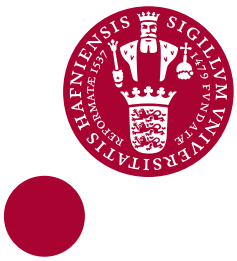

Union citizens and the recognition of professional qualifications where do we go from here?

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3. Union citizens and the recognition of professional qualifications: where do we go from here?

Silvia Adamo and Tom Binder

INTRODUCTION

A core economic right for European Union (EU) citizens is the right to exercise a profession and access the services market in a host Member State. Moreover, the growing need for professional mobility to cover internal market shortages of labour and skills highlights the need for a smooth, pan-European system of recognition of professional qualifications. The EU regulation in this area, operating since the 1960s and culminating in the 2016 introduction of the European Professional Card, is not problem-free. Practical and non-legal barriers and problems remain unresolved. There are barriers based on language and national practices, but also lengthy and costly procedures for application of recognition, impositions of retraining periods, and unfamiliarity with an immigrant workforce in non-regulated professions. Taking as a point of departure the actual implementation of the system of professional qualifications in a series of Member States, this chapter focuses on the barriers that emerge and need to be addressed in order to strengthen the concept of EU citizenship in this field.

THE LEGAL FRAMEWORK FOR RECOGNITION OF EU PROFESSIONAL QUALIFICATIONS: A BRIEF HISTORY (1960–2016)

This section touches upon the legal framework for recognition of professional qualifications within the EU, and thereby establishes the context within which we explore the main findings of this chapter. In doing so, a brief history of regulatory developments is presented, and recent as well as current developments are discussed.

Historic Regulatory Developments for Recognition of EU Professional Qualifications

Ever since the 1957 Treaty of Rome (Treaty establishing the European Economic Community – TEEC) established the European Economic Community (EEC), the recognition of professional qualifications has been of utmost importance to the free movement of professionals (Hatzopoulous 2012, p. 238). Indeed, this holds true not only for the establishment of workers and service providers, but also for occasional extraterritorial service provision (Hatzopoulous 2012). In order to make it easier for persons to take up and pursue activities as self-employed persons across Member States, Article 57(1) TEEC provided for an explicit legal basis, mandating the EEC legislature to issue Directives on the mutual recognition of diplomas, certificates and other evidence of formal qualifications.[1] Over the decades that followed, three blocks of regulatory Acts were adopted by virtue of this provision.[2] More recently, Article 47(1) TEC (the successor of Article 57(1) TEEC) provided the legal basis for a consolidation of previous legislative endeavours, as well as the introduction of some novel features.[3] These subsequent regulatory developments are discussed in chronological order.

The late 1960s and early 1970s: 'transitional' measures

Firstly, during the late 1960s and early 1970s, a series of Directives were adopted on the basis of Article 57(1) TEEC.[4] These measures, pertaining to numerous manufacturing and distribution activities, were initially intended to apply pending harmonization of the conditions under which the activities could be exercised, and are therefore to be understood as 'transitional' measures (Hatzopoulos 2012, p. 238). However, the envisaged harmonization was never materialized, and the purportedly 'transitional' Directives would remain in force until, eventually, they were repealed in 1999 (Hatzopoulos 2012, p. 239).

The series of 'transitional' measures has been described as having established an 'imperfect system' for the mutual recognition of professional experience (Hatzopoulos 2012, p. 238). Considering the aim of opening up access to the professional markets of other Member States, the measures have arguably proved of limited effect in achieving this goal. A twofold explanation may be given in this regard (Hatzopoulos 2012, pp. 238–239). On the one hand, no prior attempts to harmonize regulation of the professional fields covered by the Directives had ever been made. This proved a far more strenuous task than expected, and the intended 'transitional' measures were inadequate to produce the desired effects. On the other hand, the direct effect of the Treaty provisions on the establishment of

workers and service providers, and occasional service provision, was yet to be recognized at the time. To illustrate this, Hatzopoulos signals that, upon their repeal in 1999, merely two of the 'transitional' Directives had ever reached the Court of Justice.[5] Notwithstanding their purported limited effectiveness, these early efforts are to be considered the foundation on which the recognition of professional qualifications would further develop. It was not until 1975 that new efforts to regulate the recognition of professional qualifications were made.

The mid-1970s and mid-1980s: sector-specific recognition based on harmonization

Later, between the mid-1970s and mid-1980s, Article 57(1) TEEC was utilized for the adoption of sector-specific Directives harmonizing the conditions for access to multiple professions. In the case of six medical professions,[6] for instance, the EEC legislature opted for a regulatory approach consisting of 'paired' Directives. One Directive would harmonize the contents and duration of the relevant study cycles for a given profession, while the other would coordinate a system of 'quasi-automatic recognition' of the ensuing professional titles in all Member States (Hatzopoulous 2012, p. 239).[7] In the case of the profession of architect, by contrast, both processes were dictated by a single Directive.[8]

Like the 'transitional' measures, the sector-specific efforts to achieve recognition of professional qualifications may be considered to have been imperfect, as they were accompanied by inherent drawbacks. For one, this approach required extensive negotiations. Heremans highlighted an 'immense difficulty experienced in agreeing on even vague minimum standards' (Heremans 2012, p. 214). Furthermore, these efforts merely extended to a few 'bourgeois professions', and the highly detailed sector-specific approach could arguably be perceived as a form of legal rigidity running counter to the principle of subsidiarity that would soon be introduced with the entry into force of the Treaty of Maastricht (Hatzopoulos 2012, p. 240). Nonetheless, it was not until 1985 that a new fundamental step in the development of recognition of professional qualifications was taken.

