract<sup>146, 147</sup>.

The termination of an employment contract of a domestic worker is valid only if the conditions of article 5 para. 3 of Law 3198/1955<sup>148</sup> are met, i.e. if (a) it is made in writing, (b) the compensation due has been paid and (c) the employment of the domestic worker has been reported at the National Social Insurance Institute (*I.K.A*) or the domestic worker has been socially insured.<sup>149</sup>

Recently, some legislative efforts have taken place in order to combat illegal practices concerning the obligation to provide social security for workers.<sup>150</sup> Law 4144/2013 regulates the pay and insurance issues of domestic workers through establishing a process of issuing and cashing out a special check, known as "*Ergosimo*". This check is of certain value, which includes the amount of the employee's salary and the amount of the contribution for the social security institution. The procedure of issuing and cashing out the check is mandatory for the remuneration and the withholding of contributions of persons under this regulation.

The "Ergosimo" replaces the compensation of employees in any direct transaction of financial nature. With the cash out of the check, a part of its value is being withheld for

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<sup>144</sup> After the extension of provisions of Extraordinary Law (A N.) 539/1945 to cover the domestic workers with Royal Decree 376/1971 and art. 8(2) of the E.GS.S.E of 26-2-1975. See also art. 3 (16) of Law 4504/1966 (FEK A 57).

<sup>145</sup> In accordance with Article 1 of Law 1082/1980 and article 4(9) of the Common Ministerial Decision 19040/1981 (FEK B 742).

<sup>146</sup> In accordance with article 43 of Law 1836/1989.

<sup>147</sup> First Instance Court of Athens 720/2012, 294/2011, Appeal Court of Athens 5241/2010, AP 1955/2007, AP 1397/2006, Appeal Court of Athens 1349/2004, Appeal Court of Athens 7809/2003, Appeal Court of Pireus 667/2001, Appeal Court of Athens 2872/1996.

<sup>148</sup> FEK A 98.

<sup>149</sup> First Instance Court of Athens 720/2012, 294/2011, Appeal Court of Athens 5241/2010, AP 1397/2006, Appeal Court of Athens 1349/2004, Appeal Court of Athens 7809/2003, Appeal Court of Athens 5258/2001, Appeal Court of Pireus 667/2001, Appeal Court of Athens 2872/1996.

<sup>150</sup> Article 74 of Law 4144/2013 (FEK A 88).

social security contributions and is provided to the employee's social security carrier (*IKA-OGA*).<sup>151</sup>

### ***A2. The ILO Convention***

In 2011 the International Labour Organization adopted the Convention concerning decent work for domestic workers in an effort to set minimum labour standards for domestic workers and help professionalize domestic work worldwide (Convention No 189). Although Greece has signed the above Convention, it has not ratified it yet<sup>152</sup> nor does it seem willing to do so in the near future.<sup>153</sup>

### ***A3. The practical conditions***

The profession of in-home employees in Greece is often underrated. There is no union of in-home workers and their rights are often violated due to a variety of reasons.

Firstly, the home as a work environment leads to difficulties in monitoring by inspectors, who face serious legal and administrative obstacles, due to the protection of home privacy. For example, examination of the domestic work environment by the competent authorities for identification of the working conditions of domestic workers is not allowed unless there is a court order.<sup>154</sup>

Secondly, the employment contracts under which the in-home workers provide their services are rarely put in writing. The provisions of para. 2 of article 80 of Law 3386/05<sup>155</sup> provide that migrant domestic workers should sign with the employer an employment contract, which will indicate the type of employment and the remuneration of the employee. Also, p.d. 156/1994,<sup>156</sup> which applies to every employee connected with his employer by a contract or employment relationship, ensures disclosure to the

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<sup>151</sup> [http://www.eaed.gr/index.php?option=com\\_content&view=article&id=6710%3A2014-03-06-12-25-05&catid=244%3A-2009&Itemid=285&lang=el](http://www.eaed.gr/index.php?option=com_content&view=article&id=6710%3A2014-03-06-12-25-05&catid=244%3A-2009&Itemid=285&lang=el)

<sup>152</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102658](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102658)

<sup>153</sup> Topali, P. *The domestic workers Convention and its importance for Member States of the European Union*, Epitheorisi Koinonikon Ereunon, Issue 142, 2014, p. 3.

<sup>154</sup> *Ibid*, p. 6.

<sup>155</sup> FEK A 212.

<sup>156</sup> Art. 1(2) of p.d. 156/1994 (FEK A 102).

worker, in writing and in good time, of the work conditions (e.g. place of work, leave, remuneration, rest etc.). However, especially in cases of employment of domestic workers under a salaried contract of employment, the presentation of an employment contract is not required.<sup>157</sup>

Thirdly, in view of the Greek financial crisis, the domestic workers' pay seems to be decreasing, while significant reductions in allowances are being made as well.

Fourthly, surveys show that internal domestic workers work much more than external ones, reaching a weekly basis of 85.9 hours<sup>158</sup> as opposed to the 40 hours/week that a worker employed under private law is allowed to work.

On the other hand, recently there have been efforts to increase the registration of domestic workers, through the system of coupon-checks ("*Ergosimo*") and direct or mediated payments to employment agencies.

In conclusion, especially taking into account the large number of migrants in Greece, the regulation of the profession of domestic care-givers and employees in general is considered insufficient.

**B. Are there rules in the host country that regulate the eventual professional qualification of this type of activity, establishing prerequisites and suitability?**

There are no specific regulations or prerequisites for the practice of the profession of care giver in Greece. However, there are certain prerequisites for exercising the nursing profession. More specifically, in order to be an in-home nurse, one would have to be granted with a nursing license and get registered at the Exclusive Nurses Records of the municipality she/he wishes to practice.

Firstly, as far as the license is concerned, one must possess a qualification in nursing awarded by: a) University Nursing Departments b) Technological Educational Institutes Nursing Departments c) Former higher schools of sister nurses visiting sister nurses, falling under the competence of the Ministry of Health, Welfare and Social Security and the Centre for Advanced Vocational and Professional Training (Kentro Anoteris

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<sup>157</sup> Art 6(1) of Law 3536/07 (FEK A 42).

<sup>158</sup> Topali, fn 153, p.12.

Technologikis & Epangelmatikis Ekpaidefsis - KATEE) d) equivalent schools to those described in a, b and c of other countries.<sup>159</sup>

The recognition of the above qualifications acquired in a Member State takes place under the provisions of p.d. 38/2010.<sup>160</sup>

After obtaining the license to exercise the profession of a nurse, one must register at the Exclusive Nurses Records. To achieve that, the person interested must submit along with the license, work permit from the National Social Insurance Institute (IKA), a copy of the degree/qualification, certification of a personal social security number, a copy of the criminal record, family status certificate, certified copy of ID or passport and residence leave for non-Greeks, financial statement note for the latest fiscal year, IKA Certificate indicating the days of work (IKA stamps), a copy of the relevant page of the IKA booklet and two photos. Applicants of foreign nationality are also required to provide a certificate of knowledge of Greek, at least for level A2 for specific professional purposes, in order to certify their competence in understanding and use of the Greek language. Last but not least, holders of degrees acquired abroad must submit equivalence and correspondence of their qualification from *D.O.A.TA.P.*<sup>161</sup> or formerly *Dikatsa* or formerly *ITE* (Idryma Technologias & Ereuvnas). Degrees issued by institutions of EU member-states require recognition from SAEP, or equivalence from EOPPEP.<sup>162</sup>

Lastly, it is worth mentioning, that practicing of nursing without the relevant license is a criminal offence according to article 458 of the Greek Penal Code.<sup>163</sup>

**C. Are there non-legal barriers (i.e. linguistic, presence of a public service which replaces the examined professional figure, necessity of a specific training, others) which can impede the exercise of the professional activity in the host country?**

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<sup>159</sup> Art. 5(2A) of Law 1579/1985 (FEK A 217).

<sup>160</sup> Art. 31.

<sup>161</sup> Hellenic NARIC.

<sup>162</sup> [http://www.odigostoupoliti.eu/wp-content/uploads/2013/08/apokleistikes\\_nosokomes-aitisi-2016.pdf](http://www.odigostoupoliti.eu/wp-content/uploads/2013/08/apokleistikes_nosokomes-aitisi-2016.pdf)

<sup>163</sup> Art. 31(2) of Law 3252/2004 (FEK A 132).



As already described above, the procedure for gaining access to the profession of domestic employee differs in regards with whether Mrs. Verdi wishes to be a care giver or an in-home nurse. Access to the profession of care giver is open, in the meaning that there are no legal – or any other – requirements to become one, but instead is based largely upon the individual criteria that the employer may require. Knowledge of the language for example is usually -but not always- a prerequisite. These criteria depend on the type of care (elderly, disabled people, children) that Mrs. Verdi would be required to provide. Taking into account the large number of immigrants in Greece, many women work as care givers even despite the linguistic barrier.

On the other hand, exercising nursing care in private homes – or elsewhere – is conditioned upon certain specific requirements, training and education. Hence, exercising the profession in Greece is impeded from legal and administrative obstacles that work as safety thresholds.

### **Case 7 – Tourist guides**

**Mr. Giallo has been a tourist guide in a Member State of the EU for many years. Tired of the same routine, he decides to exercise his professional activity in a different environment and he moves to your Member State.**

#### **A. Under which conditions can Mr. Giallo exercise his profession as a tourist guide in the host country?**

The profession of tourist guide (“*xenagos*”) is regulated in Greece by law 710/1977.<sup>164</sup> Law 710/1977 was amended by law 4093/2012, known as the third Memorandum of Understanding, on the approval of the medium term of the fiscal strategy for 2013-2016 and the adoption of emergency measures for the implementation of the 2<sup>nd</sup> Memorandum of Understanding, law 4046/2012.

According to article 2 of law 710/1977, as amended, the right to exercise the profession of tourist guide is provided for, *inter alia*, Greek nationals and nationals of Member - States who hold a degree from the Tourist Guides School of the Organisation of Tourism Education and Training (OTEK) or a relevant qualification that has been

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<sup>164</sup> FEK A 283.

obtained in another Member - State and has been recognized by SAEP, in accordance with the procedures of Title III of p.d 38/2010.

The above mentioned amending law modified the conditions under which a licence to practice is issued in conformity with the provisions of Directive 2005/36 on the recognition of professional qualifications. More specifically, it recognizes the right to access and exercise the tourist guide profession, not only to those that hold the relevant degree from the Tourist Guides Schools of OTEK, but also to Member States nationals that hold relevant qualifications which have been acquired in another Member State and have been recognized by SAEP.<sup>165</sup>

Recognition of such qualification takes place through the general recognition system (art.11 c of p.d. 38/2010). Compensation measures imposed under article 14 of said p.d. could be either a training period or an aptitude test, depending on the applicant's choice. According to ministerial decision 889/2011, the training would take place in a Tourist Guide School of OTEK and the certificate for the completion of such training should be submitted at SAEP in order to gain the final recognition of the applicant's qualification. The aptitude test respectively would take place in the Tourist Guide Schools of OTEK.<sup>166</sup>

However, the above Tourist Guide Schools in Greece remain closed since 2010, due to financial difficulties of the relevant body, result of budgetary and staff cuts. What is more, OTEK has been abolished by Law 4109/2013<sup>167</sup> and the Tourist Guide Schools have been incorporated, as peripheral agencies, to the Ministry of Tourism. Hence, it has been practically impossible to implement a SAEP decision ordering compensation measures and subsequently to gain recognition.

Thus, the Panhellenic Tourist Guide Association lodged a complaint to the European Commission against Greece for violating Directive 2005/36 since 2010. According to the complaint, SAEP decisions in 2010 and 2011 imposed on certain foreign tourist guides compensatory measures in Greece. The Ministry of Tourism is responsible for

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<sup>165</sup> See preamble of Law 4093/2012, p. 49, available in Greek at [http://www.ydmed.gov.gr/wp-content/uploads/2012/12/19\\_n4093\\_01\\_1\\_aitiologiki\\_ekthesi.pdf](http://www.ydmed.gov.gr/wp-content/uploads/2012/12/19_n4093_01_1_aitiologiki_ekthesi.pdf)

<sup>166</sup> FEK B 2047.

<sup>167</sup> FEK A 16.

the implementation of aptitude tests or practical training of foreign tourist guides. Even though applicants from Member States had chosen to undergo internships in archaeological sites, museums and monuments in Greece, the Greek government and specifically the Ministry of Tourism deprives EU citizens from this possibility, since it keeps the Tourist Guide Schools in Greece closed.<sup>168</sup> The problem has been heightened and brought into the attention of the Greek Ombudsman (*Sinigoros tou Politi*), who attempted to mediate between the complainants and the Ministry of Tourism, issuing a recommendation in December 2013.<sup>169</sup>

To make matters worse, SAEP has been dormant since the latest national elections.<sup>170</sup>

Indeed, the statistics drawn from the recognition decisions taken in Greece for the tourist guide profession show that out of 24 decisions taken, 1 has been negative and 23 are still pending (10 undergoing adaptation period, 1 on appeal and 12 being examined).<sup>171</sup>

The Greek government finally gave a solution with ministerial decision 38174/IA/26-3-2014<sup>172</sup> ordering that the training will take place under the auspices of any legally functioning tourist agency and the aptitude test will be given by a committee directly established by a ministerial decision<sup>173</sup>.

In view of all the above, the legal, financial and administrative conditions in Greece render the exercise of the profession by Mr. Giallo rather difficult, if not impossible, even if he qualifies to gain access to the profession in Greece.

It is also worth mentioning that the European Court has found in the past that Greece has failed to fulfil its obligations under article 56 of the PSEU Treaty concerning the tourist guide profession, because it foresaw that tourist guides could only work under an

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<sup>168</sup> [http://kataggeilte.blogspot.com/2014/02/blog-post\\_6333.html](http://kataggeilte.blogspot.com/2014/02/blog-post_6333.html)  
<http://traveldailynews.gr/news/article/57089>

<sup>169</sup> <http://www.synigoros.gr/resources/docs/429850.pdf>

<sup>170</sup> See above Question 2 (2).

<sup>171</sup> [http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id\\_regprof=7156&tab=stat1](http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id_regprof=7156&tab=stat1)

<sup>172</sup> FEK B 751.

<sup>173</sup> 6ΕΞ0465ΦΘΘ-OKK/8-4-2015, protocol number 7106, available in Greek at <https://diavgeia.gov.gr>

employment contract and not on an independent basis;<sup>174</sup> this requirement has been removed ever since.

