EUROPEAN UNIVERSITY ASSOCIATION

POLICY BRIEFING

Recognition of professional qualifications

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This policy brief consists of three parts:

A. A brief digest of some of the significant features of the 2016-2020 period

- Implementation of the Professional Qualifications Directive
- The Proportionality Directive
- Common Training Frameworks

B. A glance at professional qualifications in the context of the new Commission headed by President von der Leyen

- The Green Deal
- The One Health initiative
- Mutual Recognition Agreements

C. Brexit

- The provisions of the Withdrawal Agreement
- The prospects for a future EU-UK Association Agreement

This is the EUA's first briefing on this topic since 2016. There are a number of reasons for this long interlude.

When the Directive on the Recognition of Professional Qualifications (2005/36/EC) was amended in 2013, the headline legislative process came to an end, followed only by a number of delegated acts designed to facilitate implementation. The acts updated Annex V, which lists the regulated disciplines, the requisite qualifications, the professional titles and the awarding bodies in all member states. They have since been incorporated into the consolidated version of the Directive published in April 2019.

The intensity of the European Commission's consultations with civil society was cut back accordingly. DG GROW's strategic plan for the period 2016-2020 commited it merely to consolidating the Internal Market and to "contributing to the work on labour mobility for instance on the free movement of professionals".

The amended Directive nevertheless left much to be desired and led to considerable lobbying by professional bodies at European level. This briefing sheds some light on these efforts, for the benefit of the higher education community.

Independent of the COVID-19 crisis (which has reduced cross-border mobility to the barest minimum) and the unresolved debate on the EU budget for 2021-27, enough has happened – and has yet to happen – to warrant picking up the thread once more.

Part A The last years of the Juncker Commission

THE AMENDED DIRECTIVE 2005/36/EC: ANNEX V

1.1 The seven sectoral professions attribute strategic importance to the way in which their knowledge, competences and skills are expressed as requirements by the Directive (DIR). The amendments of 2013 gave extra emphasis to the competences of veterinary surgeons (Article 38.3). Midwives' competences were specified in greater detail (Article 40.3). The list of professional activities of pharmacists was extended (Article 45.2). The profile of architects was set explicitly within a framework of sustainable development (Article 46.2).

1.2 These were unproblematic changes. In many cases they were backed up by competence-based curricula developed by academics and practitioners in the field.

1.3 The Commission was required to produce an implementation report by 19 January 2019. A report was compiled but not published. It remains an internal document, to be used in the ongoing monitoring of competent authorities. There has therefore been no full public review of the DIR, as there was in 2012/13, in part because the possibility of delegated acts makes wholesale revision unnecessary. (Directives may give the Commission the power to undertake delegated acts in order to, for example, update the text; such an action is regarded as addressing a "non-essential element" – that is to say, something which amends the measure without changing its spirit or purpose. The European Parliament has the power to scrutinise and to challenge.)

1.4 This does not mean that there were no outstanding problems. The 2013 changes were piecemeal and some professional bodies remained unsatisfied. Many of the difficulties lay in Annex V, which contains much of the detail of the content of the basic training programmes.

1.5 The DIR is inconsistent in the manner in which it assigns the listing of knowledge, skills and competences either to the Articles in the main body of the text or to Annex V. The Annex, for example, is silent on the competences of medical doctors and architects. For the pharmacists, it sets out their regulated activities in the main text, leaving the Annex to cover the required bodies of knowledge. No clear pattern is adopted across the board. Moreover, much of the text of the Annex is still as it was in 1970.

1.6 In the light of these perceived discontinuities between Articles and Annex, the pharmacy sector has pushed for greater textual consistency.

1.7 The nurses, too, want fuller and clearer statements. Their case is significant in a number of respects: the general care nurse is by far the largest sectoral profession in terms of raw numbers; it has larger volumes of cross-border mobility, to the point at which some EU healthcare systems are effectively dependent on skilled foreign labour; it is exposed to systematic downgrading by governments historically focused on austerity, with the Bachelor requirement considered to be in particular jeopardy; the prescribed training is delivered by large numbers of higher education institutions (and vocational and education training institutions).

1.8 The amended DIR substantially expanded the set of required nursing competences (Article 31.6-7), but still – in the view of the European Federation of Nurses Associations (EFN) and the EU Network of Nurse Regulators – there was insufficent alignment with the Annex. Together, they proposed a draft delegated act in late 2016, supported by a comprehensive Competency Framework.