The mid-1980s and onwards: General System based on a 'new approach'

From the mid-1980s and onwards, building forth on the fundamental *Cassis de Dijon* jurisprudence,[9] a 'New Approach' to harmonization was taken (see, e.g., Craig and De Búrca 2011, p. 597). Again based on the competences granted under Article 57(1) TEEC, a 'General System' for the mutual recognition of professional qualifications was developed (Hatzopoulos 2012, p. 240).[10]

Application of the General System required that the host Member State regulated the concerned profession. In any other case, access ought to be unfettered at risk of direct violation of the Treaty provisions on establishment of workers and service providers, and occasional service provision. Under the General System, any person enjoying the right to access a certain profession in a home Member State was, in principle, allowed to do so in a host Member State as well. A host Member State in turn could impose compensatory measures, in the form of apprenticeship periods or aptitude exams, under two circumstances: first, when the duration and/or content of the study cycle differed significantly; and second, when the tasks to be performed by the professional in the host Member State were fundamentally different from those they would perform in the home Member State (Hatzopoulos 2012, p. 241).

This first version of the General System has been described as employing 'superficial harmonization' (Hatzopoulos 2012), since this system set up a non-automatic recognition procedure, thereby constituting a crucial drawback of this method in comparison to the aforementioned system of paired Directives. Instead, in the General System, recognition underwent substantive evaluation by the host Member State authorities (Hatzopoulos 2012).

While the first General System merely covered degrees and diplomas awarded upon completion of a study cycle with a minimum duration of three years, it was subsequently complemented by a second General System to also include studies of lesser duration.[11] Eventually, in 2005, a new EU legislative effort would try to establish order in the arguably dispersed system of recognition through various Directives.

The mid-2000s: consolidation and novel features[12]

In September 2005, the most definite step towards the establishment of the regulatory framework for recognition of professional qualifications, as we know it nowadays, was taken with the adoption of Council Directive 2005/36/EC. The so-called 'Professional Qualifications Directive' amended and consolidated the aforementioned sector-specific Directives as well as the two General System Directives. The newest amendment is from 2013.[13]

The consolidating Directive regulates the equivalences of five distinguishable levels of education, ranging from 'attestations of competence' acquired upon completion of training courses, to diplomas accrediting the completion of four years of post-secondary education (Hatzopoulos 2012, p. 242). In addition to this refinement of the previously existing systems of mutual recognition, the Directive contained some novel features. A case in point is the provision holding that a professional established in one Member State may occasionally exercise their activity in another Member

State, without the need for recognition of any qualifications, albeit subject to a requirement of prior declaration (Hatzopoulos 2012, p. 242).

Hatzopolous describes the legislative effort that gave rise to the Professional Qualifications Directive as 'horizontal hybrid', in that it contains both rules aiming at facilitating the establishment of service providers in other Member States than their own, and rules for occasional service providers (Hatzopoulos 2012, p. 242). Moreover, it also contains rules on harmonization, as well as mutual recognition and administrative cooperation. In this optic, the Professional Qualifications Directive as the current legal basis contains four different pathways to the recognition of professional skills: (1) an automatic recognition system based on harmonized minimum training requirements (architects, dentists, doctors, midwives, pharmacists and veterinary surgeons); (2) an automatic recognition procedure based on professional experience (craft, commerce and industry sector); (3) a general system for mutual recognition for all other regulated professions (involving a case-by-case review and opening up for the possibility of requiring compensatory measures); and (4) a possibility for the exercise of professional services on a temporary basis (Mendoza et al. 2017).

Recent and Current Developments

The Professional Qualifications Directive introduced the current legal framework for recognition of EU professional qualifications. Since then, however, some recent and current developments have altered this framework.

2013: the modernization of Council Directive 2005/36/EC

In 2013, the amendment of Council Directive 2013/55/EU updated the legal basis for the recognition of the professional qualifications framework. In an effort to underscore the principles of mutual trust and mutual recognition, the changes regarded the use of modern technologies in recognition procedures, increased access to information and common training principles.[14]

Amongst the hallmarks of the 2013 Directive was the introduction of Common Training Frameworks (CTFs).[15] This refers to common curricula, consisting of sets of minimum knowledge, skills and competences necessary for the pursuit of a specific profession, made applicable in at least one-third of the Member States.

Furthermore, the Directive introduced changes to modernize the harmonized minimum training conditions for several sector-specific professions. Basic medical training, for instance, would still consist of a total of

at least 5500 hours of theoretical and practical training provided by, or under the supervision of, a university. However, the training would now comprise at least five – instead of six – years of study.[16]

Finally, the Directive introduced the European Professional Card (EPC), an electronic certificate proving either that the professional has met all the necessary conditions to provide services in a host Member State on a temporary and occasional basis, or the recognition of professional qualifications for establishment in a host Member State.[17] Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2013/55/EU by 18 January 2016.

2016: the European Professional Card (EPC)

Accordingly, in 2016, the Member States were under the obligation to have transposed the novelties of Directive 2013/55/EU – including the European Professional Card – into their legal systems. At present, the EPC procedure is only available to the professions of general care nurse, pharmacist, physiotherapist, mountain guide and real-estate agent.[18]

Amongst the benefits of the EPC procedure are the fact that home country authorities will assist with an application for the recognition of qualifications, and certify the authenticity and validity of required documents. Moreover, regarding future requests for long-term settlement or temporary provision of services in another country, the professional's file will already be available in the EPC system and documents will not need to be uploaded again. Finally, if the host country authority in charge of an application does not take a final decision within the appropriate deadline, recognition will be granted automatically and the professional can generate an EPC certificate.