**B. Mr. Giallo does not intent to work as a tourist guide in a specific place of the host country, but move from place regularly. Is this modality of exercising the profession of tourist guide allowed in the host country? (Please see the pre-infringement procedure against Italy of the EU Commission (EU PILOT No 4277/12/MARK), on the basis of a breach of Directive 2006/123/EC. The rule at stake was the stipulation under Italian law that accreditation to exercise the profession of tourist guide is valid only in the region of issue).**

The above mentioned amending law 4093/2012 revoked the provision of law 710/1977 that set geographical limits to the exercise of the profession. More specifically, (revoked) para. 3 of article 1 used to designate geographic limitations, in the sense that the license could be valid either for the whole country or for a designated part of it, depending on the training of the tourist guide in question and the needs of the tourism industry. However, this provision is not in force today, since law 4093/2012 provided the liberalization of, *inter alia*,<sup>175</sup> the tourist guide profession. Hence, 10 days after declaring the commencement of the profession, the latter is practiced freely, i.e. without any geographic – or any other – limitation.<sup>176</sup>

**C. The irrepressible restlessness of Mr. Giallo leads him, after a couple of months, to the decision of exercising the professional activity of ‘tour leader/tour manager’ and no longer to be a tourist guide. Is it a possible choice and a legitimate activity in the host country?**

There is no provision in Greek legislation of the notion of “tour leader/tour manager”. The relevant license titles the possessor as a “tourist guide”. No differentiation or provision for such profession exists in Greek law. Even though the professional activity of “tour leader/tour manager” is not specifically regulated, Mr. Giallo could exercise such professional activity as a tourist guide.

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<sup>174</sup> *Commission v. Hellenic Republic*, C-198/89, EU:C:1991:79.

<sup>175</sup> <http://www.protothema.gr/politics/article/171618/sarotiko-anoigma-136-kleiston-epaggelmaton>

<sup>176</sup> Article 3(1) of Law 710/1977, as amended.

**D. If Mr. Giallo had only been a tourist guide for one year in a Member State where this profession is not regulated, would he be able to work as a tourist guide in your country?**

Article 13(2) of Directive 2005/36 (and p.d. 38/2010) establishes that a two-year full-time practice of the profession can lead to recognition and access to that profession in another Member State which does not regulate that profession. However, in reality, SAEP has been very strict with the requirement of 2-year prior exercise in another Member State, and requires a high level of proof, failing which it rejects the application.<sup>177</sup>

This obstacle may be overcome through the novel procedure of recognition of professional equivalence provided for by Law 4093/2012<sup>178</sup> amending p.d. 38/2010. This parallel procedure applies to all Member States citizens who have acquired a degree from a Member State higher education institution, but do not meet the criteria to recognise their professional qualifications. Hence, practical experience is not a requirement for this type of recognition.

Thus, Mr. Giallo may still gain access to the profession if he gains recognition of professional equivalence, under article 2 (3) of p.d. 38/2010, as amended.

**Question 14 – Trends, Future Developments and Policy Recommendations**

**A. What are the trends in terms of future policy directions in your country as regards recognition of foreign professional qualifications? Do you see any disadvantage or, conversely, a positive angle in the current development?**

Recognition of foreign professional qualifications has never worked in Greece, but for few clear-cut cases. All the other cases are being lost between the questions of what is a ‘regulated profession’, which professional experience should be taken into account and how, what documents should be submitted to the competent body (SAEP) and, of course, the procedural meanders of Greek bureaucracy. Although some of these issues have been addressed by the legislature under the pressure of the Troika of international lenders (most notably: the extension of the system of recognition to also cover non-

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<sup>177</sup> See above under Question 5.

<sup>178</sup> Article 16 of Law 4093/2012 (FEK A 222).

regulated professions by Law 4093/12), in practice things have not got any better, quite to the contrary.

The current left-wing government is ideologically opposed to any development which would open-up Greek Universities and their alumni to external competition; this only reinforces the resistance by local professional bodies and associations to ‘intrusions’ by foreign (or foreign educated and/or trained) professionals. The latest trick of the above ‘system’ is the protracted delay in nominating the members of the SAEP, thus effectively blocking any recognition effort.

Given that SAEP is automatically dissolved each time that the participating Ministries change names and competencies, and that Ministries do change every time there is a national election (in the crisis context this happens in an average of once every 1,5 year!) but also at the occasion of cabinet reshufflings, it becomes evident that the current stalemate may go on for quite some time. A way around this problem (but not other problems which will certainly be ‘invented’ once this one is resolved) would be to modify SAEP’s composition in a way as to comprise only appointees by the very Minister of Education: his lack of dependency on other Ministries would also mean his sole responsibility in case of non- or delayed appointment.

#### **B. Which policy recommendations may be given for the EU’s future regulation of the field?**

In Greece the recognition of professional qualifications has, by and large, remained more of a legal fiction than an actual reality. Difficulties at the procedural level have impeded actual recognition from happening; hence, any substantive difficulties stemming from such recognition are difficult to identify on the basis of the Greek experience. Some tips concerning the streamlining and the rationalisation of the procedure may be put forward.

Since the application of Directive 2005/36 does rely on the existence of a committee of national representatives (Article 58), this committee could/should set and monitor quantitative standards for the national authorities processing recognition applications. On the basis of experience gained so far, there could be some upper and lower indicators concerning the number of cases that should be dealt within a given time-frame, the number of positive and negative decisions that are likely to be issued etc; any

considerable departure from the above should be specifically justified by national authorities.

Another means for making the application of Directive 2005/36 more effective would be to follow the Services Directive logic in relation to tacit approval: after the lapse of the prescribed three or four months in which the competent bodies have to respond, their silence would mean the unconditional recognition of equivalence. This would, in turn, mean that a clear check-list of all the required documents and pieces would have to be communicated to applicants and that the completeness of every application would be checked at the very moment of its submission.

A third way to curb arbitrariness and delays would be for the Commission to set up a body (or extend the mandate of Article 58 committee) to deal in a unitary and fast way with all the appeals against the decisions of national authorities.

**C. Which priorities could be suggested to the Commission with regard to initiation of cases regarding possible infringements in your country?**

Greece's record in assuring recognition of professional qualifications is so poor, despite the long series of CJEU cases against it (in the form of direct actions or preliminary rulings) discussed above, that it is indicative of very strong resistance from local organised interests against EU (trained) professionals. Clearly there are more than one areas of resistance: the non-operation of SAEP, the non-recognition of non-regulated professions, the non-organisation of aptitude tests of traineeship adaptation periods, the non-registration of recognition holders by the relevant professional bodies, and the list may go on... If one issue had to receive priority attention by the Commission, that would certainly be SAEP's functioning and effectiveness.

## Annexes

### I. Significant national legislation

- Presidential Decree 38/2010 (FEK A 78).
- Law 3919/2011, as amended (FEK A32).
- Presidential Decree 152/2000 (FEK A 130).
- Lawyers Code - Law 4194/2013 (FEK A208).
- Presidential Decree 122/2010 (FEK A 200).
- Presidential Decree 258/1987 (FEK A 125).
- Presidential Decree 351/1989 (FEK A 159).
- Law 4281/2014 (FEK A 160).
- Law 4144/2013 (FEK A 88).
- Presidential Decree 156/1994 (FEK A 102).
- Law 3386/2005 (FEK A 212).
- Law 710/1977 (FEK A 283).
- Law 4093/2012 (FEK A 222).

### II. Significant case law

#### ✓ CJEU Jurisprudence

- *Commission v Greece (Directive 2005/36)*, C-465/08, EU:C:2009:424.
- *Peros v TEE*, C-141/04, EU:C:2005:472
- *Maria Aslanidou v Ypourgos Ygias & Pronoias*, C-142/04, EU:C:2005:473.
- *Beuttenmüller v Land Baden-Württemberg*, C-102/02, EU:C:2004:264



- Joined Cases *Kastrinaki v Panepistimiako Geniko Nosokomeio Thessalonikis*, C-180/08 and 186/08, EU:C:2008:627.
- *Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, C-313/01, EU:C:2003:612.
- *Commission v. Hellenic Republic*, C-198/89, EU:C:1991:79.

✓ **Greek Conseil d' Etat**

- CE 249/2009, *NOMOS* 480422.
- CE 4881/2012, *NOMOS* 610500.
- CE 4882/2012, *NOMOS* 610551.
- CE 2636/2011, *NOMOS* 602295.
- CE 3741/2009, *NOMOS* 509121.
- CE 853/2010, *NOMOS* 517174.
- CE 4161/2011, *NOMOS* 581372.
- CE 1558/2008, *NOMOS* 468946.
- CE 225/2011, *NOMOS* 539238.
- CE (full chamber) 2770/2011, *NoB* (2011) 2209, *EDDDD* (2011) 972, *ARM* (2013) 303, *PeirNom* (2011) 395.
- CE (full chamber) 2771/2011, *NoB* (2011) 2216 = *EDDDD* (2011) 980.
- CE 3900/2012, *NOMOS* 588524.
- CE 2154/2014, *NOMOS* 634621.
- CE 339/2012, *NOMOS* 589848.

✓ **Greek Supreme Court (civil)**

- AP 55/2011, *ChrID* (2011) 702.
- AP 1123/2007, *NOMOS* 440077, *EpithErg* 2009/298.
- AP 1292/2004, *NOMOS* 364374.
- AP 964/1998, *DEN*/1998 (1035), *EpithErg* 2000/641.

- AP 783/2013, *NOMOS* 627310.
- AP 1955/2007, *NOMOS* 443329.
- AP 1292/2004, *NOMOS* 364374.
- AP 172/1993, *DEN/1993* (650), *NoB/1994* (192)
- AP 1397/2006, *NOMOS* 427686.

### **III. Bibliography**

- Th. Moutos and L. Pechlivanos ‘The Democratization of Rent Seeking in Greece’, CESifo WP n. 4331/2013, available at <https://ideas.repec.org/p/ces/ceswps/4331.html>.
- P. Evangelopoulos ‘Rent Seeking in the Greek Economic Drama’ (2012) *The Independent Review*, available at <http://www.independent.org/publications/tir/article.asp?a=893>.
- Topali, P. *The domestic workers Convention and its importance for Member States of the European Union*, *Epitheorisi Koinonikon Ereunon*, Issue 142, 2014, p. 3.

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**BEUCITIZEN**  
BARRIERS TOWARDS EU CITIZENSHIP

Deliverable 5.3: The Barriers that Professionals Face in Gaining Access to Other Member  
States – Country Report for

# The Netherlands

**Prof. dr. S. A. de Vries**

Utrecht University  
s.a.devries@uu.nl

**T.J. Binder**

Utrecht University  
t.j.binder@uu.nl

## Table of contents

1.	Legal Basis and Set-Up	p. 2
2.	Authorities	p. 4
3.	Administrative Process	p. 5
4.	Case Law	p. 6
5.	IMI and E-Government	p. 8
6.	Assisting Bodies/Associations/Unions	p. 9
7.	Further Barriers	p. 11
8.	Informal Barriers	p. 13
9.	Evaluation Studies	p. 14
10.	Main Issues to be addressed	p. 15
11.	Good Practices	p. 16
12.	Effectiveness and Organisation	p. 16
13.	Sectoral Case Studies	p. 17
	Case 1. Lawyers	p. 17
	Case 2. Lawyers	p. 19
	Case 3. Lawyers	p. 22
	Case 4. Midwives	p. 23
	Case 5. Hairdressers	p. 24
	Case 6. Care givers, in-home nurses	p. 25
	Case 7. Tourist guides	p. 27
14.	Trends, Future Developments and Policy Recommendations	p. 28
15.	Annexes	p. 29

## Question 1 – Legal Basis and Set-Up

### What is the legal basis for the set-up of regulated professions in your country?

Historically speaking, the Dutch legal system has never provided for a general act governing the whole of the body of the regulated professions. In substantive terms, the adoption of the Professional Qualifications Directive (2005/36/EC) did not change this.

Indeed, the Dutch Minister for Education, Culture and Science (*Minister van Onderwijs, Cultuur en Wetenschap*) has adopted a regulation providing for a list of professions that are regulated for reasons of public health and public security.<sup>1</sup> However, this regulation reflects but a small portion of all regulated professions. So much becomes clear when consulting the regulated professions database of the European Commission, which contains 144 professions that are regulated in the Netherlands.<sup>2</sup>

Instead, the legal basis for the set-up of regulated professions consists of wide range of specific laws for the different professions. The Act of Advocates (*Advocatenwet*), for instance, regulates the profession of lawyers, while the Healthcare Professionals Act (*Wet op de beroepen in de individuele gezondheidszorg*) regulates the profession of, *inter alia*, midwives.

### What is the legal basis for the recognition of professional qualifications acquired in another Member State or third countries?

In the Netherlands, the Professional Qualifications Directive (2005/36/EC) was implemented by the General Act on the Recognition of EC-Professional Qualifications (*Algemene Wet Erkenning EG-beroepskwalificaties*, hereafter: General Act) in 2007.<sup>3</sup> The General Act was amended in 2009, 2011 and 2013. Notably, a fourth proposed amendment was accepted by the First Chamber on 1 December 2015.<sup>4</sup> This amendment seeks to adapt the General Act to some substantive additions

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<sup>1</sup> See Regulation establishing list of regulated professions (*Regeling vaststelling lijst gereguleerde beroepen*) <[http://wetten.overheid.nl/BWBR0023396/geldigheidsdatum\\_08-12-2015](http://wetten.overheid.nl/BWBR0023396/geldigheidsdatum_08-12-2015)> accessed 8 December 2015.

<sup>2</sup> See regulated professions database <[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm)> accessed 8 December 2015.

<sup>3</sup> See bEUcitizen Deliverable 5.2, p. 6.

<sup>4</sup> See accepted proposal for amendment <[https://www.eerstekamer.nl/behandeling/20151015/gewijzigd\\_voorstel\\_van\\_wet](https://www.eerstekamer.nl/behandeling/20151015/gewijzigd_voorstel_van_wet)> accessed on 8 December 2015.

Directive 2013/55/EU made to the Professional Qualifications Directive. Its provisions relate to, inter alia, the European Professional Card.

The Dutch legislature deemed this method of implementation “most optimal” in light of the aforementioned multiform character of the existing legal basis for the set-up of regulated professions.<sup>5</sup> Indeed, a practical virtue of the selected method is that it eludes the need to amend all existing acts governing the regulated professions.

