

Conference

Legal reform and EU enlargement – Transfer of experiences

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REGULATED PROFESSIONS AND THE ROLE OF CHAMBERS IN THE EU LAW

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Structure of the presentation

- 1. Concept of freedom to provide services and freedom of establishment
- 2. Sources of law: recognition of professional qualifications in the EU
- 3. Exercise of regulated professions within the scope of freedom to provide services or establishment
- 4. Informing and cooperation at EU level and at national level
- 5. European Professional / Mobility Card

Concept

- Four fundamental economic freedoms:
- Free movement of goods, services, capital and persons
- Treaty on the Functioning of the European Union (TFEU)
- Integrated Economy

Vs.

Obstacles to economic integration / business

Concept

Freedom to provide services

-

Freedom of establishment

Freedom to provide services vs. freedom of establishment

Freedom to provide services

(Article 56. TFEU, ex. Article 49. EC)

- the right of natural and legal persons, linked to the territory of the EU Member State by establishment, seat, citizenship or permanent residence, to enter the territory of another Member State and permanently or temporarily provide or receive services without restrictions and under the same conditions as nationals of that State not precluding the provisions of establishment

Freedom to provide services

- self-employed persons (e.g. medical doctors, lawyers, engineers, psychologists etc.) are also subjects of freedom to provide services
- rules on freedom to provide services shall not apply to activities which in a Member State even occasionally associated with the performance of public authority (powers arising from the state sovereignty)

Definition of service

Services Directive (Directive 2006/123/EC of 12 December 2006 on services in the internal market)

Included in the scope of the Directive:

- distributive trades (including retail and wholesale of goods and services)
- the activities of most **regulated professions** (such as legal and tax advisers, architects, engineers, accountants, surveyors)
- construction services and crafts
- business-related services (such as office maintenance, management consultancy, event organization, debt recovery, advertising and recruitment services)
- tourism services (e.g. travel agents)
- leisure services (e.g. sports centers and amusement parks)
- installation and maintenance of equipment
- Information society services (e.g. publishing – print and web, news agencies, computer programming)
- accommodation and food services (hotels, restaurants and caterers)
- training and education services
- rentals and leasing services (including car rental)
- real-estate services
- household support services (e.g. cleaning, gardening and private nannies).

The Services Directive does not apply to the following services:

- financial services
- electronic communications services with respect to matters covered by other community instruments
- transport services
- healthcare services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession
- temporary work agencies' services
- private security services
- audiovisual services
- gambling
- certain social services provided by the State, by providers mandated by the State or by charities recognized as such by the State
- services provided by notaries and bailiffs (appointed by an official act of government).

Freedom to provide services

- Croatian Services Act
Art. 4, paragraph 1

... "Service" is any independent economic activity that is commonly performed for a fee, if not covered by legal provisions relating to the free movement of goods, capital and persons;

Freedom to provide services

- Who / what is moving across the border?
 1. **Provider** of services - temporarily leaving the home country to provide services in another Member State
 2. **User** of services – enter from another Member State into the country of provider in order to receive services (freedom to provide services to citizens of other Member States under the same conditions as those provided by local people)
 3. **Service** - service itself moves from one Member State to another

Freedom of establishment

- Free movement of companies is guaranteed by the freedom of establishment - provisions of Articles 49 -55. TFEU
- Freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies...

Freedom of establishment

- Exercise of the right of establishment is manifested:
 - 1 / as a secondary establishment which includes the establishment of subsidiaries, branches or affiliates in another Member State
 - 2 / as a primary establishment which entails the formation of a new company or transfer of seat in another Member State

- Establishment: legal or natural persons permanently established in another Member State
- Services: legal or natural persons temporarily providing services in another Member State
- Allowed restrictions on freedom to provide services / freedom of establishment

four reasons to justify national measures (proportionality):

- non-discriminatory (between domestic and foreign nationals)
 - justified by the public interest
 - suitable for achieving appropriate to the objective pursued,
 - not go beyond what is strictly necessary to achieve this objective
- service users = consumers = consumer protection
- Demarcation: interstate element and remuneration

Measures restricting the freedom to provide services / freedom of establishment

- restrictions specified by TFEU and by secondary legislation
- national measures restricting the two freedoms

Limitations


Art. 52 TFEU – justifications:

- Public safety
- Public health
- Public interest

- Narrow interpretation:
distinctly applicable national measures affecting freedom to provide services may be lawful only if they are based on these justifications

National measures

- Horizontal restrictions, administrative procedures, additional costs of doing business, cost of additional insurance
- seat of the company
- registration
- special training requirements etc.