2017: a service economy that works for Europeans

More recently, on 10 January 2017, the European Commission introduced a legislative package aimed at making it easier for companies and professionals to provide services.[19] Although not an amendment of the legal framework for recognition of professional qualifications, these efforts are deserving of notice at this point. The package consists of four concrete initiatives: a new European Services e-card, providing a simplified electronic procedure making it easier for providers of business services (for example, engineering firms, information technology consultants, organizers of trade shows) and construction services to complete the administrative formalities required to provide services in other Member States;[20] a proportionality assessment of national rules on professional services;[21] guidance for national reforms in the regulation of professional services with high growth and job potential: architects, engineers, lawyers,

accountants, patent agents, real-estate agents and tourist guides;[22] and improved notification of draft national laws on services.[23] In this regard, it must be noted that the introduction of the European Services e-card would not alter existing employer obligations or worker's rights, as the host Member State would retain its current power to apply domestic regulatory requirements and to decide whether the professional concerned can eventually offer services on its territory.[24]

This section has provided an overview of the regulation in place for the recognition of professional qualifications in the EU. Against this backdrop, what are the concrete barriers that professionals may encounter in their journey towards establishment or provision of services in a host Member State? Is it possible to identify what types of concrete hindrances are to be found along the way? In the next section, we proceed by exploring these questions in the context of Union citizenship via a case study-based analysis.

THE BARRIERS THAT PROFESSIONALS FACE IN ATTAINING RECOGNITION OF THEIR PROFESSIONAL QUALIFICATIONS: FIVE CASE STUDIES

In this section, we present the main findings of the bEUcitizen research project (Adamo et al. 2017), where we undertook a comparative study on five professions in four countries (Denmark, Greece, the Netherlands and Spain) in order to examine from a practical standpoint the challenges to the recognition of qualifications of a series of regulated and non-regulated professions. In the study, we zoomed in on the following professions: lawyers (advocates), midwives, hairdressers, caregivers and in-home nurses, and tourist guides. Behind the choice of these particular professions lies the interest in investigating how the legislation of reference (if there is one) influences the access of professionals to another Member State's labour market. Two specific Directives[25] regulate the free movement of lawyers, while the Professional Qualifications Directive is the regulatory framework for midwives. Some Member States regulate the professions of hairdressers and caregivers, while others do not. Finally, only a few Member States regulate the profession of tourist guide in detail. As such, the various categories of professions chosen in the case studies can cast light on different aspects and challenges to the issue of framing the regulation of the recognition of professional qualifications.

Lawyers

The EU regulations targeting the free movement of lawyers have been enforced since the late 1970s.[26] Having this long-lasting experience with legislative efforts to facilitate the EU lawyers' exercise of their profession across EU Member States, it was interesting to study whether or not some unresolved issues persist. A first result points to a uniform application of the Directive, thus enhancing the possibility of EU lawyers working in another Member State than their own country. Three cases were examined: establishment in another Member State using the home country's title as lawyer; establishment because of mutual recognition of professional qualifications; and lastly, the case of provision of services as a lawyer.

Establishment using the home country's title as lawyer

As regards the first case study, in all the Member States examined we verified that it is possible to exercise the profession on a permanent basis using the home country's professional title (Adamo et al. 2017, p. 26). Lawyers are thus able to practise on a permanent basis in a Member State other than that in which they obtained their qualifications, maintaining their original professional title. We identified procedural and professional rules that are of interest in the lawyers' case study. In Denmark, Spain and Greece, EU lawyers must register at the national Bar Association. The professionals have to present a series of documents by means of a sworn translation in order to register at the Spanish Bar Association. Specific rules in Denmark, the Netherlands and Greece establish that EU lawyers must abide the national guidelines on the rights and duties of lawyers, as to say the professional code of conduct. Moreover, in Greece, there is also a mandatory requirement to register to specific insurance funds (Adamo et al. 2017, p. 27).

Regarding the conditions of practice, in a uniform manner in all the Member States under focus, foreign professionals can practice individually with their home country title. Only in cases where the law prescribes the representation of a lawyer must a foreign professional cooperate with a national lawyer in order to represent a client in court and participate in proceedings. To practise individually in Spain, it is necessary to register at the Spanish Bar Association and to practise actively for three years (not exclusively in the area of international law). Recently graduated lawyers, who have obtained a degree in another Member State, must undergo a three-year internship or traineeship trial period. Specific requirements may be enforced regarding additional examination in national legal disciplines (the Netherlands), a mandatory bar exam (Denmark, Greece), or even a review of the formal and substantive requirements held by a designated body (Greece).

Finally, EU lawyers can also practise in an extrajudicial setting in all of the Member States examined; for example, in Greece, foreign lawyers can provide legal advice and practise as lawyers with their home country title for various public and private entities and also in law firms. Acts and duties that could constitute an expression of authority under Greek law are excluded from this practice in extrajudicial settings (Adamo et al. 2017, pp. 28–29).

