

Recognition of Qualifications

General

A practical issue which arises in exercising the right to establish in another member state is the recognition of qualifications. The EU has made rules in various areas harmonising diverse national rules profession by profession. There are Directives in relation to doctors, nurses, dentists, vets as well as a wide range of skills and qualifications in areas such as manufacturing, processing, food and retail, intermediaries and building industries. The Directives lay down minimum standards on training. Once these standards are met, recognition is automatic. The host state must accept the qualifications as equivalent.

In 2005 the EU adopted a general Directive on the mutual recognition of professional qualifications. The Directive applies to regulated professional activities. An individual established in one member state is entitled to provide services on a temporary and occasional basis in another member state under his original home state professional title without having to apply for recognition of qualification.

The 2005 Directive requires Member States of the European Union to establish a procedure to examine and recognise professional qualifications. The host state must compare the migrant's qualifications and abilities, with those required by the national system. There are a five levels of qualification under the Directive ranging from attestation of competence through to university degrees and completed professional training.

The general principle is that Member States are to recognise the qualifications of individuals qualified in other Member States, unless there is a very good reason not to do so. The general system relates to a wide range of professions and businesses which

are regulated. There is automatic recognition of qualifications for doctors, nurses, dentists, vets, midwives, pharmacists and architects.

The 2005 Directive is aimed at both the freedom to provide services and the freedom of establishment. The freedom to provide services would arise where services are provided cross border. Freedom of establishment arises where a branch or subsidiary is formed in the host country.

Nationals of EU Member States can provide services on temporary location basis in another States under their original professional title without having to apply for recognition of qualifications. If they relocate outside the Member State of establishment in order to provide the service, they must provide evidence of two years professional experience if the profession in question is not regulated in that Member State.

States' Obligations and Rights

A regulated profession is one where access to it, is regulated and subject to specific qualifications. Each Member State must provide and update information on its regulated professions for the benefit of outside applicants and must designate a contact point within its administration. Training requirements have been harmonised and there is automatic recognition of professional qualifications. There are special rules for lawyers providing services and establishing in other Member States.

If the comparison reveals that the holder has knowledge and qualifications identical or, at least, equivalent to the national qualification, the host state is obliged to recognise the qualification. If the comparison reveals the applicant only partly fulfils the necessary qualifications, the host member state can require compensatory tests or training to demonstrate he has acquired the relevant knowledge and qualifications.

The EU member states are obliged to give reasons for decisions in the area of mutual recognition of qualifications, so that European Commission and in the event of a dispute, the European Courts, can verify their compatibility with European law.

If the service provider relocates into the host state in order to provide services on a temporary or occasional basis, he or she must provide evidence of two years professional experience in the home state if the activity is not regulated in their home state.

The Directive allows the authorities in the host state to require the service provider to make a declaration prior to providing services and renew it annually including details of insurance cover. It can require the first application to be accompanied by certain documents such as proof of nationality, legal establishment and home professional qualifications.

Systems of Recognition of Qualifications

There are three systems for the mutual recognition of qualifications. The general system of recognition applies on a fall back basis to all professions not covered by specific rules on recognition. Where access to a profession is regulated in the host state (i.e. subject to requirements for qualifications) the regulatory body in the host state must allow pursuit of the profession under the same conditions as for nationals, provided the applicant holds qualifications obtained in the home member state which shows a level of training at least equivalent to the level required in the host state.

The host state may make recognition of the qualification subject to the applicant completing compensatory measures. Aptitude tests or adaptation periods of up to three years may be required if the training is one year shorter than that required in the host state, if the training received covers substantially different matters from that in the host state, or if the profession in the host state comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home state

and the difference consists of specific training which covers substantially different matters than those completed by the migrant. The host state must generally offer the applicant a choice between adaptation test and an aptitude test.

Under the second approach, there is a system of automatic recognition of qualifications attested by professional experience. This approach applies to certain industrial craft and commercial activities. The automatic recognition of qualifications is attested by professional experience provided that conditions of duration and the form of professional experience are met.

The third system of recognition comprises automatic recognition of qualifications for specified professions. Minimum training conditions are prescribed which cover professions of doctor, nurses, those responsible for general care, dentists, dental practitioners, vets, midwives, pharmacists and architects.

Procedures for Recognition

The host Member State may require that the service provider makes a declaration prior to providing any services and renews it annually. The host country may also require that the application be accompanied by certain documents listed in the Directive such as proof of nationality, legal establishment and professional qualification.

If the host Member State requires registration with a professional association, this must occur automatically once the relevant authority receives a declaration with the applicant's file. For professionals with health or safety implications the host Member State may carry out a prior check of the service providers professional qualifications.

In cases where services are provided under the professional qualification of the Member State of establishment, the regulatory authority in the host State may require service providers to furnish the recipient of the service with certain information including information regarding insurance cover and professional liabilities.

The authorities in Member States are required to exchange information necessary for complaints by a recipient of a service against the service provider to be pursued. The host Member State can ask the Member State of establishment for information regarding a service provider's legal status and freedom from penalties.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.