The Ministry of Education, Culture and Science is responsible for the coordination of the system of recognition of professional qualifications. More specific, the responsibility for the recognition of professional qualifications is divided among the different ministries entrusted with the regulation of professions under Dutch law. Health care professions, for instance, fall under the responsibility of the *Ministerie van Gezondheidszorg, Welzijn & Sport* (Ministry of Health, Welfare and Sports), whereas the qualifications for policemen are regulated by the *Ministerie van Binnenlandse Zaken en Koninkrijksrelaties* (Ministry of the Interior and Kingdom Relations). The Ministries are also granted the power to set more detailed rules and to delegate the duties and competences conferred upon them under Articles 33 and 36 of the General Act. As a result, profession-specific regulations have been adopted, including specific rules for various categories of professions, ranging from lawyers to inland navigators.<sup>6</sup> As of December 2015, 21 profession-specific regulations have been adopted under the powers delegated by the General Act.<sup>7</sup> Notable examples are the Regulation recognition EC professional qualifications advocacy (*Regeling erkenning EG-beroepskwalificaties advocatuur*) and the Regulation recognition EC professional qualifications individual healthcare (*Regeling erkenning EG-beroepskwalificaties beroepen in de individuele gezondheidszorg*).

Furthermore, the NUFFIC (Netherlands University Foundation for International Cooperation) and Colo (Centraal Orgaan Landelijke Opleidingsorganen) are appointed as contact points within the meaning of Article 57 of the Professional Qualifications Directive (2005/36/EC). The website of NUFFIC provides detailed information in Dutch and English, including flowcharts for prospective mobile workers and the way in which the Netherlands evaluates professional qualifications obtained abroad. Whilst the NUFFIC is responsible as overall contact point in the Netherlands they also

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<sup>5</sup> See Explanatory Memoranda, Second Chamber, session 2006–2007, 31 059, no. 3  
<<http://www.recht.nl/doc/kst31059-3.pdf>> accessed 9 December 2015.

<sup>6</sup> See bEUcitizen Deliverable 5.2, p. 7.

<sup>7</sup> See list of regulations adopted under the General Act  
<[http://wetten.overheid.nl/BWBR0023066/geldigheidsdatum\\_09-12-2015/informatie](http://wetten.overheid.nl/BWBR0023066/geldigheidsdatum_09-12-2015/informatie)> accessed 9 December 2015.

cooperate with the SBB, the Foundation for Cooperation on Vocational Education, Training and the Labour Market. SBB is the National Reference Point (NRP) in the Netherlands, the national contact point for information on vocational education in European countries.<sup>8</sup> Moreover, a cooperation between NUFFIC and SBB has resulted in the IDW (Information Centre for Credential Evaluation), an institution assisting foreign workers with the verification of their credentials.<sup>9</sup>

## Question 2 – Authorities

**What is/are the relevant authority/authorities in charge of the administration of regulated professions in your country?**

As mentioned above, the responsibility for the recognition of professional qualifications is divided among the different ministries entrusted with the regulation of professions under Dutch law. In turn, these ministries have charged different authorities with the competence to administrate the specific regulated professions. A list containing the responsible ministries and competent authorities for each regulated profession is annexed to this questionnaire.<sup>10</sup>

**Is the same authority also in charge of the recognition of professional qualifications that have been attained in another Member State?**

In the Netherlands, the authority in charge of the administration of regulated professions is also in charge of the recognition of professional qualifications that have been attained in another Member State. Notable examples are the Central Information desk Healthcare Professions (*Centraal Informatiepunt Beroepen Gezondheidszorg*, short: CIBG) and the Dutch Order of Advocates (*Nederlandse Orde van Advocaten*, short: NOvA).

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<sup>8</sup> See bEUcitizen Deliverable 5.2, p. 8.

<sup>9</sup> See < <http://www.idw.nl/start.html> > accessed 31 December 2015.

<sup>10</sup> See List of competent authorities for the regulated professions, as presented in the National Plan of Action Regulated Professions (*Lijst van bevoegde autoriteiten voor de gereguleerde beroepen, zoals weergegeven in het Nationaal actieplan gereguleerde beroepen*) <<https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/jet-bussemaker/documenten/publicaties/2015/10/05/lijs-t-van-bevoegde-autoriteiten-voor-de-gereguleerde-beroepen-zoals-weergegeven-in-het-nationaal-actieplan-gereguleerde-beroepen>> accessed 9 December 2015.

### Question 3 – Administrative Process

**How is the administrative process set up in practice, when a foreign professional wants to have his/her professional qualifications recognised in your country? Is there a possibility to complain/appeal about a decision? Please specify which authorities are involved in the processes.**

NUFFIC provides for a detailed flowchart on the process of professional recognition, which is annexed to this questionnaire.<sup>11</sup> Firstly, the flowchart reiterates some circumstances under which the Professional Qualifications Directive (2005/36/EC) is not applicable (e.g. when a certain profession is not at all regulated in another Member State). Secondly, it indicates the principle of automatic recognition, applicable to the professions of medical doctor, nurse, dentist, veterinary surgeon, midwife, pharmacist and or architect.<sup>12</sup> Finally, the flowchart shows that, save for those circumstances, the programme, by which the foreign professional qualifications are obtained, will be compared to the programme required in the Netherlands for practising the profession.

A list of competent authorities for each regulated profession was referred to above, and is annexed to this questionnaire. A common characteristic to all these bodies is that they constitute administrative authorities within the meaning of the General Administrative Law Act (*Algemene wet bestuursrecht*, hereafter GALA).<sup>13</sup> As a result, substantive administrative law is applicable to the decisions made by these competent authorities. Therefore, should the competent authority rule unfavourably on the compatibility of the foreign programme with the programme required for practicing a specific profession in the Netherlands (in other words, should the recognition of professional qualifications be denied), subsequent actions can be taken.

Firstly, depending on the relevant competent authority, either objection can be made (*bezwaar*) or an administrative appeal can be lodged (*administratief beroep*). Making objection means “making use of a statutorily conferred power to seek redress against an order from the administrative authority which made the order”.<sup>14</sup> Lodging administrative appeal means “making use of a statutorily conferred power to seek redress against an order from an administrative authority other than the

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<sup>11</sup> See flowchart < <https://www.epnuffic.nl/en/diploma-recognition/recognition-of-your-profession-in-the-netherlands> > accessed 10 December 2015.

<sup>12</sup> Cf. Article 21 Professional Qualifications Directive (2005/36/EC).

<sup>13</sup> See GALA <<https://www.rijksoverheid.nl/documenten/besluiten/2006/06/21/engelse-tekst-awb>> accessed 10 December 2015.

<sup>14</sup> Art. 1:5(1) GALA.



one which made the order".<sup>15</sup> For instance, objection can be made to a decision by the CIBG, the competent authority to recognize qualifications in many healthcare professions, which will be reviewed by the Ministry of Public Health, Welfare and Sports (*Ministerie van Volksgezondheid, Welzijn en Sport*).<sup>16</sup>

Secondly and subsequently, should the decision on an objection or administrative appeal still be unfavourable, an appeal can be lodged to an administrative court.<sup>17</sup> It should be noted that making an objection or lodging an administrative appeal is a precondition to judicial review.<sup>18</sup> Ultimately, the judgment by the administrative court can be reviewed by the Administrative law department of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*).

#### Question 4 – Case Law

**Is there case law in your national legal system, which has dealt with the issue of recognition of foreign professional qualifications? If so, please briefly indicate the most important rulings and their possible consequences for similar cases in the future.**

*District Court Oost-Nederland, 15 January 2013, ECLI:NL:RBONE:2013:BY9269:*

A German surgical assistant took up employment at the Dutch UMC St. Radboud hospital. According to the hospital, their contract of employment contained a suspensive condition requiring that the German surgical assistant was to provide proof of recognition of her degree as *Fachkrankenschwester für den Operationsdienst*, within 6 months of employment. As the surgical assistant failed to comply with that condition, UMC St. Radboud terminated her contract. According to the District Court, such suspensive condition cannot be invoked, as the General Act does not permit for such a proof of recognition to be required. Moreover, such condition is incompatible with the Dutch legal system for dismissals. As the termination was unjustified, the District Court ordered UMC St. Radboud to continue paying the surgical assistant's salary.

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<sup>15</sup> Art. 1:5(2) GALA.

<sup>16</sup> See

<<https://www.bigregister.nl/en/registration/withaforeigndiploma/objectionsandapplicationsforreview/>> accessed 10 December 2015.

<sup>17</sup> Article 1:5(3) GALA.

<sup>18</sup> Article 7:1(1)(a) GALA.

*Cbb, 21 March 2013, ECLI:NL:CBB:2013:BZ7802:*

A request for registration in the register for architects has been rejected by the competent authority (*Bureau Architectenregister*). The applicant had obtained a bachelors degree in architecture at the Polytechnic University of Minsk and a masters degree in 'housing and urbanism' at the Architectural Association School of Architecture in London. Based on the latter degree, the applicant requested to be registered as a city planner (*stedenbouwkundige*) in the register for architects. However, the profession of city planner is not regulated in the UK and the programme in 'housing and urbanism' is not considered a regulated education. Therefore, applicants professional qualifications were to be evaluated on the basis of the experience requirement in Article 6, paragraph 2 of the General Act. The court ruled that the competent authority had rightfully established that this requirement had not been satisfied. Thus, the request for registration on basis of recognition of professional qualifications was rightfully denied.

*ABRVs, 3 September 2014, ECLI:NL:RVS:2014:3307:*

By decision of 3 January 2013, the Minister of Public Health, Welfare and Sports (*Volksgesondheid, Welzijn en Sport*) has rightfully rejected a request for a statement of proficiency or recognition of professional qualification and registration in the BIG-register, made by a psychotherapist. The District Court had previously held that the applicant was not able to provide proof of the fact that she successfully completed her education as psychotherapist. Accordingly, Department of Administrative law of the Council of State confirmed the District Court's finding that the Minister rightfully decided that the applicant did not meet the requirements for recognition of her professional qualifications.

*District Court Arnhem, 6 June 2010, ECLI:NL:RBARN:2010:BM6837:*

Applicant has the Belgium nationality. Applicant seeks to establish herself in the Netherlands and seeks employment as a kindergarten teacher.

The profession of 'kindergarten education' is regulated in Belgium. The profession of 'class teacher elementary education' is regulated in the Netherlands. The latter includes education for children aged four to twelve. The education for pre-schoolers has been allocated to classes 1 and 2, within the Dutch educational system. The court establishes that the profession of preschool teacher, being class teacher to classes 1 and 2, has not been regulated in the Netherlands.

It has been established that the applicant has completed a three year education in Belgium, on the basis of which she may carry the title of 'preschool teacher'. Therefore, the professional qualification level is at least equal to the first level below the required level in the Netherlands, in applying the levels mentioned in Article 9 of the General Act. Therefore, the defendant was required to recognize the professional qualifications of the applicant. As the defendant has neglected to do so, its decision infringes Article 6, first paragraph of the General Act. The defendant, in taking a new decision on objection, shall have to evaluate whether compensating measures are required.

*ABRvS, 25 September 2013, ECLI:NL:RVS:2013:1229:*

By decision of 28 December 2011, the minister has rejected a request for registration in the register for sworn interpreters and translators, as interpreter Dutch – Farsi (Iran), interpreter Dutch – Dari, translator Dutch – Farsi (Iran) and translator Farsi (Iran) – Dutch.

As the Administrative law department of the Council of State has held before, only a granted recognition of professional qualifications for the concerned profession within the meaning of the General Act can result in registration under Article 6 under a Wbtv. It is undisputed that such recognition has not been granted to the applicant. Her request for registration does not include the request for such recognition.

## Question 5 – IMI and E-Government

**Is the Internal Market Information System (IMI) used and well-known by the national authorities in your country?**

In this regard, the Dutch national IMI-coordinator (NIMIC) indicated that the IMI is only well-known to authorities in specific cases. The IMI is predominantly known and used in for information exchanges relating to professional qualifications, for instance by *Ministerie van Gezondheidszorg, Welzijn & Sport* (Ministry of Health, Welfare and Sports) and institutions such as Nuffic.

Other modules of the IMI are used barely, which results in a reciprocity: as authorities do not use the IMI often, it remains not well-known; because the IMI is not well-know, authorities are not inclined to use it. This is why use of the IMI continues to be merely sporadic. The Dutch NIMIC also states that this is partly because the IMI is not in all cases a necessary instrument for communication between authorities. As an example, he refers to the recently implemented module for the

recollection of missing or stolen cultural heritage. The relevant authorities already had a proper communications network amongst them, and contact each other via e-mail. Accordingly, as the IMI does not provide for much added value to these authorities, the use of this module will remain limited.

**Is the system for recognition of foreign professional qualifications set up electronically in your country? If so, how user-friendly/easily accessible is it and/or could its design rather be considered as a barrier to recognition of qualifications?**

In the Netherlands, IDW is responsible for the evaluation and recognition of foreign credentials in general.<sup>19</sup> Applying for a credential check can be done either via regular postal service, or digital by sending in the form and required documents via e-mail.<sup>20</sup> The form and related guidelines are easily accessible and clear.

More specifically, the procedures for recognition of professional qualifications vary for the different competent authorities. CIBG, for instance, requires a form to be sent in manually via regular postal service.<sup>21</sup>

### **Question 6 – Assisting Bodies/Associations/Unions**

**Are there any bodies/associations/unions that can assist a foreign professional that is seeking recognition of his/her qualifications in your country?**

In the Netherlands, 'www.answersforbusiness.nl' constitutes the Point of Single Contact (PSC) within the meaning of Article 6 of the Services Directive (2006/123/EC). The PSC refers to NUFFIC, the Dutch National Contact Point for Professional Recognition to inform foreign professionals about the status of their national diploma in the Netherlands and possible access to a Dutch regulated profession. Moreover, the PSC refers to IDW (International Credential Evaluation).

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<sup>19</sup> See text accompanying supra note 17.

<sup>20</sup> See < <http://idw.nl/request-for-credential-evaluation.html> > accessed 18 January 2016.

<sup>21</sup> See <

<https://www.bigregister.nl/en/registration/withaforeigndiploma/procedures/recognitionofyourprofessionalqualification/default.aspx> > accessed 18 January 2016.

Furthermore, the Social and Economic Council of the Netherlands (SER) constitutes an advisory and consultative body of employers' representatives, union representatives and independent experts, aiming to "help create social consensus on national and international socio-economic issues".<sup>22</sup> In late 2014, the SER published an extensive report on labour migration, highlighting important aspects of EU labour mobility. Although the SER may not be of direct assistance to foreign professionals seeking recognition of his/her qualifications in the Netherlands, it seems to have a positive influence on policy making in this area.

