

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**

STUDY ON TRANSPOSITION OF THE DIRECTIVE ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS



- Economic and Monetary Affairs
- Employment and Social Affairs
- Environment, Public Health and Food Safety
- Industry, Research and Energy
- Internal Market and Consumer Protection

Recognition of Professional Qualifications

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DIRECTORATE GENERAL FOR INTERNAL POLICIES OF THE
UNION

DIRECTORATE A: ECONOMIC AND SCIENTIFIC POLICIES

INTERNAL MARKET AND CONSUMER PROTECTION

**Study on Transposition of
the Directive on the recognition of
professional qualifications**

STUDY

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STUDY

Abstract

The study showed that all MS but one have transposed and implemented the Directive, albeit with severe delays, which have had implications for the enforcement of the Directive in all MS.

The MS lack trust in each other's educational systems, and it is important to establish this trust if Directive is to work properly. Frequent meetings, common use of IMI, communication from Commission on how to interpret the Directive and assistance from industry organisations are all tools to improve this.

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LIST OF ABBREVIATIONS

- DG MARKT** Directorate General Internal Market & Services
- Directive** Directive 2005/36/EC
- EC** European Commission
- ECCE** European Council of Civil Engineers
- ECJ** European Court of Justice
- EEA** European Economic Area
- EFPA** European Federation of Psychologists Association
- EP** European Parliament
- EU** European Union
- GMC** General Medical Council
- IMCO** Committee on Internal Market and Consumer Protection
- IMI** Internal Market Information System
- MS** Member State(s)
- NCP** National Contact Point
- PSC** Point of Single Contact
- SOLVIT** On-line problem solving network in which EU Member States work together to solve problems caused by the misapplication of Internal Market law

EXECUTIVE SUMMARY

The rights of EU citizens to establish themselves or to provide services anywhere in the EU are fundamental freedoms in the Single Market, and national regulations which only recognise professional qualifications of a particular jurisdiction present obstacles to these fundamental freedoms. With this rationale in mind, Directive 2005/36/EC on recognition of professional qualifications was adopted on 7 September 2005. The Directive consolidated 15 directives, 12 Main (Sectoral) Directives and three General System Directives into a single text, thus working to simplify the legal and procedural regime for professional recognition. More specifically, instead of the General System and the Specific System being separated in several directives, they are now presented in different chapters of Directive.

The main objectives of the Directive are to rationalise, simplify and improve the rules for the recognition of professional qualifications¹. Thus, the Directive is intended to encourage the free movement of skilled labour around the European Union while acknowledging that standards and content differ between countries by seeking to establish some equivalence between those trained in the countries of the European Union. From an EU citizens' perspective it means that an EU citizen with a profession qualified and recognised in one member state should be able to move and practice in another member state relatively frictionless.

In order to allow for more flexibility within the Directive, many details and technical requirements are now included in the seven annexes. This means that the technical requirements should be easier and faster to update, thus supporting the aim of faster and more efficient administration of the system for recognition of professional qualifications. Moreover, the Directive includes a wider use of the principle of automatic recognition in relation to the professions included in the Specific System², meaning that for these professions, and upon the presentation of certain documents, specified in the annexes, the MS are to automatically recognise the qualifications of these professions.

In order to improve flexibility and simplification in the implementation and general management of the Directive, Chapter IV establishes a framework for, among other things, communication and exchange of information between MS and between MS and the Commission, including for instance the appointment of a National Contact Point in each Member State. The National Contact Points in the different MS have two main types of tasks³: to provide the citizens and contact points of the other Member States with information on e.g. the national legislation governing the professions and the pursuit of those professions, and to assist citizens in understanding their rights in connection with this Directive.

None of the Member States met the transposition deadline in time and citizens still encounter problems concerning the recognition of their professional qualifications abroad. Therefore, the Coordinators of the Committee on the Internal Market and Consumer Protection (IMCO) commissioned a study to provide an overview of the situation regarding transposition of the Directive on recognition of professional qualifications in the MS, as well as to understand real life problems encountered in different Member States when individuals are trying to get their qualifications recognised.

The main conclusions emerging from this study are as follows:

Overall, all MS except Greece have now transposed the Directive, and 17 out of 27 MS have fully implemented the Directive. However, both the transposition and the implementation have been at a rather slow pace for nearly all MS, not meeting the deadlines mentioned in the Directive. The main reason for this has been the complexity of the Directive.

¹ Directive 2005/36/EC

² Directive 2005/36/EC, article 21-1.