EU lawyers who apply for recognition of their qualifications in order to obtain the host country's title as lawyer

In this case study, we found that different recognition procedures are set in place in the various Member States. The choices reflect the Member States' attitudes towards the requirement to enforce in order to grant recognition. For example, in Denmark, a foreign lawyer is requested to have experience (or have had activity within) the Danish legal system (also in a period where they practice under their home country title). The Dutch Bar Association evaluates a foreign lawyer's credentials and proof of professional experience, and at times it conducts an additional test of proficiency. In Greece, an applicant must pass a written aptitude test on six subjects of Greek law, on top of providing a series of certificates and registration with the Bar Association. The Spanish Ministry of Education grants recognition to foreign lawyers in Spain if the applicants provide certification and have further formal training in Spanish law. Moreover, the applicants must pass a specific test and register at the Spanish Bar Association.

The rules for appearing in courts are generally the same for lawyers, regardless of which country they gained their qualifications in. Member States can require lawyers to pass a test in litigation (for example, in Denmark and in the Netherlands) or they can appear in court straight after their qualifications have been recognized (in Spain and in Greece, although for the latter that also depends on the total years of practice). Nonetheless, lawyers will have to practise for at least four years before being admitted to the Court of Appeal (and four supplementary years before it is possible to appear before the Supreme Court).

We also examined whether geographical limitations are set in place, which could potentially hinder the free movement of EU lawyers within a host country. In Denmark, Spain and the Netherlands, once lawyers register at the Bar Association they can practice throughout the entire country. However, in Greece, there are 63 local Bar Associations, and in order to practise in a particular city they have to register at the local Bar Association for the geographical jurisdiction where they are based (Adamo et al. 2017, p. 30).

Regarding participation in law firms, no particular limitations or professional rules are enforced in Denmark, the Netherlands or in Spain. No specific limitations apply to professionals whose qualifications have been recognized in Greece, where the only precondition for being a partner in a law firm is an active lawyer status.

We also concentrated on unveiling any non-legal barriers that could affect the free movement of lawyers who were seeking to have their professional qualifications recognized in another country. Linguistic barriers were the most common, and present in all the Member States examined. In the Netherlands, there is notably a lack of information in English on the website of the Bar Association, in relation to both the procedure for recognition and the procedures applicable in case of denial of recognition. Difficulties related to the various official languages in Spain may constitute an obstacle; while in Greece the high level of unemployment among recent graduates (more than 40 per cent in 2013) is also very likely to affect labour market access of foreign lawyers. The final case study focused on the conditions for providing services for EU lawyers, as regulated by Council Directive 77/249/EEC.

Providing services as an EU lawyer

In this third and final case study involving legal practice, we found a generally uniform and similar application of the EU regulation across the Member States examined. Lawyers established in another Member State can freely provide legal services in Denmark without any prior requirement for authorization or registration. However, Danish authorities and courts can, by law, request documentation of the EU lawyer's right to provide services in Denmark. In addition, where there is a duty to appear by one's attorney in national legislation, the foreign lawyer providing services cannot appear in court unless they are with a lawyer holding a Danish licence to practise and appear before the court treating the case (Adamo et al. 2017, p. 31).

Similarly, in the Netherlands, where the law so prescribes, professionals providing legal services on a temporary basis must cooperate with a person holding the title of Dutch 'Advocaat' in a judicial setting. The EU lawyers may practise under their home country title, after stating their professional organization of reference and the judiciary to which they have been admitted in their home country. In the Netherlands, two exceptions are valid for EU lawyers providing services: they may be exempted from dress code requirements, and a judge may allow them to conduct proceedings in a language other than Dutch (Adamo et al. 2017, p. 31).

Lawyers pursuing professional activity on a temporary basis in Greece must comply with the professional rules of conduct of the EU lawyers'

home country and the Greek code of conduct rules. Similarly to the Netherlands and Denmark, an EU lawyer providing services in Greece must cooperate with a Greek lawyer competent to practise before a judicial authority. There are also duties to inform the President of the relevant Bar Association of the details and specific conditions of the legal services offered, their duration, documentation of conduct, and so on (Adamo et al. 2017, p. 32).

In conclusion, the case studies on lawyers have highlighted that lawyers practising under their own country title and professionals providing services as EU lawyers encounter the least difficulties in exercising their professions in the countries examined. In both cases, and generally speaking, the national authorities apply well-known legislation in a uniform way. Difficulties persist, unsurprisingly, as regards the national procedures set in place in order to recognize the qualifications of an EU lawyer in order for them to gain a host country title. In this case, the Member States retain their discretionary power and may apply various (more or less favourable) procedures. A possible explanation for this set-up could be that it appears to be in the Member States' interest to maintain control over the assignment of the national lawyer's professional title.

The linguistic barrier is also very clearly present. As with the recognition of foreign qualifications in order to gain a host country's professional title as lawyer, this is not an unusual or unexpected hindrance, given the key role that language plays in the exercise of the legal profession.

Midwives

The second profession under focus was that of midwife, which is a profession regulated via the automatic recognition procedure established in the Professional Qualifications Directive.[27] The analysis revolved around the case of recently graduated midwives who seek professional recognition in another Member State. The procedure for recognition is thus oriented towards formal requirements (Adamo et al. 2017, p. 32).