1.9 In response, DG GROW commissioned a study: "Mapping and assessment of developments for one of the sectoral professions under Directive 2005/36/EC – nurses responsible for general care." A workshop was held in November 2019 and a full report is awaited – in theory in April 2020, but perhaps in current circumstances much later. A delegated act may well follow.

1.10 The dentists, too, seek an upgrading of the content of the Annex. But they go further. The Council of European Dentists (CED) and the European Federation of Dental Regulators (FEDCAR) want a delegated act obliging member states to ensure the rigorous accreditation and quality assurance of training programmes – something which, in their view, the DIR cannot guarantee.

1.11 Annex V is updated annually and includes additions for which there is a sufficient majority among member states. Cardiac surgery will feature for the first time in the 2020 revision. Discussions are ongoing in respect of physiotherapy and radiology.

THE AMENDED DIRECTIVE 2005/36/EC: TRANSPOSITION, IMPLEMENTATION, AND INFRINGEMENTS

1.12 The attempts to introduce more coherence into the DIR are intrinsic to the the efforts to build an integrated EU healthcare workforce. Prior to the SPARK study EFN had already developed a Workforce Matrix 3+1. Designed to upgrade the data available to policy makers, it maps the volume and competences of three categories of nurses (plus healthcare assistants) across the EU's various regulatory jurisdictions. It aligns with the profiles lodged in the database of European skills/competences, qualifications and occupations (ESCO).

1.13 Transposition of the DIR into national legislations should have been completed by 18 January 2016. As is often the case, member states fell way behind schedule. The majority had to be formally warned by the Commision, pulling them into line on issues such as the professional card, the alert mechanism, partial access, and language requirements.

1.14 This generalised dilatoriness does not signify resistance. But four member states drew more targeted and principled rebukes. In November 2018, Greece was put on formal notice for taking three or four times the requisite period to process applications for recognition. The Commission tightened the screw in July 2019, adding a "reasoned opinion" on Greece's refusal to recognise professional qualifications gained on foreign programmes franchised to its private higher education sector. In the same month, Malta was taken to task for imposing excessive conditions on the establishment of psychotherapists. In January 2019, Cyprus (reasoned opinion) and Portugal (formal notice) were cautioned for non-compliant practices regarding the access of architects and engineers.

THE PROPORTIONALITY DIRECTIVE

1.15 Infringement proceedings often indicate the persistence of tensions between national and EU labour markets. From a baseline of 2014, DG GROW resolved to reduce the restrictiveness of member states' regulation of services by 10% in 2017, moving to 20% in 2020. Key to this was a Commission Proposal in January 2017 for a proportionality test before adoption of new regulation of professions. It derived from a

public consultation and from an earlier exercise in mutual evaluation, which revealed – in the view of the Commision – unsound, discriminatory and opaque practices on the part of Competent Authorities, as well as significant discrepancies between them.

1.16 Professions should, in principle, be regulated in compatible ways by all member states. This is not the case. Since 1957, successive waves of enlargement, scientific and technological developments, demographic change, shifting patterns of demand and the rise in cross-border mobility of consumers have created a landscape in permanent evolution. DG GROW routinely cites a total of 6500 regulated professions,including 71 varieties of civil engineer, and 50 million regulated professionals.

1.17 The Commission's Proposal put forward a set of minimum criteria for establishing that new regulatory measures were proportionate rather than extravagant. It was part of a Services Package that was liberalising in intent, anti-protectionist and pro-consumer.

1.18 Unsurprisingly, it aroused mixed feelings among the professional bodies. The Architects' Council of Europe (ACE) considered that it would impinge on the prerogatives of member state legislatures. The healthcare professionals – among them the Standing Committee of European Doctors (CPME), CED, FEDCAR, and the Pharmaceutical Group of the EU (PGEU) – mounted a vigorous campaign echoing the efforts which had led successfully to the exclusion of the healthcare professions from the Services Directive ten years previously. They argued that patient care and the precautionary principle trumped all economic considerations and that the DIR and EU case law already guaranteed that regulators would act proportionately.

1.19 Their efforts drew some sympathy from the European Parliament, which was instrumental in determining the final agreed text of Directive 2018/958/EU on a proportionality test before adoption of new regulation of professions. A compromise was reached which effectively gives greater discretionary scope to the healthcare professions than to others, when determining proportionality. Exactly how this works will become apparent in the Directive's review, due in January 2024.