Recognition of foreign professional qualifications

Sources of Law

EU:

SOURCES OF PRIMARY LAW:

- TFEU = Treaty of Lisbon

SOURCES OF SECONDARY LAW:

- Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005 (Directive 2005/36/EC on the recognition of professional qualifications)
- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L376/36, 27.12.2006 (Services Directive)

Sources of EU law (general)

- Secondary sources:
 - Regulations, directives, recommendations, opinions
– enacted by European Parliament, Commission and Council.
 - Court decisions –by the Court of Justice of the EU

- Regulations - completely replacing the existing legal norms in the Member states, governing a particular type of situation fully equal to European norm
- Directives
 - the purpose is not full unification of national legal orders of Member states, but their mutual convergence to the degree necessary for the achievement of the objectives of European integration
 - allow Member states to resolve certain issues in a different ways by setting regulatory objective for the Directive, it is on the Member state to decide how to achieve it

- According to the interpretation of the Court of Justice of the European Union when applying national law national courts must interpret national law in a manner and in light of the wording and purpose of the Directive in order to achieve the results specified in Directive

- when certain subject matter is harmonized within the EU Law by adoption of the Directive/Directives it is no longer subject to simple changes
- the application of Directives is limited on determination of principles and general rules, while detailed rules should be left to the Member states / the principles and general rules will be transferred into national law of the Member states and Member states will decide on exact form of their incorporation into national legislation (new legislation, amendments to existing legislation etc.) /

Directive 2005/36/EC on the recognition of professional qualifications

- recognition of professional qualifications is a prerequisite for the exercise of freedom of establishment and to provide services
- *lex specialis* in relation to the Services Directive in so far as it relates to the conditions that must be met in order to provide cross border services
- implemented in Croatian legislation
Act on Regulated Professions and Recognition of Foreign Professional Qualifications (ARP)

The scope of Directive 2005/36:

- includes the exercise of regulated professions by persons who are nationals of EEA states*, who want to perform regulated profession whether as self-employed or as employed person in a Member state other than the Member state in which they obtained their professional qualifications (Article 2 of Directive 2005/36, Art. 2. of the ARP- harmonised)

* European Economic Area includes Liechtenstein, Norway, Iceland and EU Member states.

Concepts

- regulated profession- a professional activity/group of professional activities in which the access/exercise/way of doing business is regulated by enacted legislation and directly or indirectly dependent on the possession of specific professional qualifications
 - professional activity or group of professional activities which is exercised by members of professional organizations holding a professional title (Article 3. of Directive 2005/36, Art. 3, paragraph 3 of the ARP-harmonized)

Evidence of formal qualification

- Diploma / certificate / other public document issued by the competent authority of the EEA Member state
- Confirms that formal education and, if necessary, professional development and training acquired in the EEA Member state, has been successfully completed
- Includes diplomas, certificates and other official documents issued by the competent authority of the third country if the holder of documents has acquired three years of professional experience in the EEA Member state which is a subject to confirmation of the competent authority , entitles their holder to perform a particular profession within the territory of a EEA Member state

Act on Regulated Professions and Recognition of Foreign Professional Qualifications (ARP)

Article 2

- **RECOGNITION** - the formal acknowledgment of the value of foreign educational qualifications/education period issued by the competent authority in order to facilitate access to education/employment

- PROFESSIONAL RECOGNITION

- Recognition of equal legal validity of a foreign higher education qualifications with corresponding domestic qualifications, which allows access to employment and further education in Croatia

- ACADEMIC RECOGNITION

- Equalizing foreign qualification with corresponding domestic qualifications for the exercise of the right to continue their education in Croatia


Modes for regulated professions:

1. Providing services
2. Business establishment

1. Providing services

temporary and occasional on the basis of recognition of foreign professional qualifications

- Directive 2005/36 (> in CRO: Act on Regulated Professions and Recognition of Foreign Professional Qualifications) - special rules regarding requirements for the exercise of freedom to provide services (in relation to the Services Directive /in CRO: Services Act)
- Services Directive (>Services Act) defines services, the rights of recipients of services, security and quality of service, notification system, the national contact point...