In Denmark, the Danish Patient Safety Authority is in charge of evaluating the applications for the recognition of qualifications of foreign health professionals. The applicant must provide certificates that attest to the formal qualifications attained, the applicant's good standing and legal entitlement to the profession, and a declaration regarding the conformity of the applicant's education (and any professional experience) to the requirements specified in the Directive. The documents provided must be recent (less than three months old) and accompanied by an official English or Danish translation. The cost of the application fee is very reasonable.[28]

In Greece, midwives can also achieve recognition of their professional qualifications if they can certify these by means of a diploma after following full-time training for at least three years. In addition, midwives holding qualifications as nurses in general care who have practised as midwives can achieve automatic recognition. The fee for the procedure is quite modest in Greece as well. If the professional wants to apply for recognition under the general system for recognition (in case they are not in possession of a diploma certifying the minimum training conditions), the administrative fee will be higher. The procedure for the recognition of the qualification of midwife trained in another Member State (who may never have practised) is also quite straightforward, as a sworn translation of the diploma (indicating subjects passed and marks) will suffice.

Finally, in Spain, the procedure for recognition also follows the Directive's guidelines and grants automatic recognition to midwives who fulfil the requirements of the Directive and whose country of origin regulates the profession. Midwives who do not fulfil the requirements have to provide evidence of full-time work for at least three consecutive years within the last five years. In cases where a midwife comes from a country where the profession is not regulated, the applicant must produce a certificate confirming full-time work as a midwife for at least two years within ten years from the achievement of the professional certificate (Adamo et al. 2017, p. 33).

After recognition, the conditions for practice for midwives are similar in all the countries we studied, where midwives can practise in both private and public facilities. In Greece, they can work independently or in collaboration with other professionals, or can be self-employed (the latter situation only if they have worked for at least two years in a hospital or other institution and hold a licence from the Greek Ministry of Health). Finally, we found no gender bias against male midwives in any of the countries under focus, although in general they are under-represented in this health sector.

In this case study, which concerns a profession included in the Professional Qualifications Directive, we did not find significant or structural barriers to the free movement of midwives who fulfil the requirements listed in the Directive. This statement could give rise to different interpretations. On the one hand, it could speak for a general acceptance in the Member States under study of the reach and system set up by the Directive. On the other hand, the relative similarity of procedures could be a consequence of the general similarity of requirements for the exercise of this particular profession. In other words, it could be the case that as the profession of midwife is practised on the basis of similar requirements across all Member States, recognition in a host country is consequently more accessible.

Hairdressers

The third study we undertook focused on the profession of hairdressers, which is a profession that is not regulated under the Directive on Professional Qualifications. Neither in Denmark nor in the Netherlands is the profession of hairdresser regulated, thus there are no requirements for recognition to be met. A dedicated trade union in Denmark or the Centre for Credential Evaluation (IDW) in the Netherlands could assist foreign hairdressers who want to work as employees in those countries.

The situation is very much different, though, for hairdressers who want to practise in Spain or in Greece. In Spain, regional authorities are in charge of granting official accreditation, based on at least three years of professional experience. In cases where the hairdresser is in possession of a diploma, the Spanish Education Department will be in charge of evaluating it. The applicant must be proficient not only in Spanish, but also in any of the official languages of the region where they intend to practise. Notable in particular is the right of consumers in Cataluña to be attended in either Catalan or Spanish; business owners who fail to attend consumers in their language of choice may incur a heavy fine (ranging from €1000 to €100 000). Finally, the self-employed may also have fiscal and registration obligations, and licences and/or planning permissions to comply with in order to practise in Spain (Adamo et al. 2017, p. 34).

Greek legislation also requires a diploma attesting the completion of secondary education (or equivalent from another Member State) in order to work as a hairdresser. The general system of recognition will be applicable should a foreign hairdresser want to move and work in Greece. Moreover, apart from an informal requirement and knowledge of the Greek language in order to deal with the customers, a foreign professional may also incur a series of costs and fees. They will have to apply for a licence to practise, enrol with the municipality and provide, *inter alia*, a health certificate for businesses with sanitary interests (which confirms the absence of contagious diseases). The list of requirements to be fulfilled in order to open a hair salon is a little longer, and it includes: a certificate by the professional chamber for the use of the title; a licence; registration with the Social Insurance Organization of Freelance Professionals; a certificate for commencing a business activity; and a licence of establishment and function as a business of sanitary interest (Adamo et al. 2017, p. 35).

In the case study of hairdressers, it is interesting to see the different approaches to the same profession. While some Member States do not specifically regulate the profession, other national settings may require hairdressers to meet consumer-friendly requirements (particularly in

Spain, insisting on language proficiency also in regional languages) and health requirements (in Greece). Thus, the hindrances that could arise with regard to this profession may surge when a professional moves from a Member State that does not regulate the profession to a Member State that sets up professional and other types of requirements.

Caregivers

The analysis of the rules regulating the professional status and qualifications of caregivers and in-home nurses revealed different approaches across the Member States. In Denmark the profession is regulated (although few work as in-home nurses), and in order to hold an authorization as a social and healthcare assistant (*social- og sundhedsassistent*), as the profession is referred to in Denmark, a professional must follow a two-year full-time educational programme. Foreign professionals must apply to the Danish Patient Safety Authority in order to obtain an authorization to work based on their qualifications and previous training. If there are substantial differences between the educational background of the foreign professional and the Danish qualifications, these can be remedied by compensation measures (test, or adaptation period). Moreover, the linguistic proficiency requirements for exercising health work, especially with elder persons, are very high. Social and healthcare assistants are normally not employed directly by private citizens, but by a hospital or municipality that provides the care services to the citizens as part of the Danish welfare system.

In the Netherlands, the profession of caregiver (*thuiszorg*) is not regulated, and consequently there are no legal requirements to fulfil in order to enter a market which is privatized. These caregivers assist the elderly in daily household activities; while in-home nurses provide professional care, perform minor medical procedures and provide emotional support, after following a specific educational programme. Moreover, as in the Danish case, the linguistic competences of in-home nurses are very important in order to perform the duties of their profession. Thus, the profession of in-home nurses is regulated, and recognition of foreign professional qualifications is a precondition to practise in the Netherlands.