**Are the unions as stakeholders promoting the recognition of certain categories of professionals that from your country would like to move to another Member State?**

The VCP (*Vakcentrale voor Professionals*) represents numerous unions.<sup>23</sup> It participates in various national and European deliberative bodies on, *inter alia*, the recognition of professional qualifications and can hence be said to take an active interest in the matter. Upon request, the affiliated unions will assist their members with the recognition of their professional qualifications when moving to another Member State. Should they encounter barriers, the affiliated unions notify the VCP, who in turn will seek to resolve the matter on administrative level. To this extent, the VCP can indeed be said to promote the recognition of professional qualifications.

**How are the national contact points for the internal market functioning in your country, in terms of accessibility of information and guidance to professionals who are trying to achieve recognition of qualifications in your country? Are the national contact points able to provide statistics or analysis on their activities?**

According to the Commission's scoreboard for the internal market, the Dutch Point of Single Contact, [www.answersforbusiness.nl](http://www.answersforbusiness.nl), performs above EU average.<sup>24</sup> The accessibility of information is considered good, while the actual information provided is even considered very good. However, according to the Commission, the quality of assistance could be improved.

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<sup>22</sup> See < <https://www.ser.nl/en/> > accessed 24 December 2015.

<sup>23</sup> See < <https://www.vcp.nl/> > accessed 10 January 2016.

<sup>24</sup> See Commission Internal Market Scoreboard < [http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_member\\_state/netherlands/index\\_en.htm#maincontentSec7](http://ec.europa.eu/internal_market/scoreboard/performance_by_member_state/netherlands/index_en.htm#maincontentSec7) > accessed 10 January 2016.

The Dutch SOLVIT centre, when acting as lead centre, needs to improve its handling time. This is not surprising, considering that the Commission deems it understaffed for the caseload it receives.<sup>25</sup> Nonetheless, the centre cooperates well with the competent authorities, and maintains good communication with NUFFIC. As regards the accessibility of information, it must be noted that the Dutch SOLVIT centre is able to provide statistics and a brief analysis of previous activities upon request.

**What are the insufficiencies regarding these various organisations and/or are they optimised with regard to minimisation of barriers to recognition of qualifications?**

In general, the various organisations mentioned above are functioning decently with regard to the minimisation of barriers to recognition of qualifications. However, the following minor ‘insufficiencies’ could be noted.

Firstly, as was mentioned above, the European Commission deems the Dutch SOLVIT centre understaffed for the caseload it receives. Secondly, as will be explained under Question 7, NUFFIC considers that the Dutch PSC ([www.answersforbusiness.nl](http://www.answersforbusiness.nl)) is not allocated at the most logical place. Thirdly, NUFFIC provides for a flowchart that depicts the procedure recognition. This is a practice that is to be applauded, as the flowchart is very informative. However, the flowchart does not indicate possible actions such as objection or appeal to the judiciary in case of a negative outcome. To this extent, the flowchart might not yet be considered optimised.

Whether or to what extent these aspects have an actual negative effect on the minimisation of barriers to recognition of professional qualifications remains unclear.

### **Question 7 – Further Barriers**

**What types of barriers do professionals typically face when accessing your country? Provide as many examples as possible; in particular with regard to possible infringements of EU law.**

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<sup>25</sup> Ibid.

Regarding possible linguistic barriers, as a preliminary remark, it should be noted that the websites of almost all organisations mentioned above are readily accessible in English.<sup>26</sup> This is one aspect of the Dutch system of recognition that is to be applauded. When asked to explain the small number of questions it receives regarding the recognition of professional qualifications, NUFFIC named the availability of their bilingual website as an important factor. All in all, foreign professionals have decent access to information in the Netherlands.

According to an experience report on the Professional Qualifications Directive (2005/36/EC), written by the CIBG, a lacking proficiency in the Dutch language does not necessarily form an obstacle to the professionals themselves.<sup>27</sup> However, it stated that “complaints have been received [...] about insufficient language skills of migrating health professionals who were granted registration under the Directive on a regular basis. It is incomprehensible to employers and insurance agencies that a migrant can be recognized and registered even though he or she does not speak the Dutch language”. Hence, the Minister of Public Health, Welfare and Sports is set to introduce a language requirement for all health professionals by 1 July 2016.<sup>28</sup> Such a requirement, allowed for by Directive 2013/55/EU, will be based on Article 31(2)(a) of the General Act.<sup>29</sup> Although the requirements are in essence allowed for by the Directive, it remains to be seen whether such *ab initio* requirement for all health professionals does not amount to a too broad interpretation.

Moreover, the Dutch implementation allows for further language checks under Article 31(2)(b) of the General Act. Under this provision, the relevant Minister is allowed to check the proficiency in Dutch for all regulated professions, “in case of serious and concrete doubts”.<sup>30</sup> To this extent, language requirements are also planned for the regulated profession of childcare.

Although currently professionals are not facing significant linguistic barriers, it is conceivable in light of the foregoing developments that this might change in the near future.

A lack of guidance from the authorities can hardly be said to form a further barrier. First of all the central governments website proves a helpful point of departure for any questions foreign

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<sup>26</sup> With exception of the NOvA, see below.

<sup>27</sup> See < [http://ec.europa.eu/internal\\_market/qualifications/docs/evaluation/experience-report-gs-hu-uk\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/evaluation/experience-report-gs-hu-uk_en.pdf) > accessed 31 December 2015.

<sup>28</sup> See < <http://www.tweedekamer.nl/kamerstukken/detail?id=2015D50028&did=2015D50028> > accessed 19 January 2016.

<sup>29</sup> Cf. Article 7(a)(ii)(f) and Article 54(3) Directive 2013/55/EU.

<sup>30</sup> Cf Article 54(3) Directive 2013/55/EU.

professionals might have.<sup>31</sup> Additionally, as was mentioned above, the PSC makes clear reference to the institutions that might be able to assist any foreign professional. NUFFIC remarked that, in its view, the PSC ([www.answersforbusiness.nl](http://www.answersforbusiness.nl)) might not be most sensible place to allocate the one stop shop for recognition of professional qualifications. However, NUFFIC could not specify a more appropriate place. To what extent this actually forms a barrier, cannot be determined.

The complexity of documentation and administrative procedures does not constitute a further barrier to the recognition of professional qualifications. Exemplary is the NUFFIC flowchart mentioned above, which gives a clear and structured illustration of the process.

In the Netherlands, financial costs attached to the process of recognition of qualifications cannot be held to constitute a barrier to professionals. IDW charges €123 for a regular verification foreign credentials, and €176 for urgent assessments.<sup>32</sup> However, people following a required adaptation routine, or being enrolled at regular education in the Netherlands are exempted from payment. Also, credential verification is free of charge for teachers.<sup>33</sup> Furthermore, DUO can grant professionals a Dutch title on the basis of their foreign credentials.<sup>34</sup> This process is entirely free of charge.

Moreover, there is no mention of significant delays or long processing times in case handling. To this extent, the fourth amendment to the General Act, as discussed above, could prove highly relevant.<sup>35</sup> The amendment enhances the 'lex silencio positivo' (LSP) in Article 28(4), by declaring paragraph 4.1.3.3 GALA applicable to the recognition of professional qualifications. NUFFIC suspects that this amendment will therefore safeguard the limitation of processing times in case handling even more.

## Question 8 – Informal Barriers

**Are there any other types of barriers, which may be informal or cultural 'unspoken rules', which in some way affect the access of foreign professionals to the services market of your country?**

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<sup>31</sup> See < <http://www.government.nl> > accessed 10 January 2016.

<sup>32</sup> See < <http://www.idw.nl/faq.html> > accessed 10 January 2016.

<sup>33</sup> See < <http://www.duo.nl/particulieren/diplomas/u-heeft-een-buitenlands-diploma/werken-in-het-onderwijs.asp> > accessed 10 January 2016.

<sup>34</sup> See < <http://www.duo.nl/particulieren/diplomas/u-heeft-een-buitenlands-diploma/een-nederlandse-titel-aanvragen.asp> > accessed 10 January 2016.

<sup>35</sup> See text accompanying supra note 12.



The SCP (Social and Cultural Research Institute), an interdepartmental institute conducting research in the field social science, has published various reports on the position of (labour) migrants in the Netherlands.<sup>36</sup>

In a 2011 study on the position of Polish migrants, the SCP named their weak social networks as one of the factors contributing to unemployment amongst all (European) migrants.<sup>37</sup> Although the need to establish a new social network can be deemed inherent to the process of migration as such, and therefore not specifically relevant to the Netherlands, this disadvantaged should be considered an informal barrier to access to the Dutch services market.

In a similar 2015 study on the position of Romanian migrants, the SCP found that many Romanian labour migrants experienced a loss of professional prestige when coming to the Netherlands.<sup>38</sup> It is conceivable that such a loss might constitute another informal barrier to access to the Dutch services market.

The Assembly for Human Rights (*College voor de Rechten van de Mens*) highlights another possible informal barrier. The Assembly monitors cases of discrimination against EU labour migrants.<sup>39</sup> A 2013 study showed that in some cases Polish labour migrants were treated unequal in regard of salary, working hours and living conditions. Admittedly, these cases concerned unskilled labour and the issue has ever since been under severe scrutiny of the government, unions, employment agencies and employers. Whether foreign professionals face similar discrimination is unclear, although it is unlikely. However, this issue should be monitored closely, as it is conceivable that such discrimination would constitute a major barrier.

The Assembly for Human Rights has also acknowledged the existence of work related discrimination on grounds of religion.<sup>40</sup> Notably, in 2006 the Commission started an infringement procedure against the Netherlands, as its implementation of Directive 2000/78/EC contained a too broad exception to the principle of non-discrimination in labour matters.<sup>41</sup> In 2012, some authors still had doubts as to

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<sup>36</sup> See < <http://www.scp.nl> > accessed 30 December 2015.

<sup>37</sup> See, p. 78 < <http://www.scp.nl/dsresource?objectid=28778&type=org> > accessed 30 December 2015.

<sup>38</sup> See, p. 74 < <http://www.scp.nl/dsresource?objectid=39280&type=org> > accessed 30 December 2015.

<sup>39</sup> See < <https://www.mensenrechten.nl/dossier/misstanden-eu-arbeidsmigranten> > accessed 10 January 2016.

<sup>40</sup> See < <https://www.mensenrechten.nl/dossier/religie-en-werk> > accessed 10 January 2016.

<sup>41</sup> Infringement 2006/2444.

the Dutch compliance with the Commissions stance on the matter.<sup>42</sup> To what extent discrimination on grounds of religion forms an informal barrier to foreign professionals, is not clear. The issue should be considered nonetheless.

### Question 9 – Evaluation Studies

**Have there been studies that evaluate the difficulties that professionals face in accessing your country, providing empirical evidence as regards recognition of their qualifications (reports, statistics, surveys, etc.)?**

As was referred to in Deliverable 5.2, the Dutch government has published a report on the implementation of the EU Professional Qualifications Directive.<sup>43</sup> It contains statistics on the number of requests for recognition of professional qualifications during the period 2008-2009, as provided for by the relevant Ministries.

Moreover, as mentioned above, the SCP has published several studies on the difficulties (labour) migrants face when accessing the Netherlands.<sup>44</sup> However, these studies do not focus on the recognition of qualifications in particular. As a matter of fact, no specific studies on that subject are available.

### Question 10 – Main Issues to be addressed

**What would you identify as being the major problem as regards the mutual recognition of professional qualifications in your country?**

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<sup>42</sup> See Holtmaat < <http://crvdm-zoeken.stippacceptatie.nl/StippWebDLL/Resources/Handlers/DownloadBestand.ashx?id=2087> > accessed 10 January 2016.

<sup>43</sup> See < <https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.rijksoverheid.nl%2Fbestanden%2Fdocumenten-en-publicaties%2Fkamerstukken%2F2010%2F04%2F23%2Fverslag-toepassing-eu-richtlijn-erkenning-beroepskwalificaties%2F205244tk.pdf&ei=R1mNVeiVEoH2sgGn-IDAAQ&usg=AFQjCNEBzpHt1Gav0xO-Bcf1eOlo2XR4lw&sig2=FFsQWRyYVzkYObEUtlvdpg&bvm=bv.96782255,d.bGg> > accessed 19 January 2016.

<sup>44</sup> See text accompanying supra notes 39 and 40.

There are currently no major problems as regards the mutual recognition of professional qualifications in the Netherlands. This is illustrated by the fact that there is not much case law on the subject. Cases that have been decided on by the judiciary generally concerned mere marginal problems (see above). Moreover, the fact that institutions such as NUFFIC and SOLVIT receive very little questions and complaints related to the recognition of professional qualifications could be seen as indicating that the system works properly in the Netherlands.

However, as was mentioned above, there is on-going discussion on the need to impose language requirements on certain regulated professions. This is a development that needs to be monitored, as it could possibly result in a major obstacle to foreign professionals. It is clear that such requirements would constitute indirect discrimination. Whether or not this discrimination is justifiable under the exceptions provided for by Directive 2013/55/EU remains to be seen.

**In general, once a foreign professional has his/her professional qualifications recognised by the national authorities, is the possibility to concretely exercise the profession real and effective in your country?**<sup>45</sup>

In line with the SOLVIT report referred to, the aforementioned SCP study on Romanian migrants, acknowledged that this specific group of labour migrants often experienced a loss of professional prestige when coming to the Netherlands.<sup>46</sup> Whether this also constitutes a genuine problem to foreign professionals in general, is not clear. There are no further indications that once a foreign professional has his/her qualifications recognised by the national authorities, he/she does not have the possibility to concretely exercise the profession.

## Question 11 – Good Practices

**Can you highlight any good practice that your country has put into place in this area?**

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<sup>45</sup> According to the SOLVIT report ([http://ec.europa.eu/internal\\_market/scoreboard/performance\\_by\\_governance\\_tool/solvit/index\\_en.htm](http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm)) the major barrier that professionals typically face is the difference between the profession the professional is entitled to exercise in the home country and the one he or she intends to exercise in the host country.

<sup>46</sup> See text accompanying supra note 40.

First and foremost, the fact that most information is readily available in both Dutch and English is one of the good practices in the Netherlands. Not only the websites of most competent authorities (e.g. CIBG), but also the website of the Dutch central government and even important administrative legislation are published in English.