³ Article 57, Directive 2005/36/EC

The Directive covers many sectors, thus involving many national ministries (competent bodies) in the transposition and implementation phase. Secondly, a great number of measures had to be communicated, including existing measures under the previous sectoral directives (which the Commission asked for in accordance with Article 63).

The legal systems in the MS are rather different due to different legal traditions, and so are the educational systems and the number of regulated professions. The Directive takes these differences into account by allowing for a national interpretation of the provisions. However, although there is room in the Directive for national interpretation, it is of utmost importance that all MS are working towards the same goal. If just a few MS are not transposing and/or implementing the Directive properly, it affects the enforcement of the Directive in other MS.

As the legal structures differ in the MS, it is difficult to define one good practice of the transposition and implementation of the Directive. However, as the Directive is as complex as it is, a system which is receptive of changes in the technical provisions of the directive can be seen as an advantage. In order to ensure this flexibility to as large extent as possible, the transposition strategy of one main law combined with sector-specific secondary legislation is advised to use when possible. It is also highly important to support any changes in the Directive with interpretation guidance from EU-level or national level, taking into account the difference between more centralised or decentralised administrative structures in MS, in order to promote uniform transposition throughout the EU27.

The MS' lack of trust in each other's systems seems to be a general issue affecting the proper enforcement of the Directive. Establishing a mutual understanding between MS is very dependent upon the MS trusting each other's systems. The MS are not always willing to trust each other's educational systems. The problem especially appears if people move with 'old' qualifications which do not correspond to the requirements of the educational system today. A similar problem applies to new types of education which are not broadly recognised, or to educations that are not typically found in the MS in question. The MS' interpretation of Article 7 as the service provider being *obliged* to inform the competent authority about a possible move symbolises the current lack of trust in each other's systems. However, the MS generally feel the need to control the people *before* they are coming to work in their country. Several solutions to this problem have been suggested, including introducing additional Codes of Conduct and better use of the IMI system. The IMI system provides a good practice for the exchange of information, but a more active use should be encouraged. This seems not so much a question of technical barriers, but more a question of capacity and priority in the MS.

Industry organisations could also play a larger role in helping the MS gaining trust in each other, by helping competent bodies and regulatory authorities in the assessment of the suitability of a certain profession from other MS and through providing these authorities with the needed information. The Common Platforms foreseen in Article 15 of the Directive should play a role in this, however, none of the MS have engaged in developing such platforms. The professional organisations interested in this are calling for more initiatives at European level in order to ensure a common footing on how these platforms should be developed. Some professional organisations, such as the EFPA (European Federation of Psychologists Association) and the ECCE (European Council of Civil Engineers) have however started to try and form common platforms by creating a single European certificate, through which a European agreement on competency requirements should ensure mobility, patient safety as well as similar services across Europe. The European Parliament has also explored the need for a European Professional Card, containing certified information on qualifications. The card/certificate entails that the industry organisations can play a role in facilitate the understanding of the educational/professional structures in other MS, thus assisting the competent bodies in assessing the suitability of a certain profession from another MS. However, such a certificate should not become another bureaucratic hurdle for professionals who want to work in another Member State. This approach could then contribute to a common understanding between Member States of the professions in question.

In terms of the **lessons learned from the cases**, it can be seen that the main problems with the recognition procedure are often due to **delays**, in the sense that the MS are not respecting the 3-month deadline stated in the Directive, and **protectionism**, meaning that the MS favour own nationals and deliberately hinder the recognition of professionals from other MS.

These problems also continue to exist with regard to the professions regulated by the specific system. These professions are separately regulated in order to ensure automatic recognition, meaning that the competent authorities of the host MS should not examine the training leading to these qualifications, but merely examine whether the applicant has fulfilled all the requirements necessary to practice that profession in the home Member State. Nevertheless, problems still exist, mainly due to the fact that the education structures differ among MS. Coming back to the issue of lack of trust, if the MS could trust each other's education systems and believe that for instance a child nurse is well educated in the EU regardless of the formal degree he or she has obtained, there might be fewer problems with recognition of professional qualifications.

The below recommendations have emerged from this study.

Recommendation 1: Ensure that transposition and implementation is concluded in all MS as soon as possible.

The recommendation is rather obvious, but nevertheless of utmost importance if citizens are to benefit fully from the Directive. As mentioned, the success of the Directive largely depends on all MS working towards the same goal, and the transposition and implementation in one MS affects the enforcement of the Directive in other MS. This means that in order for the Directive to function properly, and thus for the citizens to benefit fully from the provisions in the Directive, the MS will have to be able to depend upon each other and have a common ground on which to refer. This can only be reached if all MS have transposed and implemented the Directive. The regular committee meetings between the Commission and the national contact points could possibly be used to put pressure on the remaining MS.