The Greek notion of domestic workers (*oikiakoi voithoi*) covers both caregivers and in-home nurses. Regarding domestic employees, a private agreement normally regulates the pay and working conditions (including paid leave and social security contributions) of individuals employed to perform activities as caregivers. Unfortunately, the authorities do not effectively monitor the working conditions and rights of domestic workers (or what the employers may require from the workers), and with the financial

crisis that has affected Greece in the recent years their situation cannot be said to be efficiently regulated and protected. As regards in-home nurses, Greek regulation requires a nursing licence, specific qualifications and registration on a nurses' record in order to practise. Foreigners must also produce a certificate of knowledge of the Greek language, and documentation for equivalence of their qualifications, with all the legal and administrative hurdles that this may entail (Adamo et al. 2017, p. 36).

A collective bargaining agreement in Spain regulates the working conditions and resting hours for caregivers, including a minimum monthly salary for full-time employees. The regional authorities must verify a 'suitable accreditation' for caregivers, which is normally given based upon a minimum of three years of working experience or at least 300 hours of training. Noteworthy is the fact that there is an annual cap on the number of professional accreditations for caregivers in Spain, and reserve lists seem to favour those professionals who have studied or worked in a particular region. In general, the working conditions in this profession (which is performed mostly by women aged 40–64 and irregular migrants) are poor, also due to budgetary cuts to the assistance of the elderly and the disabled.

In the case study on caregivers, the differences in the various national approaches derive from the fact that the profession is in the middle ground between a healthcare professional and a domestic worker. In this middle ground, the principles for the mutual recognition of qualifications offer protection to the citizens employing caregivers to work as in-home nurses, who are to be considered as health professionals. However, when the definition shifts to caregivers who mostly work in-home, the protection of the workers' conditions and pay may not always be guaranteed to be fair although the role they fulfil has a great socio-economic impact.

Tourist Guides

The last study we examined referred to tourist guides with professional experience. We discovered that the professions of tourist guide and of tour leader or tour manager are not regulated in Denmark nor in the Netherlands, permitting access to the profession to foreigners who want to practise in these countries. In Denmark, although no formal authorization is required in order to practise, it is possible to obtain a diploma as tourist guide (*turistfører*) following a one-year full-time educational programme (or two-year part-time). An association of tourist guides holding the diploma manages the guides, who call themselves 'authorized guides'. Another, shorter educational programme can lead to the profession of tour leader or tour manager (Adamo et al. 2017, p. 37).

In Greece and Spain, the situation is quite different. The profession of tourist guide is regulated by Greek legislation, giving access to the profession to those having qualifications obtained in Greece or in another Member State. In the latter case, foreigners must apply for recognition of their qualifications at the Council for the Recognition of Professional Qualifications (SAEP). A law amendment opened the path to the recognition of foreign tourist guides in 2012. However, foreigners have to gain recognition through the general recognition system via compensation measures, such as a training period or aptitude test held at a Greek tourist school. Unfortunately, since 2010 schools of this type have remained closed due to budgetary constraints. As such, at the time of writing in early 2017 it is not possible for foreigners holding professional qualifications to have them recognized in Greece. In the aftermath of a complaint to the European Commission (in 2014), alternative venues now offer the possibility to undertake training periods and aptitude tests. No geographical limitations apply to the profession, and foreign tourist guides holding a higher education degree are not required to show proof of previous work experience to attain equivalence of their qualifications (Adamo et al. 2017, p. 38).

Lastly, in Spain the regional authorities are in charge of granting accreditation to work as a tourist guide in places of interest and museums. Foreign tourist guides may attain accreditation in a series of circumstances, for example if they have acquired accreditation in another Member State or a diploma as a tourist guide after completing secondary education. In those instances where tourist guides come from a Member State that does not regulate this profession, they can gain accreditation in Spain if they have carried out the profession for at least two years within the last ten years, or they hold a higher education certificate (after passing a further test). As regards linguistic requirements, tourist guides in Spain must speak Spanish but must also master Catalan and Galician in case they work in the regions of Cataluña or Galicia. The national principle of mutual recognition across Spanish regions (as enforced in the Unity Market Act) does not allow for imposing geographical restrictions to the mobility of tourist guides.

In this final case study, it appears that the countries that link their historical heritage to the tourism industry extensively regulate and consequently protect the professional category of tourist guide, in some ways limiting access to other EU nationals. Consequently, professionals who may try to enter the labour markets in these countries face a series of practical and administrative barriers.

EVALUATION OF THE BARRIERS TO THE RECOGNITION OF UNION CITIZENS' PROFESSIONAL QUALIFICATIONS

The realities we discerned from the case studies showed a variety of approaches to the same pressing questions: how do we most efficiently structure the mutual recognition procedures to admit professionals from another Member State to the domestic labour market? How can we ensure, on the one hand, that a series of national interests are protected (quality of standards, health safety, consumer protection, and so on); and on the other hand, that Union citizens are guaranteed the economic right to move and provide services across the EU? Simultaneously, these difficult considerations have played a central role in the development of the EU legal framework for the recognition of professional qualifications. The Professional Qualifications Directive has created a system whose purpose was to 'codify, simplify and rationalize the conditions under which recognition is ensured' (Hatzopoulos 2005, p. 1622). Since its adoption in 2005, one can confidently say that the system is not running smoothly.