## Question 12 – Effectiveness and Organisation

**How would you and/or others evaluate the level of effectiveness and organisation of the national system of recognition of foreign professional qualifications in your country?**

Overall, the Dutch system of recognition of foreign professional qualifications must be considered rather effective. Most illustrative is the fact that NUFFIC and SOLVIT The Netherlands receive very little questions and complaints on the matter. Moreover, the VPC has indicated that it did not experience any difficulties whatsoever related to the recognition of professional qualifications. Although these factors can easily be perceived as indicating that the Dutch system for recognition is highly effective, we have no additional empirical data to verify these assumptions. Therefore, the question remains why there are so little complaints in the Netherlands? Another, admittedly less feasible explanation could be that there actually are problems with the system, but that these simply do not reach NUFFIC or SOLVIT at all times. That being said, reference ought to be made to the minor insufficiencies highlighted under Question 6 above. These remain points on which the Dutch system could improve.

## Question 13 – Sectoral Case Studies

### Case 1. Lawyers

**A) Mr. Smith does not apply for recognition of his title/degree/qualification as lawyer, but since he can practice as a lawyer in his Member State of origin, he wishes to make use of the title of lawyer in the language of the host country to which he wants to move. Is this admissible in your Member State? What is the legislation of reference?**

In the Netherlands, it is not admissible for Mr. Smith to practice his profession under these circumstances. In order to make use of the title of *advocaat* (lawyer) he must apply for recognition of his qualifications.

To practice under the title of *advocaat*, one must be registered to the tableau of the Dutch bar association (*Nederlandse orde van advocaten*).<sup>47</sup> Registration requires that the applicant possesses ‘*civiel effect*’, a standard acknowledgement of proficient education.<sup>48</sup> In general, one receives ‘*civiel effect*’ by obtaining both a bachelor’s and a master’s degree in law from a Dutch university.<sup>49</sup> Upon registration, a Dutch graduate will begin a three-year internship (*Beroepsopleiding Advocatuur*).

However, as Mr. Smith did not obtain his credentials at a Dutch university, he must apply for recognition before he can be registered, and therefore before he can practice under the title of *advocaat*.<sup>50</sup>

**B) Are there specific procedures to be followed and professional rules to which Mr. Smith is subject?**

As the answer to question a) was negative, this question is not relevant.

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<sup>47</sup> See Article 1(1) Act of Advocates (*Advocatenwet*) < [http://wetten.overheid.nl/BWBR0002093/volledig/geldigheidsdatum\\_16-01-2016#1](http://wetten.overheid.nl/BWBR0002093/volledig/geldigheidsdatum_16-01-2016#1) > accessed 16 January 2016.

<sup>48</sup> See Article 2(1)(a-b) Act of Advocates (*Advocatenwet*) jo. Decree on Professional Requirements Advocacy (*Besluit beroepsvereisten advocatuur*) < [http://wetten.overheid.nl/BWBR0017969/geldigheidsdatum\\_16-01-2016](http://wetten.overheid.nl/BWBR0017969/geldigheidsdatum_16-01-2016) > accessed 16 January 2016.

<sup>49</sup> Subject to specific requirements as to the contents of the curriculum.

<sup>50</sup> See Article 2(1)(c) Act of Advocates (*Advocatenwet*).

**C) Can Mr. Smith start his professional activity individually (not in an associated firm or in agreement with a colleague qualified in the host country)?**

In the Netherlands, Mr. Smith is able to practice his profession individually under the title he received in his Member State of origin.

Directive 98/5/EC (“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”) has been implemented by Articles 16(g) to 16(k) of the Act on Advocates (*Advocatenwet*).

In order to represent and defend a client in court (*“vertegenwoordiging en de verdediging van een cliënt in rechte”*), Mr. Smith will have to cooperate with someone who does possess the title of *advocaat*, if such representation is prescribed by law.<sup>51</sup>

In any case, the same professional and customary codes that apply to an *advocaat*, apply to Mr. Smith when he practices under his original title.<sup>52</sup>

**D) If Mr. Smith had just recently obtained his law degree, without going through a training period to become a lawyer, would he be able to directly enrol in the bar association of your country as a lawyer?**

In the Netherlands, Mr. Smith is able to enrol in the bar association (*Nederlandse orde van advocaten*).<sup>53</sup> In order to do so, he must make request to the General Council (*algemene raad*). His request must include: proof of his EU nationality, a copy of the foreign credentials he has obtained, and a list of courses he followed as part of his education. The General Council will then assess whether or not Mr. Smith is required to pass additional examination regarding (Dutch) civil, criminal and/or administrative law. After successfully completing the examination, Mr. Smith can enrol in the bar association and begin the three-year internship (*beroepsopleiding advocatuur*).

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<sup>51</sup> Article 16(j) Act on Advocates (*Advocatenwet*).

<sup>52</sup> Article 16(k) Act on Advocates (*Advocatenwet*).

<sup>53</sup> Article 2(4) Act on Advocates (*Advocatenwet*).

### **E) Can he practice in a court/judicial setting?**

In the Netherlands, Mr. Smith can practice in court. There are two ways by which this would be possible for him.

On the one hand, should Mr. Smith decide to practice his profession under the title he acquired in his Member State of origin, this is subject to the limitations referred to above.

On the other hand, should Mr. Smith choose to enrol at the bar association and participate in the mandatory three-year internship (*beroepsopleiding advocatuur*), there will be no limitations to his ability to practice in a court. After all, advocate-interns (*advocaat-stagiaire*) are de facto *advocaat*.<sup>54</sup>

### **F) Can he practice out of court/in an extrajudicial setting?**

In the Netherlands, Mr. Smith is free to practice in an extrajudicial setting. As of January 2016, there are no legal requirements towards mediation. However, the Minister of Security and Justice (*Veiligheid en Justitie*) is preparing a legislative proposal regarding registration and quality assurance of mediators.<sup>55</sup>

## **Case 2. Lawyers**

### **G) Can Mr. Smith, as an alternative, obtain recognition for his qualification in the host country? Which procedures have to be followed in that case?**

Alternatively, Mr. Smith can obtain recognition of his professional qualifications in line with Directive 2005/36/EC.

In the Netherlands, a specific Regulation for the recognition of EC-professional qualifications for advocacy (*Regeling erkenning EG-beroepskwalificaties advocatuur*) is based on the General Act implementing Directive 2005/36/EC.<sup>56</sup>

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<sup>54</sup> See < <https://www.advocatenorde.nl/265/studenten/advocaat-stagiaire.html> > accessed 16 January 2016.

<sup>55</sup> See < <https://zoek.officielebekendmakingen.nl/dossier/33722/kst-33722-23.html> > accessed 16 January 2016.

<sup>56</sup> See < [http://wetten.overheid.nl/BWBR0024507/geldigheidsdatum\\_16-01-2016](http://wetten.overheid.nl/BWBR0024507/geldigheidsdatum_16-01-2016) > accessed 16 January 2016.

Mr. Smith must make a request to the General Council of the Dutch bar association (*Nederlandse orde van advocaten*). In doing so, he must provide for: proof of nationality, a copy of his credentials, a detailed list of the courses he took while obtaining said credentials, documentation proving he successfully completed the professional education (*beroepsopleiding*), if possible proof of any professional experience, a declaration of good conduct, a declaration of solvency, and lastly, a declaration provided by the authorities of his Member State, confirming that Mr. Smith is not expelled from his profession on disciplinary or criminal grounds.<sup>57</sup>

Unless the General Council requires Mr. Smith to pass an additional test of proficiency, his qualifications will be recognized. In that case, Mr. Smith will be registered to the tableau of the Dutch bar association and he can practice his profession under the title of *advocaat*.

**H) Once recognition has been obtained in the host country, can Mr. Smith actually work as a lawyer?**

In the Netherlands, once Mr. Smith has obtained recognition of his qualifications, he can actually work as a lawyer. He can practice under the title of *advocaat*, the same as a Dutch professional can.

**I) Can Mr. Smith practice as a lawyer in the higher courts?**

Once Mr. Smith has his qualifications recognized, he can practice as a lawyer in the higher courts, the same as any *advocaat* can. This means he is free to practice his profession before the lower courts (*de rechtbanken*) and the higher courts (*de Gerechtshoven*). However, as of 1 July 2012 additional examination is required for all lawyers who wish to practice before the Dutch Supreme Court (*de Hoge Raad*).<sup>58</sup> Naturally, these requirements also apply to Mr. Smith.<sup>59</sup>

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<sup>57</sup> Article 3(2)(a-h) Regulation for the recognition of EC-professional qualifications for advocacy.

<sup>58</sup> See < <https://www.advocatenorde.nl/6831/advocaten/vakbekwaamheidseisen.html> > accessed 18 January 2016.

<sup>59</sup> Article 9(j) Act on Advocates (*Advocatenwet*).



**J) Once he has obtained the recognition of his qualification in the host country, Mr. Smith decides to move to a different city and start practicing as a lawyer. Is that allowed in the host country? Does he have to register to a local bar association? Can Mr. Smith actually practice as a lawyer?**

In the Netherlands, there is only the national bar association: the NOvA (*Nederlandse orde van advocaten*). As there are no local bar associations to which Mr. Smith has to register, he can actually practice as a lawyer throughout the whole country.

**K) Are there specific limitations or professional rules concerning the participation in law firms/or: Could he become a partner in an existing law firm in the host country? Are there specific limitations or professional rules?**

In the Netherlands, there are no specific limitations or professional rules concerning the participation in law firms. Mr. Smith could become a partner in an existing law firm in the Netherlands, just as any *advocaat* can. There are no specific limitations or professional rules applicable to Mr. Smith.

**L) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?**

The most striking insufficiency, when it comes to the recognition of foreign professional qualifications by the NOvA, is that their website and documents are not available in English. It is conceivable that this might constitute a barrier to recognition. Moreover, the NOvA does not provide clear and easily accessible information on the procedures to be followed should a request for recognition be denied. These are both aspects on which the authority competent to recognize the professional qualifications of lawyers could improve.

### Case 3. Lawyers

**M) Mr. Smith intends to pursue his professional activity in the host Member State on a temporary basis. What is the legislation of reference and which procedures have to be followed? Can he exercise the profession independently?**

In the Netherlands, Council Directive (77/249/EEC) seeking to facilitate the effective exercise by lawyers of freedom to provide services, has been implemented by Articles 16(a-f) Act on Advocates (*Advocatenwet*). These provisions require, *inter alia*, that Mr. Smith pursues his activities under his own title, thereby stating to what professional organisation he belongs, or to which judiciary he has been admitted in his home state.<sup>60</sup>

When pursuing his professional activity on a temporary basis, in order to represent and defend a client in court (*“vertegenwoordiging en de verdediging van een cliënt in rechte”*), Mr. Smith will have to cooperate with someone who does possess the title of *advocaat*, if such representation is prescribed by law.<sup>61</sup> In any other scenario, Mr. Smith can exercise the profession independently.

**N) Are there specific conditions or professional rules to which he is subject?**

Primarily, Dutch law prescribes that Mr. Smith remains subject to the professional rules of his home state.<sup>62</sup> In addition, when Mr. Smith is pursuing his professional activity on a temporary basis, he is subject to the same professional rules as any Dutch lawyer would be.<sup>63</sup> The NOvA provides for an overview of legal and professional rules pertaining to the practice and conduct of lawyers.<sup>64</sup> Especially relevant is the code of conduct for European lawyers.<sup>65</sup>

Although the professional rules and legal conditions are generally the same as those applicable for Dutch lawyers, there are some minor differences. For instance, where (Dutch) lawyers are obligated to wear a specific suit, Mr. Smith is instead allowed to wear the suit that is prescribed in his home

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<sup>60</sup> Article 16(c) Act on Advocates (*Advocatenwet*).

<sup>61</sup> Article 16(e)(1) Act on Advocates (*Advocatenwet*).

<sup>62</sup> Article 16(f) Act on Advocates (*Advocatenwet*).

<sup>63</sup> Article 16(e)(2) Act on Advocates (*Advocatenwet*).

<sup>64</sup> See < <https://www.advocatenorde.nl/10928/nieuwe-regelgeving-per-1-1-2015> > accessed 30 januari 2016.

<sup>65</sup> See < <https://www.advocatenorde.nl/10994/code-of-conduct-for-european-lawyers-def> > accessed 30 januari 2016.

state.<sup>66</sup> Moreover, under certain circumstances, the presiding judge can allow Mr. Smith to continue the proceedings in another language.<sup>67</sup>

**O) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?**

The answer to question L) is also applicable here.

#### **Case 4. Midwives**

**A) Can Mrs. Johnson obtain the recognition of her professional degree in your Member State (host country)? Does she have to provide a sworn translation of her qualifications/diplomas? Does she have to pay any administrative fees for her application?**

In the Netherlands, Mrs. Johnson can obtain recognition of her professional degree by making a request to IDW.<sup>68</sup>

A sworn translation of her diploma, the list of her results and the list of the subjects belonging to the diploma, is only required when the educational institute did not issue these documents in Dutch, German, English or French.<sup>69</sup>

As was mentioned above, IDW charges €123 for a regular verification foreign credentials, and €176 for urgent assessments.<sup>70</sup>

**B) Can she practice her profession in the host country in a hospital and in private homes, as well as in a private facility/hospital?**

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<sup>66</sup> Article 16(e)(5) Act on Advocates (*Advocatenwet*).

<sup>67</sup> Article 16(e)(6) Act on Advocates (*Advocatenwet*).

<sup>68</sup> See text accompanying supra note 17.

<sup>69</sup> See < <http://idw.nl/required-documents.html> > accessed 18 January 2016.

<sup>70</sup> See text accompanying supra note 40.

Once her professional qualification (i.e. diploma) has been recognized, Mrs. Johnson can practice her profession both in hospitals and in private facilities. An example of the latter, are the so-called maternity hotels (*kraamhotel*) that are available in the Netherlands.

**C) If Mrs. Johnson were a Mr. Johnson, as to say a man qualified as a midwife, would that be an impediment to the recognition of his degree? Would that be an impediment to the practice of his profession in the host country?**

In the Netherlands, no distinction is made between male and female midwives. The fact that Mrs. Johnson were a Mr. Johnson would not be an impediment to the recognition of his degree or to the practice of his profession.

**D) Are there particular health prerequisites in your country, which could impede the actual exercise of the profession?**

In the Netherlands, there are currently no particular health prerequisites, which could impede the actual exercise of the profession of midwives.