- 
- Art. 5 (2) of Directive 2005/36
 - application of the provisions on the freedom to provide services to service providers crossing into the territory of another Member State on temporary and occasional basis exercising their professional activity
 - temporary and occasional nature of the providing of services is estimated in each case in particular with regard to its duration, frequency, regularity and continuity (distinguishing it from the freedom of establishment)

Differences in relation to the conduct of regulated activities established in the host MS

- the service provider **is not obliged to:**
 - seek approval of a professional organization, to register with a professional organization, to be a member of professional organizations in Croatia
 - register with a public social security body for the purpose of settling accounts with an insurer relating to activities pursued for the benefit of insured person
- **professional organizations or other authorities or organizations may provide for automatic temporary registration, provided that the registration or membership in them do not delay or make more difficult the provision of services and do not result in any additional costs for candidates**
- (Article 6 of Directive 2005/36, Art. 5 ARP -harmonized)

2. Freedom of establishment

- it is necessary to carry out the procedure of recognition of foreign qualifications
- three recognition systems:
 1. recognition of professional qualifications in seven regulated professions under Directive 2005/36 (automatic recognition on the basis of minimum training)
 2. recognition of professional experience (automatic recognition based on professional experience)
 3. general system of recognition of professional qualifications

Automatic recognition for seven regulated professions

- medical doctors, dentists, pharmacists, nurses (general health care), midwives, veterinarians and architects
- automatic recognition of qualifications on the basis of evidence of formal qualifications
- Member states shall not adopt any national measures that would limit their access to the market

Automatic recognition based on professional experience

- when professional experience for the recognition of professional qualification that demonstrates general, commercial or professional knowledge and skills is sufficient in certain professions, the competent authority shall recognize previously activity in another EU Member State as sufficient proof of knowledge and skills
- professions: crafts, trade, manufacturing / industrial activities (listed in Annex 1 Annex IV of Directive 2005/36)
- Directive stipulates a minimum of three years of post-secondary education as a necessary condition for the recognition of higher education qualifications

The general system of recognition

- applies to professions that are not automatically recognized, and in situations where the candidate does not meet particular conditions for automatic recognition
- based on the principle of mutual recognition, and applies to all non-regulated professions

Recognition process

Art. 13 Directive 2005/36

art. 14, paragraph 2 of the ARP (harmonized)

process of recognition of professional qualifications by competent authorities (In Croatia - Agency for Science and Higher Education / ENIC NARIC office *)

art. 15, paragraph 1 of the ARP (harmonized)

procedure is initiated by the candidate application to the competent authority

* ENIC - European Network of National Information Centers on academic recognition and mobility

Qualification testing / adjustment period

Art. 14. Directive 2005/36, Art. 17 ARP (harmonized)

The competent authority may require that a candidate chooses * between proficiency test or adaptation period in profession if:

- duration of training is at least one year shorter than one required in the state of performance of regulated profession
- training covers substantially different content in comparison to formal training of the destination Member state
- regulated profession in a Member state of performance contains one or more activities that are not covered by the same profession in the candidate's country of origin and when that difference is related to the specific training.

LIST OF REGULATED PROFESSIONS IN THE EU is available at:

http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=homepage

Search About this site Con



THE EU SINGLE MARKET

Regulated professions database

European Commission > Internal Market > Free movement of professionals > Regulated professions database

The database contains information on the regulated professions covered by [Directive 2005/36/EC](#), statistics on migrating professionals, contact p
This applies to professions regulated in the EU Member States, EEA countries and Switzerland*.
*According to the EU-Swiss agreement of 30 September 2011, the Directive 2005/36/EC applies on a provisional basis from 1 November 2011 (e



IS MY PROFESSION REGULATED IN ANOTHER MEMBER STATE?