Firstly, there are practical barriers, also non-legal, which affect all professions, even the ones included in the automatic system for recognition. As shown by the case studies presented, the system is complex and fragmented, and professionals have to navigate through complicated procedures and opaque information. The process for skills assessment or recognition can be lengthy and costly. Linguistic barriers can also prevent foreign professionals from accessing a host Member State's labour market in a timely manner. In fact, if a long time goes by before a professional's qualifications are recognized, their skills might remain unutilized long enough to impair a later labour market insertion. Widely available and accessible information in a multilingual version could remedy this condition (Adamo et al. 2017, p. 39). Pre-departure assessment has been used efficiently in other contexts in order to sustain the first insertion in a host State's labour market, so that professionals' competences do not become out of date and lead them to desist in their job-seeking efforts.[29] A similar procedure is at stake as regards the European Professional Card, since the Member State that has granted the qualifications is also is in charge of certifying the credentials towards other Member States.

Secondly, the system works more efficiently when automatic recognition is possible, rather than when the General System carries out a case-by-case assessment. At present, though, the automatic recognition process is only applicable to seven professions out of around 700 regulated professions in Europe. As shown by some of the case studies above (for example, lawyers, midwives), the automatic recognition system is the one that maximizes

the opportunities for smooth recognition. When skills and knowledge are comparable, the need to evaluate the professionals' competences in every individual case diminishes. In order to achieve its goal of facilitating the mobility of skilled people, mutual recognition of professional qualifications entails that Member States waive their discretion to assess foreign qualifications. This framework involves a high degree of mutual trust in the regulatory boards of other Member States. A possible way to deal with this issue could be to build and support mutual trust via an infrastructure that connects the various agencies, for example those in charge of releasing diplomas and/or recognizing foreign diplomas, also in informal fora. Increasing and maintaining the knowledge about the minimum requirements of training standards in other Member States would reassure a host country's authorities about the quality of the qualifications of foreign professionals. In turn, this trust ought to turn into domestic regulations that ease the access of foreign-trained professionals to the Member States' labour markets. In addition, one may argue that at the base of mutual recognition there should be an evaluation not of the process leading to a certain professional qualification, but first and foremost of the quality of the outcome of this qualification against the backdrop of national standards and objective criteria (Plimmer 2002).

Thirdly, another drawback in the procedures as they are set up now is, as a matter of fact, that the General System may open up to the possibility of introducing supplementary or compensatory requirements and thus expanding the non-automatic recognition of professionals. Compensatory measures are necessary when professional qualifications are not comparable, and in these cases, specifically tailored compensatory measures should target foreign qualified professionals (Desiderio 2014, p. 41). The possibility to take compensatory measures must be real and viable, and not create unfair barriers to foreign professionals. Moreover, it is pivotal to avoid professionals incurring double training or licensing requirements in a host Member State, and essentially going through the qualification process twice. In order to avoid this scenario, domestic regulations should not be too restrictive in demanding supplementary or compensatory measures. In addition, it would be of relevance to enquire whether private actors (also, non-profit organizations) could undertake the task of providing bridging courses that offer training specifically aiming at the inclusion of foreign professionals in the labour market. There have been examples of private actors taking the lead in providing guidance and job counselling, but also arranging intensive language training that can ease the transition to a foreign labour market. Private actors could also potentially be involved in order to provide intensive retraining (Hooper and Sumption 2016, pp. 13–17). In this way, the pressure on State-based authorities would ease.

As regards compensatory measures, the European Commission's proposal to introduce a proportionality assessment of national rules on professional services might prove to be a welcome development. In order to ensure a Union-wide coherent and consistent approach to national regulations, the proposed system aims to streamline and clarify how Member States should undertake a comprehensive and transparent proportionality test before adopting or amending national rules on professional services.[30] The proposal does not address recognition in particular, but one can argue that a similar application of such a proportionality test could apply to the introduction of supplementary or compensatory measures. To address this problem, furthermore, it could be useful to reassess the scope of the Directive, and perhaps extend the number of occupations and the business sectors covered, so as to exclude them from the application of the General System.

Another area to keep under scrutiny is the barrier constituted by language proficiency requirements. Language requirements are employed in relation to a variety of professions, and although they may be justified and permitted by the exceptions in the 2013 Directive, they could constitute a barrier to professionals' mobility, as the national legislators could interpret their discretion too broadly.[31] It is thus pivotal to closely monitor the implementation of the latest amendments to the Professional Qualifications Directive.

The case studies have highlighted that the Member States' concerns with regulatory standards may also conceal, behind a system of safeguards (for example, of patient safety or consumer interests) a kind of protectionism towards certain professions. There could also be other interests lying at the heart of a system that excludes foreign nationals from accessing particular professions, as for example the linguistic rights of Catalan consumers that indirectly impose linguistic proficiency requirements upon hairdressers. These concerns and socio-economic interests should not be disregarded, but addressed in a way that ensures that the affected Member States maintain an openness to foreign professionals without their national professionals thereby losing important job possibilities.

Among the national case studies examined, the Greek report highlighted a series of structural flaws that lead us to conclude that the professional qualifications recognition system has had very limited positive outcomes so far.[32] There are also no tangible policies regarding the recognition of professional qualifications in Spain, which presumably is not at the top of the list of priorities for Spanish authorities. In relation to these Member States in particular, it may be a positive development that the Commission now offers guidance for national reforms in the regulation of professional services with high potential for growth and employment: architects,

engineers, lawyers, accountants, patent agents, real-estate agents and tourist guides.[33] This guidance by the European Commission would specifically address the requirements applicable to the aforementioned professions, and could potentially be beneficial to the recognition process.