### **Case 5. Hairdressers**

**A) Mrs. Rossi has carried out the profession as a hairdresser for ten years in her country of origin. In order to do so she has obtained the registration at the Roll of artisan businesses. In 2015 she decides to move to your Member State (host country) to expand her professional experience and acquire new techniques for hairstyling and haircutting. Can Mrs Rossi obtain the recognition of her qualification in the host country?**

In the Netherlands, the profession of hairdresser is not regulated. Therefore, Mrs. Rossi can freely open up a business for her practice. Recognition of professional qualifications on the basis of the General Act, is only possible for the exercise of professions that are regulated in the Netherlands.<sup>71</sup> In general terms, the Services Directive (2006/123/EC) is applicable to the situation of Mrs. Rossi.

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<sup>71</sup> Article 5(1) of the General Act.

**B) Mrs. Bianchi has attended some professional educational and training courses, at the end of which she has gained the diploma of professional hairdresser. In 2015 she decides to move to your Member State (host country) to start her professional experience and to acquire the techniques for hairstyling and haircutting. Can Mrs. Bianchi obtain recognition for her professional qualifications in the host country?**

In the Netherlands, Mrs. Bianchi can get her credentials evaluated by IDW.<sup>72</sup> Because the profession of hairdresser is not regulated, such credential check is not mandatory when she wants to open up her own business. On the other hand, should she seek employment at another barbershop, IDW's services might prove useful.

**C) Are Mrs. Rossi and Mrs. Bianchi required to show knowledge of the official language of the host country in order to obtain the recognition of the professional qualification?**

Mrs. Rossi and Mrs. Bianchi are not in anyway required to show knowledge of the Dutch language in order to obtain recognition of their professional qualifications (i.e. credentials).

**D) Are there elements that can render difficult or impede the effective exercise of the profession in the host country (licences, authorisations, high cost of lease/rent, health requirements, others?)**

There are no major elements that can render difficult or impede the effective exercise of the hairdressers' profession in the Netherlands. Especially the possibility of requirements such as licences or authorisations are limited by the application of the Services Directive (2006/123/EC).

### ***Case 6. Care givers, in-home nurses***

Mrs. Verdi works as a caregiver in a private home. Her daughter Andrea decides to move abroad for professional reasons and she decides to follow her together with her family. Her intention then is to work as a caregiver in a private home in the host country.

**A) What are the legal-economic conditions that protect Mrs. Verdi in the host country?**

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<sup>72</sup> See text accompanying supra note 17.

In the Netherlands, the market for caregiving (*thuiszorg*) is privatised. Accordingly, there is little governmental regulation in this field. This could say something as to the extent to which Mrs. Verdi is protected in the Netherlands.

Additionally, reference must be made to the D9.6 'Report on the legal-sociological analysis of discrepancies and dilemmas in care worker's rights', related to, *inter alia*, the Netherlands.<sup>73</sup>

**B) Are there rules in the host country that regulate the eventual professional qualification of this type of activity, establishing prerequisites and suitability?**

In the Netherlands, the profession of caregivers (*thuiszorg*) is not regulated. This category includes activities such as assisting, for instance, elderly in their day-to-day household activities. As was mentioned above, the market for caregiving is privatised. Although there are no legal requirements as to the practice of this profession, it is possible that an employer imposes requirements regarding experience or language skills.

On the other hand, the profession of in-home nurse (*verzorgende individuele gezondheidszorg, VIG'er*) is regulated in the Netherlands. This profession is usually practiced in private homes. The main difference between caregivers and in-home nurses, is that the latter have followed specific education relevant to the professional care of the elderly or the disabled. As such they are not only capable of assisting in day-to-day activities (as are caregivers), they are also trained in providing emotional support and exercising minor medical actions (e.g. applying a catheter). Therefore, should Mrs. Verdi aim to work as an in-home nurse, her professional qualifications must be recognized.

The competent authority to recognize professional qualifications for the profession of in-home nurse, is the CIBG. The process of recognition, as well as possible actions to a unfavourable decision are explained on their website.<sup>74</sup>

**C) Are there non-legal barriers (i.e. linguistic, presence of a public service which replaces the examined professional figure, necessity of a specific training, others) which can impede the exercise of the professional activity in the host country?**

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<sup>73</sup> See < [http://beucitizen.eu/wp-content/uploads/Deliverable\\_9.6\\_final1.pdf](http://beucitizen.eu/wp-content/uploads/Deliverable_9.6_final1.pdf) > accessed 19 January 2016.

<sup>74</sup> See <

<https://www.bigregister.nl/en/registration/withaforeigndiploma/procedures/Recognitionofyourprofessionalqualification/default.aspx> > accessed 28 January 2016.

As was mentioned above, it is conceivable that an employer might demand a sufficient proficiency in Dutch, should Mrs. Verdi want to work as a caregiver (*thuiszorg*). To be assisting a patient in their day-to-day activities, it is necessary to establish their needs. In general, the Dutch elderly are not as proficient in English as the rest of the population. Therefore, in order to make possible at least a bare minimum of communication, her employer could impose language requirements on Mrs. Verdi.

### **Case 7. Tourist guides**

**A) Under which conditions can Mr. Giallo exercise his profession as a tourist guide in the host country?**

In the Netherlands, the profession of tourist guide is not regulated. Accordingly, there are no specific conditions under which Mr. Giallo can exercise his profession.

**B) Mr. Giallo does not intend to work as a tourist guide in a specific place of the host country, but move from place to place regularly. Is this modality of exercising the profession of tourist guide allowed in the host country? (Please see the pre-infringement procedure against Italy of the EU Commission (EU PILOT No 4277/12/MARK), on the basis of a breach of Directive 2006/123/EC. The rule at stake was the stipulation under Italian law that accreditation to exercise the profession of tourist guide is valid only in the region of issue).**

Yes, this modality of exercising the profession of tourist guide is allowed in the Netherlands. The Netherlands does not have rules similar to the Italian rules giving rise to the pre-infringement procedure mentioned above.

**C) The irrepressible restlessness of Mr. Giallo leads him, after a couple of months, to the decision of exercising the professional activity of 'tour leader/tour manager' and no longer to be a tourist guide. Is it a possible choice and a legitimate activity in the host country?**

Yes, this is a possible choice and legitimate activity in the Netherlands. The profession of tour leader (*reisleider*) is not regulated in the Netherlands.

**D) If Mr. Giallo had only been a tourist guide for one year in a Member State where this profession is not regulated, would he be able to work as a tourist guide in your country?**

Yes, as was mentioned above, the profession of tourist guide is not regulated in the Netherlands. Hence, Mr. Giallo would be able to work as a tourist guide even if he had only been working for one year in another Member State.



## Question 14 – Trends, Future Developments and Policy Recommendations

**What are the trends in terms of future policy directions in your country as regards recognition of foreign professional qualifications? Do you see any disadvantage or, conversely, a positive angle in the current development?**

As was explained above, multiple responsible Ministries lean towards making use of the new possibilities offered by Directive 2013/55/EU.<sup>75</sup> It appears that language assessments will become a constitutive element of the recognition process for some regulated professions. Health professionals will soon be required to demonstrate sufficient proficiency in the Dutch language. Similar plans pertain to childcare professionals. It is conceivable that more professions will become subject of discussion in the near future. These developments, although likely anticipated by the emerging of Directive 2013/55/EU, are of course regrettable from the perspective of recognition of foreign professional qualifications. After all, language requirements are capable of constituting an additional barrier to migrating professionals.

Furthermore, on a more positive note and quite significantly, in May 2015 the Ministers of Education of the Benelux countries (Belgium, the Netherlands and Luxembourg) decided to automatically recognize higher education diplomas for bachelor and master studies. The normal and more complicated procedure for the recognition of these diplomas will be abolished. The intention of the Benelux countries is to make a first step in the direction of a European area of higher education. The agreement is based on mutual confidence in quality standards and supervision of these standards.<sup>76</sup> According to Article 3 of the Benelux Decision, two conditions must be fulfilled for higher education diploma's to be eligible for mutual recognition: the minimum quality of the programme should be guaranteed, which must be assessed by a quality body that adheres to the 'Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG)'; and the diploma is assumed to be handed out by the competent authority.

**Which priorities could be suggested to the Commission with regard to initiation of cases regarding possible infringements in your country?**

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<sup>75</sup> See text accompanying supra note 28 et seq.

<sup>76</sup> See: <https://www.rijksoverheid.nl/actueel/nieuws/2015/05/18/benelux-landen-erkennen-wederzijds-het-niveau-van-elkaars-hoger-onderwijsdiploma-s> (last consulted 11 February 2016). Beschikking van het Benelux Comité van Ministers betreffende de automatische wederzijdse generieke niveauserkenning van diploma's hoger onderwijs, M(2015) 3.

In light of the developments set out above, our recommendation to the Commission would be to pay close attention to possible infringements relating to the setting of language requirements for the recognition of professional qualifications. Although we suspect that these requirements will be justified in most cases, it is not inconceivable that the Dutch legislator interprets its discretion on this matter too broadly. If the Dutch legislator makes use of the exceptions provided by Directive 2013/55/EU too eagerly, the recognition of professional qualifications could be impeded.

## 15. Annexes

### National provisions

Algemene wet erkenning EU-beroepskwalificaties

Aanwijzingsbesluit assistentiecentrum erkenning EU-beroepskwalificaties

Binnenvaartregeling

Regeling diergeneeskundigen

Regeling erkenning EG-beroepskwalificaties advocatuur

Regeling erkenning EG-beroepskwalificaties beroepen in de individuele gezondheidszorg

Regeling erkenning EG-beroepskwalificaties beëdigde tolken en vertalers

Regeling erkenning EG-beroepskwalificaties brandweerpersoneel

Regeling erkenning EG-beroepskwalificaties cultuurberoepen

Regeling erkenning EG-beroepskwalificaties kandidaat-gerechtsdeurwaarder

Regeling erkenning EG-beroepskwalificaties kandidaat-notaris

Regeling erkenning EG-beroepskwalificaties kinderopvangpersoneel

Regeling erkenning EG-beroepskwalificaties onderwijspersoneel

Regeling erkenning EG-beroepskwalificaties politiepersoneel

Regeling erkenning EG-beroepskwalificaties rechterlijke beroepen

Regeling erkenning EU-beroepskwalificaties en bewijzen van bevoegdheid luchtvaart

Regeling erkenning EU-beroepskwalificaties zeevisserij

Regeling opleidingen en bevoegdheden nautische beroepsbeoefenaren

Regeling rijonderricht motorrijtuigen 2009

Regeling spoorwegpersoneel 2011

Regeling vaststelling lijst gereguleerde beroepen

Regeling verkeersregelaars 2009

Reglement betreffende het scheepvaartpersoneel op de Rijn (RSP)

### Case law

District Court Oost-Nederland, 15 January 2013, ECLI:NL:RBONE:2013:BY9269

CBb, 21 March 2013, ECLI:NL:CBB:2013:BZ7802

ABRvS, 3 September 2014, ECLI:NL:RVS:2014:3307

District Court Arnhem, 6 June 2010, ECLI:NL:RBARN:2010:BM6837

ABRvS, 25 September 2013, ECLI:NL:RVS:2013:1229

## **Deliverable 5.3: The Barriers that Professionals Face in Gaining Access to Other Member States**

### **Questionnaire for Country Reports**

*(Barriers to recognition of EU Citizens' professional qualifications)*

Maribel González Pascual

Universitat Pompeu Fabra

#### **Question 1 – Legal Basis and Set-Up**

✓ What is the legal basis for the set-up of regulated professions in your country?

Article 36 Spanish Constitution,

LO 5/2002, de 19 de junio, de las cualificaciones y de la formación profesional (*Qualifications and professional training Act*)

✓ What is the legal basis for the recognition of professional qualifications acquired in another Member State or third countries?

Real Decreto 1837/2008, de 8 de noviembre, por el que se incorporan al ordenamiento jurídico español la Directiva 2005/36/CE, del Parlamento Europeo y del Consejo, de 7 de septiembre de 2005, y la Directiva 2006/100/CE, del Consejo, de 20 de noviembre de 2006, relativas al reconocimiento de cualificaciones profesionales, así como a determinados aspectos del ejercicio de la profesión de abogado. (*Royal decree introducing into the Spanish legal order the Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005, and the Directive 2006/100/EC of Council of 20 November 2006, concerning the recognition of professional qualifications, and certain aspects related to the exercise of the profession of lawyer*)

## Question 2– Authorities

- ✓ What is/are the relevant authority/authorities in charge of the administration of regulated professions in your country?

There are several authorities in charge, because it depends on the allocation of powers among ministerial departments and also among the central State and the 17 Spanish Regions. Therefore, there is not a pre-established rule for all professions but the authority in charge is determined on an almost case by case basis.

Within the State the authorities in charge are: Education Department, Justice Department, Employment and Social Security Department; Economy Department; Foreign Affairs Department; Home Affairs Department; Energy, Industry and Tourism Department; Agriculture, Food and Environment Department; Tax Department, Defence Department, Health, Social Services and Equality Department and Public Works Department

Regions are also in charge of the administration of several professions. At least seven Regions have centralized the professions' administration within one Department or Agency, whereas in the rest the scheme is similar to the one followed by the State (professions' administration is allocated among several Departments depending on the field)

- ✓ Is the same authority also in charge of the recognition of professional qualifications that have been attained in another Member State?

Yes, they are the same authorities.

## Question 3 – Administrative Process

- ✓ How is the administrative process set up in practice, when a foreign professional wants to have his/her professional qualifications recognised in your country?

All the documentation has to be sent to the assigned department depending on the profession. The Chief Administrative Office of the department checks the documentation. Afterwards, the documentation is sent to the Evaluation Commissions. Such Commission Members are nominated either by the Department Secretary or even by the Professional

Associations or Professional Bodies, if the latter exist in the specific profession. The Commission must decide within four months and they must give a reasoned answer. If they deny the accreditation, they must explain whether further training or professional experience is required, and also the existing ways to achieve it.

The administration in charge will depend on the profession. In any case, the university degrees are recognized by the Education department of the State. If the education is not at university level and the foreigner's place of residence is in Spain, a Regional administration is the one entitled to decide on the recognition.

The administrative process is quite similar when the profession is not regulated, although not only can the paperwork be harder, but there can be a compulsory counselling from the administration at the beginning of the process.

Is there a possibility to complain/appeal about a decision?

The decision can be appealed before the superior administrative authority and, ultimately, it can be challenged before an administrative court.