1.20 The Proportionality Directive came into force in July 2018 and has to be transposed by 30 July of this year.

COMMON TRAINING FRAMEWORKS (CTFS)

1.21 As a short cut to the automatic recognition enjoyed by the seven sectoral professions, the amended DIR gave all other professions the opportunity to propose CTFs (Recital 25 and new Article 49a). These would allow groups of member states – at least one third of the total number (i.e. 9 of EU27) – to agree curricula based on "common sets of knowledge, skills and competences". Other member states could then opt in.

1.22 Take-up has not been widespread and the box below lists those, in various stages of development, of which EUA is aware:

Body		Most recent relevant web page publicly available	Comment
EAHP	European Association of Hospital Pharmacists	https://www.hospitalpharmacy.eu/how-the-project-is-progressing	In advanced stage of planning
EBVS	European Board of Veterinary Specialisation	https://ebvs.eu/news/common-training-framework-ctf-for-ebvs-recognized-specialists-update-october-2017	Application submitted in 2016
ECEC	European Council of Engineers Chambers	https://www.ecec.net/activities/common-training-principles-for-engineers/basics/	Contracted by the Commission in 2016; outcomes inconclusive
ECP	European Councl of Podiatrists and European Network of Podiatry in Higher Education (ENPODHE)	https://www.fip-ifp.org/ecp/ctf/	Has evolved into an Erasmus+ Strategic Partnership application, led by the University of Malta
ESNO	European Specialist Nurses Organisation	https://www.esno.org/assets/harmonise-common_training_framework.pdf	Intended as a template for a range of specialties

When professional bodies have completed their planning, they have to submit applications to DG GROW. These are then assessed by the Group of Coordinators – made up of national experts who "assist the Commission in the preparation of delegated acts". Group minutes currently available to the public show that the Group has dealt extensively with a Common Training Test for ski instructors, but has conducted no higher education-related business. No meetings have been held since March 2018 and no reason for this is given.

1.23 The recognition of professional qualifications has grown more complex. Not only are Proportionality and the use of delegated acts taking effect, but there is greater dependence on digital information management (IMI). The Group of Coordinators is seeking to broaden and deepen its activities. A sub-group dealing with the notification of architecture diplomas has had its remit extended until late 2020, while DG GROW has agreed to support the holding of profession-specific meetings – both bilateral and multilateral. A meeting on engineers was held in July 2018.

Part B The Von der Leyen Commission

2.1 The relevant members of President von der Leyen's team are:

- Vice-President Frans Timmermans (NL) – European Green Deal
- Phil Hogan (IE) – Trade
- Mariya Gabriel (BG) – Innovation, Research, Culture, Education and Youth
- Thierry Breton (FR) – Internal Market
- Stella Kyriakides (CY) – Health and Food Safety

2.2 The corresponding committees in the European Parliament also deal with the recognition of professional qualifications. The lead is taken by Internal Market and Consumer Protection (IMCO). The Committee, historically led by UK members, is now chaired by the Belgian Green Petra de Sutter.

2.3 Both Commission and Parliament have mandates which expire in 2024. Charles Michel (BE) is the new President of the European Council, serving a renewable term of two and a half years.

THE GREEN DEAL

2.4 The headline strategy of the incoming Commission is the European Green Deal, conceived as a timely political and economic response to the threats posed by climate change. Despite the current difficulties in determining the EU budget – difficulties hugely exacerbated by the likely departure of the UK and by the economic crisis triggered by the COVID-19 pandemic – the strategy remains in place. Ambitious, and representing an additional investment of EUR 260 billion per annum, it is in effect an umbrella framework to which all EU policies must relate.

2.5 Even so, the initial paper makes no direct reference to professional qualifications. This would have been a good opportunity to take up, albeit belatedly, the 2010 Monti Report on internal market strategy, which recommended the automatic recognition of digital and green professions. But the Green Deal is more concerned with re-skilling the workers who are most vulnerable to the transition to a circular green economy. It also has a strong focus on research. The nearest it comes to training programmes with HE relevance is when it declares that:

> The Commission will prepare a European competence framework to help develop and assess knowledge, skills and attitudes on climate change and sustainable development. It will also provide support materials and facilitate the exchange of good practices in EU networks of teacher-training programmes.