EU country where you got your qualification:

EU country where you wish to practice:

Profession you wish to practice:

Fill here a generic name of a [profession](#) in the site language, or if not



STATISTICS

[Professionals moving abroad \(est](#)

- [Overall statistics](#)
- [Geography of mobility](#)
- [Ranking - the most mobile profession:](#)

Information and Cooperation

- via the contact point
 - Croatian Chamber of Economy (CCE) - contact point for services on the basis of the Services Directive 2006/123
 - ENIC / NARIC - contact point for regulated professions under Directive 2005/36
 - IMI system (EU) - provides for the connection of all information related to the services at EU level

Contact point:

- in cooperation with other competent authorities and contact points provides assistance to interested parties seeking to exercise their rights, obtain information on regulated professions and access regulated professions in other Member States
- maintains a database (with a list of regulated professions in Croatia, adopted decisions, information on appeals, the list of persons in competent authorities, professional organizations)

List of National contact points

http://ec.europa.eu/internal_market/qualifications/contact/national_contact_points_en.htm

The screenshot shows the top part of a website. At the top right, there are links for Sitemap, About this site, Links, What's New, Legal notice, Contact, and Search, along with a language selector for English (en). Below this is a header with the European Commission logo and the text 'THE EU SINGLE MARKET'. A blue navigation bar contains the breadcrumb: European Commission > The EU Single Market > Free movement of professionals > Contact points. On the left, there is a sidebar with a 'Home' link and a section titled 'Free movement of professionals' containing links for News, Directive 2005/36/EC - policy developments, Directive 2005/36/EC in practice, Database of regulated professions..., and Other directives. The main content area has the title 'National contact points' and a 'Share' button. The text explains that users should ask national contact points for help with qualifications recognition and provides a link to national web sites. It also mentions a 'single point of contact' for electronic services. At the bottom, there is a dropdown menu labeled 'Select a country' and the start of a section for 'BELGIQUE (Communauté française)'.



THE EU SINGLE MARKET

European Commission > The EU Single Market > Free movement of professionals > Contact points

Home

Free movement of professionals

- News
- Directive 2005/36/EC – policy developments
- Directive 2005/36/EC in practice
- Database of regulated professions...
- Other directives

National contact points

Share

Search on this site

If you need more information on having your qualifications recognised in another EU country, ask one of the contact points given here. They can tell you more about the national rules, and give advice on exercising your rights.

You may also find useful information on these [national web sites](#).

For all formalities you wish to carry out by electronic means in the host country, you can also consult the [single point of contact](#) set up by Directive 2006/123/EC on services in the internal market.

Select a country

BELGIQUE (Communauté française)

Professional Mobility Card / European Professional Card: proposals

PROFESSIONAL MOBILITY CARD: EXAMPLE FOR TEMPORARY M

 PROFESSIONAL MOBILITY CARD Valid for temporary mobility	
Name	Schmidt
First Name	Michael
Date and place of birth	23 August 1974, Berlin
Nationality	German
Profession	Engineer
PROFESSIONAL CARD NUMBER: 3-800065-711135 Security code: 123457884887	
Conditions of use: <ul style="list-style-type: none"> This card is valid for temporary mobility in all EU Member States (except for cases covered by Article 7(4) of the Directive 2005/39/EC) This card is only valid in conjunction with an identity card or a passport. Check the validity of this card online using the card number and the security code at: http://ec.europa.eu/internal_market/mi-reb/professional/pass/check 	
ISSUED BY: Home Member State: Competent Authority (contact details): Date of issue: Valid until:	

PROFESSIONAL MOBILITY CARD: EXAMPLE FOR ESTABLISHMENT

 PROFESSIONAL MOBILITY CARD Valid for establishment	
Name	Schmidt
First Name	Michael
Date and place of birth	23 August 1974, Berlin
Nationality	German
Profession	Engineer
PROFESSIONAL CARD NUMBER: 3-800065-711135 Security code: 123457884887	
Conditions of use: <ul style="list-style-type: none"> This card is only valid in conjunction with an identity card or a passport. Check the validity of this card online using the card number and the security code at: http://ec.europa.eu/professionalmobilitycard/check 	
ISSUED BY: Home Member State: Competent Authority (contact details): Date:	VALIDATED BY: Host Member State: Competent Authority (contact details): Date:

- implementation issues: insurance / disciplinary action
- codes of conduct in professional services:
 - transparency
 - availability
 - published in at least two languages
 - aligned with *ius cogens*
- consumer protection and protection of wider social interests
- rules incorporated into the codes usually try to codify duties of professionals in order to achieve the trust of clients and society as a whole

Thank you for your attention !