Please specify which authorities are involved in the processes.

There are many authorities in charge depending on the profession (see above). However, the process is highly similar in all the cases.

**Question 4 – Case Law**

✓ Is there case law in your national legal system, which has dealt with the issue of recognition of foreign professional qualifications? If so, please briefly indicate the most important rulings and their possible consequences for similar cases in the future.

The case law on this subject is scarce. In fact, Courts have mostly focussed on the competence of the Spanish legislator regarding the regulation and management of professions. The case law granted a wide margin of appreciation to the Spanish legislator. However, later judgments have seemed to constrain this margin by stating that the scope of

regulated professions must be understood in a restrictive manner. (This case law can be found on Deliverable 5.2 Spain. WP 5)

### **Question 5 – Use and Knowledge of the Internal Market Information System (IMI) and E-Government**

✓ Is the Internal Market Information System (IMI) used and well-known by the national authorities in your country?

*"In Spain, the efficiency of this system is clearly revealed by the records (below) related to the time between question and answer among Member States Public Administrations concerned (period January-May 2012). In fact, according to the European Commission, in 2013, as in the previous period, Spain has performed extremely well in IMI even though it has had to deal with a high number of incoming requests. Since the last Scoreboard, Spain has even further improved its already outstanding results. Furthermore, Spanish authorities are one of the fastest in accepting and replying to incoming requests. These efforts are clearly appreciated by their counterparts and should be continued"* (WP 5. Deliverable 5.2 Spain)

✓ Is the system for recognition of foreign professional qualifications set up electronically in your country? If so, how user-friendly/easily accessible is it and/or could its design rather be considered as a barrier to recognition of qualifications?

Yes it is electronically set up. It indeed is user friendly. Still, the page is located on the website of the administration in charge of the recognition of each profession. Therefore, it can be a bit difficult to find out on which website the page is located. Last but not least, the information is normally provided only in the official languages in Spain

### **Question 6 – Assisting Bodies/Associations/Unions**

✓ Are there any bodies/associations/unions that can assist a foreign professional that is seeking recognition of his/her qualifications in your country?

Not specifically. However, trade unions assist foreigners looking for a job in Spain and also workers seeking the accreditation of their profession. Thus, it can be assumed that, if necessary, they might assist foreigners seeking recognition of their qualifications in Spain.

Besides, most of the professional bodies help out their members to seek recognition of their qualifications in other Member States and also foreigners who want to settle or work temporarily in Spain. In a nutshell, neither trade unions nor professional bodies seem particularly concerned about foreigners trying to work in Spain but they help them if asked to do so.

✓ Are the unions as stakeholders promoting the recognition of certain categories of professionals that from your country would like to move to another Member State?

Yes, they are. As a matter of fact, given the high unemployment in Spain, both trade unions and Professional bodies are fostering the recognition of Spanish professionals who are willing to move to another Member State

In this regard, for instance, the Civil Servants Trade Union (CSI-F) does not only demand the recognition of Spanish teaching professionals but it also cooperates on training and dissemination activities in this matter. In a similar vein, Professional Bodies in fields such as Architecture, medicine and odontology also support activities aiming at removing barriers that Spanish professionals could face if they lacked the recognition. In many cases these activities are focussed on gaining access to specific Member States (such as Germany, United Kingdom or France)

In any case, both the Spanish Ministry of Employment and Security and the Ministry of Education provide any Spanish professional with plenty of information and facilities to gain access to other Member States' markets.

✓ How are the national contact points for the internal market functioning in your country, in terms of accessibility of information and guidance to professionals who are trying to achieve recognition of qualifications in your country? Are the national contact points able to provide statistics or analysis on their activities?

The Spanish national contact point seems to be aimed mostly at supporting Spanish people who want to run a new business or to move abroad. There is not specific information related to foreign professionals wanting to settle in Spain. No statistics or analysis of the national contact point activities is to be found



- ✓ What are the insufficiencies regarding these various organisations and/or are they optimised with regard to minimisation of barriers to recognition of qualifications?

As already explained, the organizations dealing with the exercise of any profession in Spain are particularly concerned with the recognition of Spanish professionals wanting to work abroad but not with EU citizens wanting to exercise their profession in Spain. Still, if an EU citizen requires any kind of information or help from these organizations they will receive it.

### **Question 7 – Further Barriers**

What types of barriers do professionals typically face when accessing your country?

- i. The role of Professional Bodies and the need to have a specific academic title to exercise a profession; 200 professions are linked to a specific title and the enrolment is compulsory to exercise 80 different professions in Spain.

In this regard, it has been highlighted that in many cases the enrolment quota and also the monthly/yearly quota are quite expensive. Still, I have not found a thorough analysis on the matter and the data provided from the professional bodies are very different from the Ministry of Economy statements. Nevertheless, the National Commission for the Concurrence and the Market has repeatedly recommended an amendment of the Professional Bodies Act in order to eliminate barriers in access to the market<sup>1</sup>. This proposal has also repeatedly been recommended by both the European Commission and the Troika<sup>2</sup>.

As a matter of fact, the Government drafted a proposal on professional bodies according to which only in 38 professions the enrolment would be compulsory and only 59 professions would require a specific title. However, the proposal was heavily contested by the Spanish Professional Bodies and the Government has withdrawn it.

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<sup>1</sup> See “Report on the free exercise of professions. Proposal to adapt the provisions on self-regulated professions to the rules of free competition prevailing in Spain” (1992). “Competition in Spain. Current state and new proposals” (1995) Report on the professional services sector and professional associations” (2008) Report on professional colleges after the transposition of the services directive (2012).

<sup>2</sup> See Financial Assistance Programme for the Recapitalisation of Financial Institutions in Spain. First review - Autumn 2012 and Spain - Post Programme Surveillance Spring 2014 Report; Commission Staff working Documents related to Spain National Program Reforms (2012 and 2013)

- ii. Linguistic barriers: Generally, it is necessary to master the Spanish language and it can also be required to prove competence of a high level of knowledge of any other official language in the territory where the profession is going to be practiced. This requirement is normally sound if the language is needed to practice the profession but that is not always the case. It could be argued that in many professions no national language is really necessary. Furthermore, not only the language can be a direct barrier preventing a foreigner from acquiring the recognition but also a deterrent of the employer to hire foreigners if a fine is foreseen when the employees do not answer in the specific language required by customers. Furthermore, it can prevent professionals from moving throughout Spain (Examples of these provisions are given in the cases of the Hairdressers and the Tourist Guides. Cases 5 and 7. Question 13).
- iii. Access to information; There is a deep lack of coordination and transparency which impairs the access to information. (This flaw is explained in question 10)
- iv. Complexity of documentation/administrative procedures; the qualification recognition is not particularly complex, once the information has been found. Still, the documentation asked to become a self-employed worker seems excessive. (see Case 5 Question 13).
- v. Financial costs attached to the process of recognition of qualifications; The documentation must be translated into Spanish; at the very least, the translation of the certificate of the accreditation of the profession and the academic title must be a sworn one. Still, in several cases all the documentation must be provided as sworn translation. The enrolment fee in many professional bodies might prove to be excessive (see for the Bar Associations, Cases 1 and 2 Question 13).
- vi. Delays/long processing times in case handling ; The Spanish Administration decides on the case within four months.

### **Question 8 – Informal Barriers**

- ✓ Are there any other types of barriers, which may be informal or cultural ‘unspoken rules’, which in some way affect the access of foreign professionals to the services market of your country?

There are no particular unspoken rules regarding foreigners' access to professions

### **Question 9 – Evaluation Studies**

- ✓ Have there been studies that evaluate the difficulties that professionals face in accessing your country, providing empirical evidence as regards recognition of their qualifications (reports, statistics, surveys, etc.)?

Not that I am aware of. I have found none

### **Question 10 – Main Issues to be addressed**

- ✓ What would you identify as being the major problem as regards the mutual recognition of professional qualifications in your country?

There is a deep lack of coordination and transparency. There are too many authorities in charge of the recognition and no official website has a full record of them. In fact, only the National Institute of Qualifications website contains the list of the regional authorities in charge without further information. The Spanish website on professional training contains the specific calls made by the regions regarding professional accreditations based on professional experience. However, in this second website the information is only available in Spanish

There is not a website with the specific authorities of the Spanish State in charge of the recognition of the regulated professions; they must be found department by department.

In fact, a list of authorities was published in the Annex II of the Royal Decree 1837/2008 but in the meantime the names of the Departments have changed. It is, in fact, necessary to read the legal rules on recognition of professional qualifications and, afterwards, look into the website of the department currently in charge.

The mutual recognition among regions has been improved with the Unity Market Act but there are still impediments in certain cases, an automatic and full recognition within the country has not been fully achieved.

✓ In general, once a foreign professional has his/her professional qualifications recognised by the national authorities, is the possibility to concretely exercise the profession real and effective in your country?

According to the Spanish authorities, in Spain 22,7% of men and 27,1% of women do not get the profession related to their actual training but a lower one. (National Institute of Statistic. 2014). Other reports point out that up to 35% of the professionals in Spain are overqualified (Eurostat Spain qualifications 2000-2013). The data are not aggregated on the basis of the origin, but it is to be expected that foreigners are facing similar if not worse difficulties to exercise their profession.

#### **Question 11 – Good Practices**

✓ Can you highlight any good practice that your country has put into place in this area?

All the administrations' websites have an inbox which allows requests for information. In all the cases in which such a tool was used to fill out this questionnaire, the Spanish administration answered in less than 24 hours.

#### **Question 12 – Effectiveness and Organisation**

✓ How would you and/or others evaluate the level of effectiveness and organisation of the national system of recognition of foreign professional qualifications in your country?

It is difficult to assess the effectiveness of the national system of recognition of foreign professional qualifications given the lack of data on its performance. Still, the lack of a structured cooperation among administrations can impair the general performance. The allocation of functions among departments and of powers among the Central State and the Regions should be accompanied by clear and accessible guides for the professionals who want to accredit their qualifications. Thus, it could be said that the organisation suffers from a lack of coordination among authorities and a general lack of transparency.

## Question 13 – Sectoral Case Studies

### ✓ Lawyers

Mr. Smith is qualified as a lawyer in a Member State of the European Union. He decided to pursue his profession in your Member State [the reference Member State in the report's national context, hereinafter 'host country']. He therefore intends to continue his activity as a lawyer in the new national context also.

#### Case 1.

A) Mr. Smith does not apply for recognition of his title/degree/qualification as a lawyer, but since he can practice as a lawyer in his Member State of origin, he wishes to make use of the title of lawyer in the language of the host country to which he wants to move. Is this admissible in your Member State?

Yes, it is admissible

What is the legislation of reference?

Real Decreto 936/2001, de 3 de agosto, por el que se regula el ejercicio permanente en España de la profesión de abogado con título profesional obtenido en otro estado miembro de la Unión Europea. (*Royal Decree, 936/2001 on the permanent practice in Spain as a lawyer with a professional title acquired in another Member State*)

B) Are there specific procedures to be followed and professional rules to which Mr. Smith is subject?

Yes, there are.

Mr. Smith should register himself in a bar association, the documentation required being

- i. Certificate of his Member State as a qualified lawyer
- ii. Law Degree Title
- iii. Information about any criminal records in Spain and in his country
- iv. -Passport or National Identity Document.
- v. -Certificate confirming that he has civil liability insurance

- vi. -If he wants to work as self-employed worker, he must present the certificate of having paid the required taxes
- vii. Certificate of the Spanish Council of Bars confirming that Mr. Smith has not been disbarred (It costs 171,82 €)
- viii. Certificate of having paid the inscription quota in the bar association (the cost clearly differs among Bar associations, it might be between 250 and 800 €)

All the documentation must be translated into Spanish (sworn translation) and legalised.

C) Can Mr. Smith start his professional activity individually (not in an associated firm or in agreement with a colleague qualified in the host country)?

No, he cannot.

He must be three years registered in a Spanish bar, during which he must actually practice as a lawyer in Spain before being able to exercise his professional activity individually. In fact, after this three-year period, he must provide evidence that he practised as a lawyer in Spain and that he not only dealt with international but also with Spanish law before being allowed to work on his own.

D) If Mr. Smith had just recently obtained his law degree, without going through a training period to become a lawyer, would he be able to directly enrol in the bar association of your country as a lawyer?

If Mr Smith has not obtained the recognition of his title he can register in a bar but not to enrol in it directly. (The requirements for enrolment are explained in Case 1 B)

E) Can he practice in a court/judicial setting?

He cannot until he has enrolled in a bar.

F) Can he practice out of court/in an extrajudicial setting?

Yes, he can, although he cannot provide any assistance to people who have been accused of having committed a crime or people who have been detained.

## Case 2.

G) Can Mr. Smith, as an alternative, obtain recognition for his qualification in the host country? Which procedures have to be followed in that case?

Yes, he can.

He must ask for the recognition of his qualification from the Spanish Ministry of Education. He must provide a copy of his title and his studies certificate. The studies certificate must specify the study plan, the subjects and their credits. Still, Mr. Smith could be required to get further training in any subject. In this case, he must pass an exam in a Spanish School of Law. It is important to take into account that Mr. Smith has the recognition as a lawyer in his country because, if he had only the law degree, then he would be asked to study a Master aimed at lawyers' training.

H) Once recognition has been obtained in the host country, can Mr. Smith actually work as a lawyer?

No, he cannot.

He must pass a test which the Justice Ministry sets every year. The test has two parts: a practical one (meaning to deal with a case) and a theoretical one (focussed on the lawyers' ethics and Spanish Judicial organization).

Once he has passed the test he must enrol in a bar. The requirements for this enrolment are the same as the ones explained in case 1.B although the price of the enrolment is normally higher than the price of registration. In this regard, the enrolment may cost between 150 and more than 1000€, and the monthly quota might cost between 15 and 100€

I) Can Mr. Smith practice as a lawyer in the higher courts?

Yes he can

J) Once he has obtained the recognition of his qualification in the host country, Mr. Smith decides to move to a different city and start practicing as a lawyer. Is that allowed in the host country? Does he have to register to a local bar association? Can Mr. Smith actually practice as a lawyer?

Once Mr. Smith has obtained the recognition of his legal qualification and has registered to any bar association in Spain, there are no limitations to practice as a lawyer within the whole territory of Spain. Registering at a bar association in Spain should take just a couple of weeks.

K) Are there specific limitations or professional rules concerning the participation in law firms/or: Could he become a partner in an existing law firm in the host country? Are there specific limitations or professional rules?