Whether the framework will be generic or sector-specific remains to be seen. The higher education sector should certainly be consulted.

ONE HEALTH

2.6 There has been much discussion about the shift to online learning prompted by the pandemic. This poses a particular problem for professional training programmes requiring specified amounts of clinical contact.

2.7 The pandemic also poses questions about the adequacy of the healthcare training programmes. Cross-species transmission suggests the need, now become urgent, to bring the studies of human health, animal health and environmental health much closer together. This is the thesis of the One Health initiative. Launched in the US in 2006, recent conferences in Paris and Warsaw have raised its profile in Europe. The CPME, CED, the Federation of Veterinarians of Europe (FVE) and PGEU, together with their related student associations, used the platforms to call for a focused inter-disciplinary undergraduate curriculum centred on agreed One Health competences.

2.8 Taking the initiative further will require a number of problems to be addressed. How to contruct an integrated curriculum based on multi-professional knowledge, skills and competences? How to deliver it in and beyond the existing patchwork of high education institutions? How to incorporate nursing and other specialist and ancillary healthcare Bachelor curricula? And, crucially, how to enshrine One Health in the DIR?

MUTUAL RECOGNITION AGREEMENTS (MRAS)

2.9 Since the EU turned its attention to a "new generation" of free trade agreements (FTAs), the recognition of professional qualifications has become as prominent in its external market as it is in the Internal Market. Typically, FTAs feature an opportunity for professional bodies in each trading partner to agree on the substance of mutual recognition. Their joint proposal then wends its way through whatever joint committee structure has been set up by the FTA.

2.10 The Comprehensive and Economic Trade Agreement with Canada (CETA) first spelt out the MRA methodology. ACE and the Canadian Architecture Licensing Authority (CALA) have made use of the facility. The EU-Japan Economic Agreement (JEEPA) has a committee which receives MRA proposals. The EU-Korea Free Trade Agreement envisages dedicated working groups (in architecture and engineering) reporting to a Trade Committee. The accounting and legal professions are also considered likely candidates. In the EU-Vietnam Trade Agreement, ratified by the EU last month, proposals go from the professional bodies to a committee which, if it approves, forwards them to the competent authorities for negotiation and agreement.

2.11 Discussions regarding an EU-US FTA are also officially under way, although seriously hampered by the pandemic and by incompatible trade policies and postures. Developments are nevertheless taking place through other channels. The US Educational Commission for Foreign Medical Graduates (ECFMG) requires all immigrant medical doctors to be graduates of institutions accredited by an agency recognised by the World Federation for Medical Education (WFME). Both bodies are now in discussion with the European Quality Assurance Register (EQAR) and the European Association for Quality Assurance in Higher Education (ENQA) to establish whether European and US agency recognition practices can be aligned. This would facilitate the mobility of doctors between the EU and the US; the likely beneficiary would be the US.

Part C Brexit

WHAT HAPPENS WHEN THE UK BECOMES A THIRD COUNTRY?

3.1 When the UK becomes, definitely and technically, a "third country" after the end of the transition period, currently scheduled for 31 December 2020, with no intention to join Schengen, it will lose some of the benefit of the mutual recognition procedures enshrined in the DIR.

3.2 Under Article 3.3, it will still be possible for an individual member state to recognise – as is the case with other third countries - a newly qualified UK professional, but that person will be obliged to practise for three years in that member state before becoming legally entitled to recognition throughout the EU and EEA.

3.3 If however, as the EU and UK formally envisage, an Association Agreement (and, within it, a Free Trade Agreement) is in place at the beginning of 2021, it may then be possible for professional bodies on both sides to work towards Mutual Recognition Agreements.

3.4 This wouid be consistent with para.34 of the agreed (but not legally binding) Political Declaration, which notes that the 'Parties should also develop appropriate arrangements on those professional qualifications which are necessary to the pursuit of regulated professions, where in the Parties' mutual interest.'

3.5 There is currently no clarity beyond the end of 2020.

WHAT HAS BEEN AGREED SO FAR?

3.6 The transition period began on 1 February 2020. It can be extended once only by up to two years, by agreement before 1 July 2020. The UK government has said that it is determined not to use this facility.