CONCLUSION

Increased intra-EU mobility could be a solution to the increasing shortage of labour skills that many Member States are experiencing, which affect the economic growth of the Union as a whole. A mutual recognition procedure makes it easier for foreign professionals to have their qualifications recognized in another Member State and thus sustain mobility and provision of services across the EU, and is therefore an important element of Union citizenship.

In the context of exploring the barriers that Union citizens face, we find that it is pivotal to assess how the EU can continue to maximize the potential of the Professional Qualifications Directive. Ever since 2010, the European Commission has highlighted the need for a 'faster and less bureaucratic recognition of professional qualifications', since the automatic system for recognition applied to only seven professions, and even so, the rules harmonizing the requirements for these professions were outdated.[34] The existing system still presents limits and challenges, in both organization and implementation. In its effort to encompass both national and EU interests, the system of mutual recognition of professional qualifications may lose momentum in pursuing its original scope: supporting the free movement of professionals and the cross-border provision of services.

Particular national factors and contexts have shaped the approaches different Member States have taken. Any new policy must take into account the socio-economic reality of the Member States involved in the process of receiving foreign professionals in their labour market. In order to create an efficient system for the recognition of professional qualifications, it is pivotal to build an atmosphere of trust and openness towards foreign professionals. In the current times of institutional EU crisis and general hostility towards foreign professionals (Brexit being the absolute expression of this general concern), that is, at best, a very difficult task to undertake, but nonetheless a worthy one to pursue.

NOTES

1. Nowadays, this specific competence is conferred upon the EU legislature in Article 53(1) TFEU.
2. Hatzopoulos (2012, pp. 238 *et seq*), referring to: 'long-lived transitional measures', 'sector-specific recognition based on harmonization', and 'the general systems', respectively.
3. Council Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications [2005] OJ L255/22.
4. By means of illustration, reference can be made to: Council Directive 64/222/EEC of 25 February 1964 in respect of activities in wholesale trade and activities of intermediaries in commerce, industry and small craft industries [1964] OJ L56/857.
5. Hatzopoulos (2012, p. 239, note 92), referring to: Directive 64/427/EEC in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23–40 [1964] OJ L117/1863 was interpreted in Case 115/78 *J. Knoors v Staatssecretaris van Economische Zaken* [1979] ECR 399, Case 130/88 *C.C. van den Bijl v Staatssecretaris van Economische Zaken* [1989] ECR 3039, Joined cases C-193 & C-194/97 *Manuel de Castro Freitas and Raymond Escallier v Ministre des Classes moyennes et du Tourisme* [1998] ECR I-6747, and Case C-58/98 *Josef Corsten* [2000] ECR I-7919; Directive 68/368 /EEC in respect of activities of self-employed persons in the personal services sector [1968] OJ L260/19, was interpreted in Case 20/87 *Ministère public v André Gauchard* [1987] ECR 4879 and Case 204/87 *Criminal proceedings against Guy Bekaert* [1988] ECR 2029.
6. These are: doctors, nurses, dentists, veterinaries, midwives and pharmacists.
7. In the case of doctors, for instance, these consisted of: Council Directive 75/362/EEC of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services [1975] OJ L167/1; and Council Directive 75/363/EEC of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors [1975] OJ L167/14.
8. Hatzopoulos (2012, p. 239, note 95), referring to: Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services [1985] OJ L223/15.
9. Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 1979-00649.
10. Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least a three years' duration [1989] OJ L19/16.
11. Hatzopoulos (2012, p. 242, note 105), referring to: Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L30/4.
12. For an extensive discussion, see Heremans (2012).
13. 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').
14. With certain geographical limitations the scope of the Professional Qualifications Directive includes certain groups of third-country nationals; see Eisele (2014, pp. 55–56).
15. Art. 49a Directive 2013/55/EU.
16. Art. 24(2) Directive 2013/55/EU.
17. Art. 4a Directive 2013/55/EU.
18. 'Your Europe', available at: europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index_en.htm (accessed 14 July 2017).

19. European Commission, 'A service economy that works for Europeans' (Press release) IP/17/23.
20. European Commission, 'Proposal for a regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities' COM(2016) 824.
21. European Commission, 'Proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions' COM(2016) 822.
22. European Commission, 'Communication on reform recommendations for regulation in professional services' COM(2016) 820.
23. European Commission, 'Proposal for a directive on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services' COM(2016) 821.
24. European Commission, 'A service economy that works for Europeans' (Press release) IP/17/23.
25. Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained; and Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.
26. The first Directive concerned the possibility to provide services on a temporary or occasional basis; see Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.
27. Ever since the 1980s, the Member States agreed on minimum standard requirements on the training of midwives.
28. In 2016, the fee amounted to DKK 313, approximately €42.
29. On the Australian, Canadian and German model, see Desiderio (2014).
30. European Commission, 'A service economy that works for Europeans' (Press release) IP/17/23.
31. Dutch national report, Adamo et al. (2017, pp. 30–31).
32. Greek national report, Adamo et al. (2017, p. 56).
33. European Commission, 'A service economy that works for Europeans' (Press release) IP/17/23.
34. European Commission, EU Citizenship Report 2010. Dismantling the obstacles to EU citizens' rights, Brussels, 27.10.2010 COM(2010) 603 final, p. 16.

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