There is no impediment for Mr. Smith to become a partner in a law firm in Spain (regardless if it is a Spanish law firm or an international law firm with offices in Spain). Given that selection criteria at a law firm usually depend on merit and qualifications of the candidate, Mr. Smith would have better chances of becoming a partner if he has obtained the recognition of his title.

It is not uncommon in large law firms established in Spain to have partners that originally qualified as a lawyer in another Member State.

L) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?

There are no impediments for the practice of law specific to Spain. To intervene in Court proceedings, lawyers are required to be registered as a practicing lawyer in a bar association in Spain and prove that they are actually representing their client (providing the corresponding notarised power of attorney).

The working language of the Spanish public administration and Courts is Spanish. To that effect, although it is not a formal requirement, Mr. Smith would have to master Spanish to avoid linguistic barriers. The public administration and Courts from regions in Spain with



another official language may also accept and issue documents in Catalan, Basque or Galician if the parties to the proceedings agree to having the language of the proceedings changed to one of these other official languages.

### Case 3.

M) Mr. Smith intends to pursue his professional activity in the host Member State on a temporary basis. What is the legislation of reference and which procedures have to be followed? Can he exercise the profession independently?

The Dean of a Bar Association must be informed of Mr. Smith's professional qualification, the domicile and the name of the lawyer enrolled in a Spanish bar with whom Mr. Smith will practice in Spain. Thus, Mr. Smith cannot work independently. Finally, Mr. Smith must provide the dean with a statement confirming that he has not been disbarred.

The rules are contained in Real Decreto 607/1986, de 21 de marzo, de desarrollo de la Directiva del Consejo de las Comunidades Europeas de 22 de marzo de 1977, encaminada a facilitar el ejercicio efectivo de la libre prestación de servicios de los Abogados. (*Royal Decree transposing the Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services*)

N) Are there specific conditions or professional rules to which he is subject?

No, there are not.

O) Generally speaking, are there non-legal barriers (i.e. linguistic, bureaucratic, procedural, particular authorisation, etc.) which can prevent practicing professional activity in the host country?

No (see case 2. L)

✓ **Case 4. Midwives**

Mrs. Johnson has obtained the degree of midwife in her country of origin, but has never practiced.

A) Can Mrs. Johnson obtain the recognition of her professional degree in your Member State (host country)? Does she have to provide a sworn translation of her qualifications/diplomas? Does she have to pay any administrative fees for her application?

There are three avenues, depending on the certificates that she can provide

- i. In her country, being a midwife is a regulated profession and she fulfills the requirements of Directive 2005/36. It will be easily and almost automatically recognized.
- ii. It is not a regulated profession in her country. Thus, she must provide a certificate confirming that she has worked full-time as a midwife for at least two years during the last ten years in the country where she acquired the professional certificate.
- iii. If her professional degree does not fulfill the requirements established in the Chapter two, Title Three of the Directive, she must provide evidence of having worked full-time as a midwife at least three years in a row within the last five years.

In all the cases she must provide a Certificate of good standing and a sworn translation of all the documents provided by another State. There is no administrative fee.

B) Can she practice her profession in the host country in a hospital and in private homes, as well as in a private facility/hospital?

Yes, once her professional degree has been recognised

C) If Mrs. Johnson were a Mr. Johnson, as to say a man qualified as a midwife, would that be an impediment to the recognition of his degree? Would that be an impediment to the practice of his profession in the host country?

There is not any impediment related to the gender. In fact, 5% of the midwives in Spain are men

D) Are there particular health prerequisites in your country, which could impede the actual exercise of the profession?

No, there are not.

✓ **Case 5. Hairdressers**

A) Mrs. Rossi has carried out the profession as a hairdresser for ten years in her country of origin. In order to do so she has obtained the registration at the Roll of artisan businesses. In 2015 she decides to move to your Member State (host country) to expand her professional experience and acquire new techniques for hairstyling and haircutting. Can Mrs Rossi obtain the recognition of her qualification in the host country?

Yes she can. Spain requires three years of professional experience to get an official accreditation as hairdresser. However, Regions are the ones entitled to provide the accreditation regarding hairdressers. Therefore, she should apply for the accreditation to a regional authority, but for instance in 2015 only Baleares Island called for accreditations for hairdressers. So, Mrs. Rossi should have made the application before Baleares authorities. Nonetheless, the call was made for just 40 accreditations.

B) Mrs. Bianchi has attended some professional educational and training courses, at the end of which she has gained the diploma of professional hairdresser. In 2015 she decides to move to your Member State (host country) to start her professional experience and to acquire the techniques for hairstyling and haircutting. Can Mrs. Bianchi obtain recognition for her professional qualifications in the host country?

Yes, the Spanish Education Department will give her the studies equivalence.

C) Are Mrs. Rossi and Mrs. Bianchi required to show knowledge of the official language of the host country in order to obtain the recognition of the professional qualification?

Yes, they must show knowledge of Spanish. If the accreditation is given by the regional authorities they must also speak any official language in the Region (following the former example, Mrs. Bianchi should speak Catalan because it is an official language in Balears)

Besides, consumers have the right to be attended either in Catalan or Spanish in Catalunya, as established by Catalan Consumer Protection Code. This entitlement involves that not attending in the language required by the customer<sup>3</sup> in any establishment could amount to a fine between 10.000 and 100.000 to be paid by the owner of the store.

D) Are there elements that can render difficult or impede the effective exercise of the profession in the host country (licences, authorisations, high cost of lease/rent, health requirements, others?)

If somebody wants to work as self-employed worker the business activities tax must be paid. If business premises are needed, the trade name has to be registered in the industrial property registration. The status as self-employed has also to be registered at the national employment institute. Furthermore, it is compulsory to ask for a municipal opening license and, if needed, a planning permission. Finally, a provisory company tax code has to be provided.

The registration as self-employed costs 50€, the opening license depends on each council (regarding hairdressers it is normally around 850€). If planning permission is needed the cost will depend on the total cost of the construction itself, normally being 4% of the cost (It may vary depending on the council).

✓ **Case 6. Care givers, in-home nurses**

Mrs. Verdi works as a caregiver in a private home. Her daughter Andrea decides to move abroad for professional reasons and she decides to follow her together with her family. Her intention then is to work as a caregiver in a private home in the host country.

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<sup>3</sup> To be attended in the language required means that the consumer must be understood

A) What are the legal-economic conditions that protect Mrs. Verdi in the host country?

The legal conditions are the same as the ones established in any other job. However, their working hours per year is 37 hours less than the general one. It is not allowed to work more than 9 hours per day, they must have at least 36 hours rest in a row per week, and once a month such a rest must take place on Sunday (unless they have been hired explicitly to work during the weekends). According to the collective bargaining agreement for caregivers in a private home, their minimum salary is 947€ per month if they are full-time workers.

Still, according to reports the trade unions the profile of care givers at home are women among 40-64 who live in the same house as the person that they care for. Furthermore, labour conditions in practice are quite poor.

B) Are there rules in the host country that regulate the eventual professional qualification of this type of activity, establishing prerequisites and suitability?

Since 2015 onwards all care givers must have been given a suitability accreditation by the regional authorities if they want to exercise their profession in Spain. Such accreditation is given by the regional authorities either if they have carried out the profession for at least three years or they have at least 300 hours training in the profession.

C) Are there non-legal barriers (i.e. linguistic, presence of a public service which replaces the examined professional figure, necessity of a specific training, others) which can impede the exercise of the professional activity in the host country?

The professional accreditations given per year is limited. It seems that there are reserve lists with candidates who do fulfill the requirement every year. Normally, the ones who have been in the reserve list have priority for the next call. Another quite widespread criteria to establish the final list are the years of experience or the age of the candidates. However, calls can be found in which the fact of having worked or studied in the Region is a criteria to be given priority (such criteria have been found in 2015 calls of Cataluña and Castilla Leon).

Besides, the Personal Autonomy and Dependency Act assigned a budget for its actual implementation which was later deeply cut. One of the consequences is that the

administrations would rather provide for a grant to relatives of the people who need to be taken care of than a subsidy to hire a third person. (Grants for relatives amount to 500€).

Last but not least, according to an official report the home caregiver is mostly in irregular migrants' hands<sup>4</sup>. The report was drafted ten years ago and has not been updated. However, the assistance to elderly and disabled people is one of the fields that has suffered the harshest budget-cuts during the last five years. Therefore, if any, the caregivers' situation might have worsened.

✓ **Case 7. Tourist guides**

Mr. Giallo has been a tourist guide in a Member State of the EU for many years. Tired of the same routine, he decides to exercise his professional activity in a different environment and he moves to your Member State.

A) Under which conditions can Mr. Giallo exercise his profession as a tourist guide in the host country?

If he wants to work as a tourist guide within museums or official places of interest, he must get an accreditation from the regional authorities

He can get the accreditation;

- i. If he has got an accreditation as a tourist guide in a Member State
- ii. If he has a diploma as a tourist guide given by a Member State, and such training as a tourist guide has taken place after achieving a general certificate of secondary education
- iii. If the profession is not regulated in the Member State but he carried out the profession for at least two years during the last ten.
- iv. If he has a certificate of higher education and he passes a test

In all the cases he must speak three languages at least, one of them being Spanish. If he wants to be accredited as tourist guide in Galicia or Cataluña he must also speak Gallego or Catalan.

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<sup>4</sup> <http://www.dependencia.imserso.es/InterPresent1/groups/imserso/documents/binario/cuidadodepinmi.pdf>

B) Mr. Giallo does not intend to work as a tourist guide in a specific place of the host country, but move from place to place regularly. Is this modality of exercising the profession of tourist guide allowed in the host country? (Please see the pre-infringement procedure against Italy of the EU Commission (EU PILOT No 4277/12/MARK), on the basis of a breach of Directive 2006/123/EC. The rule at stake was the stipulation under Italian law that accreditation to exercise the profession of tourist guide is valid only in the region of issue).

Yes, it is. The Unity Market Act enforced a compulsory mutual recognition principle among regional authorities regarding professions

Still, Cataluña requires the ability to speak Catalan in all the cases. This rule has been challenged and currently no more accreditations as tourist guide are given in Cataluña until further notice.

C) The irrepressible restlessness of Mr. Giallo leads him, after a couple of months, to the decision of exercising the professional activity of 'tour leader/tour manager' and no longer to be a tourist guide. Is it a possible choice and a legitimate activity in the host country?

Yes, it is.

D) If Mr. Giallo had only been a tourist guide for one year in a Member State where this profession is not regulated, would he be able to work as a tourist guide in your country?

See the answer given in Case 7.A

#### **Question 14 – Trends, Future Developments and Policy Recommendations**

✓ What are the trends in terms of future policy directions in your country as regards recognition of foreign professional qualifications? Do you see any disadvantage or, conversely, a positive angle in the current development?

Currently, there is no tangible policy on this matter. In fact, the latest development has been the withdrawal of the Government's proposal on Professional Bodies, which might turn out to be a problem for the exercise of several professions according to Spanish and European players (see before). Apart from this failed proposal, the foreigners' professional

qualifications are not a priority at all for the public administrations. However, Spanish authorities pursue the recognition of Spanish professionals to facilitate their access to other markets. Still, this could make Spanish authorities quite prone to widen the European recognition of professional qualifications.

✓ Which policy recommendations may be given for the EU's future regulation of the field?

Information accessibility must be even more enhanced, information that must be also aimed at foreigners in all the cases. If several administrations are entitled to rule on the professions or to recognise professional qualifications, the Member States should be asked to create a website containing all the necessary links. Such information should be provided in languages other than those which are official within the Member State.

✓ Which priorities could be suggested to the Commission with regard to initiation of cases regarding possible infringements in your country?

The following should be assessed:

- i. The role of Professional Bodies.
- ii. The likely linguistic barriers, especially at the regional level, due to the linguistic requirements to get the accreditation, regardless of the actual link with the professional practice.
- iii. In certain cases professional accreditations given per year are limited which turns out to be an insurmountable barrier if the accreditation is compulsory to access to the market.

## **Annexes**

✓ National provisions

Please provide a list of the most important national legal provisions (constitutional acts, legislation, regulations, etc.) and a list of relevant cases for your Member State (name, date and publication reference).

### 1. Legal provisions



- i. Article 36 Spanish Constitution,
- ii. LO 5/2002, de 19 de junio, de las cualificaciones y de la formación profesional (Qualifications and professional training Act)
- iii. Ley 2/2013, de 9 de diciembre, de garantía de la unidad de mercado, (Unity Market Guarante Act)
- iv. Real Decreto 104/1988, de 29 de enero, sobre homologación y convalidación de títulos y estudios extranjeros de educación no universitaria.homologación y convalidación de títulos y estudios extranjeros de educación superior. (*Royal Decree on the approval and recognition of diplomas and foreign studies of non-university education*)
- v. Real Decreto 1128/2003, de 5 de septiembre, por el que se regula el catálogo nacional de cualificaciones (*Royal Decree on the national catalogue of qualifications*)
- vi. Real Decreto 285/2004, de 20 de febrero, por el que se regulan las condiciones de homologación y convalidación de títulos y estudios extranjeros de educación superior (*Royal Decree on the conditions of approval and Recognition of foreign qualifications and studies of Higher education*)
- vii. Real Decreto 1837/2008, de 8 de noviembre, por el que se incorpora al ordenamiento jurídico español la Directiva 2005/36/CE (Royal decree introducing into the Spanish legal order the Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005, and the Directive 2006/100/EC of Council of 20 November 2006, concerning the recognition of professional qualifications, and certain aspects related to the exercise of the profession of lawyer)
- viii. Real Decreto 1224/2009, de 17 de julio, de reconocimiento de las competencias profesionales adquiridas por experiencia laboral (*Royal Decree on the recognition of professional competences acquired through experience*)
- ix. Real Decreto 127/2014, de 28 de febrero por el que se regulan aspectos específicos de la Formación Profesional Básica (*Royal Decree on specific features of the basic professional training*)

## 2. Case Law<sup>5</sup>

- I. ECLI:ES:TS: 2009:5062
- II. ECLI:ES:TS:2011:7110
- III. ECLI:ES:TS:2012:2998
- IV. ECLI:ES:TS:2012:2966

### ✓ Bibliography

Please provide a list of what you consider the most relevant recent bibliographic sources with respect to your country. Please mention the title in the original language and include a translation in English, in brackets.

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<sup>5</sup> The case law can be found at <http://www.poderjudicial.es/search/indexAN.jsp>