3.7 Day-to-day business during transition is conducted according to the terms of a Withdrawal Agreement, which is legally binding. This means that any professional recognition granted before the end of transition (to UK professionals already practising in another member state and to non-British EU citizens in the UK) shall, in the words of Article 27 "maintain its effects". In other words, duly recognised professionals will continue to have the right to practise. This applies to:

- professional qualifications recognised in the framework of the DIR, both in the automatic recognition regime covering the seven sectoral professions and via the General System;
- professional legal qualifications recognised in the framework of Directive 98/5/EC;
- professional auditing qualifications recognised in the framework of Directive 2006/43/EC;
- professionals entitled to engage in the use of toxic products in the framework of Directive 74/556/EEC.

3.8 The Withdrawal Agreement gives similar assurance to professionals whose recognition is in train but not yet completed. The EU and the UK agree to cooperate on any pending applications. To this end, the UK will have access to the EU's Internal Market Information system (IMI) during the nine months following the end of the transition period.

WHAT ABOUT PROFESSIONALS WHO APPLY FOR RECOGNITION AFTER THE END OF TRANSITION?

3.9 Such is the dependence of the UK on qualified professionals from EU27 that there is considerable anxiety on the British side. The Confederation of British Industry (CBI), while happy with the provisions of the Withdrawal Agreement, wants them backed up with the mutual recognition of professional bodies (among which it includes the competent authorities). BusinessEurope calls for the future EU-UK trade agreement to mirror the DIR and to use it as the basis for any further recognition arrangements.

3.10 The EU and UK have agreed that these matters will be handled by a negotiating group focused on trade in services. For the time being, we know little more than is contained in the mandates for the negotiations which began in March.

3.11 Para.43 of the EU's directives to its negotiators specify that "the envisaged partnership should also include a framework for negotiations on the conditions for the competent domestic authorities to recognise professional qualifications necessary to the pursuit of specific regulated professions, where in the Union's interest." [EUA italics]

3.12 Paras.48-49 of the UK's "approach to negotiations" read as follows:

> 48. The Agreement should provide a pathway for the mutual recognition of professional qualifications, underpinned by regulatory cooperation. Comprehensive coverage would ensure that qualification requirements do not become an unnecessary barrier to trade in regulated services, across the modes of supply, between the UK and the EU.
>
> 49. The Agreement should ensure that the parties can set their own professional standards [EUA italics] and protect public safety. The parties should explore how competent authorities could recognise applicants who demonstrate that they meet the host states' standards.

3.13 Both positions leave open the possibility of total alignment on the one hand and divergence on the other. The eventual outcome will be determined by wider considerations of trade in services and citizens' rights. Ominously, the UK paper contains a threat to walk away from the negotiations if substantial progress has not been made on the whole package by June 2020. Here, "progress" appears to mean the sealing of a trade deal similar to the CETA and its MRAs. However, in the oft-reiterated view of the EU's chief negotiator Michel Barnier, the CETA is not an appropriate model. The geographical proximity of the UK, together with the sheer volume of trade linking it to the EU, brings quite different considerations into play – notably, regulatory alignment and a level playing field.

3.14 The wider context is also relevant. Geneva-based talks involving a number of WTO member countries have focused on "services domestic regulation", one aspect of which is the recognition of professional qualifications. The EU, including the UK until the end of January this year, has been an active participant. Finalised policy was expected to emerge from the next WTO ministerial conference in June 2020, but this has now been postponed.

3.15 In mid-March the Commission's UK Task Force published its 440-page draft of an eventual EU-UK agreement. It contains some predictable formulations (p.119), but the Annex intended to spell out the practical guidelines (p.347) is empty. Some observers (for example, Borderlex) take this reticence to indicate that the UK is the needier Party and that the EU will seek to take advantage.

3.16 Future professionals yet to qualify in the EU and the UK will certainly have to wait a good while before they have clear sight of whether and how they might be able to work in each other's jurisdictions.

3.17 The only bilateral relationship currently in place is the Memorandum of Understanding committing the UK and Ireland to the continuation of their Common Travel Area. The MoU notes that:

> It is acknowledged that the recognition of qualifications, including professional qualifications, is an essential facilitator of the right to work associated with the CTA. The Participants are committed to ensuring that within their respective jurisdictions, comprehensive measures continue to be in place to allow for the recognition of such qualifications, covering all relevant professions, in accordance with their national laws.

Comments and corrections are welcome:

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