

## The Recognition of Professional Qualifications in the Framework of the Free Provision of Services in EU law

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It took the Community fifty years and a great deal of direction from the Court of Justice to create a single horizontally applicable legal framework of the free movement of services. Rules on the recognition of professional qualifications form an essential part of this framework as qualification requirements are a pre-condition to the exercise of regulated professions or activities in the Member States. In fact, qualification requirements and related requirements as to other types of aptitudes or competences often constitute the greatest obstacles to the cross-border provision of services of regulated professions. Indeed, this is one of the reasons why for a long time in certain sectors rules on qualification recognition constituted the only existing secondary law framework of the free movement of services.

The legal framework governing qualification recognition has been subject to dynamic development which can be seen as a four-stage process. During the first stage, which roughly corresponds to the transitional period for the realization of the freedom of establishment and the freedom to provide services according to the timetable laid down on the basis of the original EEC Treaty, „transitional“ measures were adopted concerning activities not requiring high-level professional qualifications. These measures were based on the method of automatic admission to professional activities of persons who have proven their integrity and qualifications by means of a stable and continuous exercise of a similar activity in the Member State of their origin. These measures nevertheless anticipated future harmonization of a minimum level of protection required in the Member States. In the second stage stretching from the mid-70s to mid-80s such harmonization measures were adopted in particular with regards to certain professions requiring high professional qualifications. These measures guaranteed the minimum level of protection in all the Member States, and thus allowed the use of a method consisting in automatic recognition.

The third stage spanning between the mid-80s and the adoption of Directive 2005/36/EC is marked by a clear break away from the requirement of prior harmonization as a necessary pre-condition to allowing the free movement of certain professionals. In order to guarantee the

equivalence of qualifications covered by the respective recognition instruments the Community legislator opted for a recognition method consisting in the material examination of the equivalence of individual professional qualifications. This approach on the one hand enabled the recognition of an undetermined number of professional qualifications, but on the other hand obliged the host Member State to carry out relatively difficult comparisons and verifications, leading at times to procedural delays and legal uncertainty as to the result of the examination. The application of the method described was therefore in many aspects entirely inadequate with respect in particular to situations and modes of service provision not involving any exercise of a professional activity by a provider in the territory of the host Member State, or involving only sporadic and isolated cases of such an exercise.

In the fourth stage, specific attention of the legislator was finally brought to the long ignored needs of the service providers. The new single horizontally applicable legal framework, which absorbed an overwhelming majority of the provisions of previous legal acts in the field, introduced the application of the automatic recognition method with regards to service providers. This stage is characterized by a clear shift on the side of the then Community legislator away from the principle of equivalence, which until that time had empowered the Member States to effectively enforce their own level of protection in their respective territories. Thus, under the new regime, providers may in principle provide their services irrespective of the level of their own professional qualification and the level of qualifications required by the host Member State. However, the method of automatic recognition introduced in the fourth stage differs from the previous systems using automatic recognition above all in the fact that the profession or professional activity in question is exercised in the territory of the Member States under the professional title of the provider's Member State of origin.

The new legal framework is accompanied by a set of guarantees which a host Member State may require the service provider to satisfy. An important guarantee for a host Member State consists in the fact that the exercise of a service activity in its territory is subject to the core provisions of its own professional rules, as well as to the supervision of its own competent authorities. In order to assure the necessary mutual trust between the Member States in the professional qualifications which they confer on service providers and to guarantee a more effective enforcement of obligations imposed on providers by the legal systems of the Member States concerned, the new legal framework stresses the importance of information

exchange, and administrative cooperation in general. The use of modern means of electronic communication, including the Internet, offers possibilities of swift and effective cooperation.

In view of achieving further liberalisation and a higher degree of transparency of cross-border service provision further secondary legislation of horizontal application has been adopted in addition to the rules governing qualification recognition. The Directive on e-commerce and the Services Directive are of prime importance in this respect.

The first one of those Directives contains rules fully governing the provision of information society services, including matters arising with respect to national qualification requirements. Such coordination is achieved by means of employment of the country of origin principle – problematic in many respects as it reserves the regulatory competence exclusively to the provider's Member State of establishment – and with only a marginal level of harmonization of the relevant legal rules of the Member States. However, in the case of information society services which only entail the cross-border movement of a service, and not of its provider, the use of such a principle can be deemed well-founded, given also the existence of accompanying measures aimed at guaranteeing a certain degree of transparency of the services provided, and the introduction of a basic legal framework of administrative cooperation between the competent authorities of the Member States.

Legislative proposals of the Commission extending the application of the country of origin principle as conceived in the Directive on e-commerce to service activities exercised in the territory of the host Member State were not met with success. The over-ambitious goals of the Services Directive proposal were watered down in the resulting binding text to a balanced solution offering the Member States sufficient guarantees in the field of supervision of service activities exercised in their respective territories, while providing economic operators with a more or less comprehensive list of specific measures which the host Member State cannot take against them, going beyond the requirements of the existing case-law of the Court of Justice. Although the Services Directive does not regulate aspects falling within the scope of specific legislation, including matters relating to the recognition of professional qualifications, it contains provisions governing certain aspects relating to the pursuit of regulated professions. However, the principle contribution of the Directive in the field of the free provision of services lies in the fact that it contains a legal basis for the creation of an

electronic information system of administrative cooperation, which can be used more widely to cover other legislation in the field of the Internal Market.

The Directive on professional recognition, the Directive on e-commerce and the Services Directive form a contemporary basic legal framework regulating access to and the exercise of service activities in the Member States, bringing specific new challenges both for services providers and the respective national administrative and professional structures.