A lesson learned from the transposition and implementation of this Directive is that the deadline should probably be less ambitious, as all MS have had trouble reaching the deadline. Thorough discussions between the Commission and the responsible national ministries could possibly be undertaken prior to setting the deadline, consulting each responsible ministry on when it will be possible to transpose and implement the Directive and setting the deadline with departure point in these discussions.

Recommendation 2: Overcome the MS' lack of trust in each other's systems

The Directive takes the national differences into account by allowing for a national interpretation of the provisions, which then implies that in order for the citizens to be able to move rather freely within the EU, the MS need to trust each other's systems and interpretation of the Directive. One of the ways in which these trust issues could be overcome is to continue the regular meetings between the national contact points in order to provide the national contact points and competent bodies with a forum in which to clarify legal and technical issues, and to get a better understanding of how the system works in other countries.

Another tool that could be used in increasing the MS' understanding of each other's systems is the IMI system. The technical framework is there for the MS to exchange knowledge and to help each other with specific cases, but there is a need for the MS to agree on how to use the system. A Code of Conduct developed by the Commission and the national contact points on the use of the IMI system could probably help better exploit the opportunities for sharing knowledge that the system offers.

If the IMI system is to be used to its fullest benefit, it should according to the MS include a greater number of professions, thereby also cover the professions with less mobility, and the MS should agree on a more uniform way of using the system and keeping it up to date.

Recommendation 3: Exploit the synergies between related directives

In particular this Directive, the Professional Qualification Directive, and the Services Directive potentially have much in common, since both aim at free movement of service providers, use the IMI system and require the proper functioning of a national contact point/point of single contact. Therefore both directives could probably benefit from synergies if administrations are working closer together. However, there is a lack of resources in the different agencies/ministries implementing the directives to carry out such information exchange. Also lack of tradition for cooperating between national ministries seems to prevent the contact points from achieving these synergies. What could be done at EU level is to arrange regular meetings between all contact points for the two Directives, thus providing them with a forum to exchange knowledge. At EU level, steps could be taken to identify the most active contact points in terms of cooperation, bring them together and have them act as an inspiration towards other MS. However, the contact points could also take the initiatives of setting up forums for better and more cooperation. Given the budget restraint, focus could especially be on how results can be reached without spending a large amount of money.

Recommendation 4: Increase the communication from the Commission to the national contact points and the coordination among national contact points

As the Directive leaves room for national interpretation of the transposition and the implementation, several national contact points stress the need for more communication from the Commission on how the Directive's provisions should be interpreted, how the MS can explain the Directive to the citizens in a similar fashion, and on new court rulings of relevance to the Directive, in order to be certain that the MS interpret the Directive in the same way and to provide the MS with a common platform to do so. As some MS are already working on providing the needed documents, increased coordination between the National Contact Points could also help in securing a more uniform approach across MS. The regular meetings between the national contact points could serve as a forum for this.

Recommendation 5: Include industry organisations in the assessment of professions from other MS

Industry organisations can play a role in facilitating the understanding of the educational/professional structures in other MS, thus assisting the competent bodies in assessing the suitability of a certain profession from another MS. A better understanding of the educational/professional structures can help MS gain a better understanding and thereby trust in other MS' systems. It is therefore recommended to include industry organisations more in the assessments of professions from other MS and to formalise this cooperation further. This could for instance be done through the use of professional cards/certificates, as suggested by two professional organisations. When properly implemented, these certificates would contain a European agreement on competency requirements assisting the professional to get his qualifications recognised within the EU. Another (simultaneous) approach could be to facilitate meetings at EU level between industry organisations and competent bodies, where sectors of certain interest could be discussed and competent bodies could have the opportunity to ask for clarifications where necessary.

1. INTRODUCTION

1.1. Objective of this study

The Coordinators of the Committee on the Internal Market and Consumer Protection (IMCO) agreed to commission a study on transposition and/or impact assessment of the Directive on the recognition of professional qualifications, and to commission case studies on real life stories of problems encountered in different Member States (MS). The objective of the study is to provide an overview of the situation regarding transposition of the Directive on recognition of professional qualifications in the MS. Moreover, the study should provide case studies on real life stories of problems encountered in different MS for citizens when attempting to get their qualifications recognised, both cases that were easily solved and cases where problems were encountered in solving them.

The Directive 2005/36/EC (hereinafter the Directive) is considered a key directive for the functioning of the Internal Market, and the European Parliament is taking a great interest in the implementation of the directive. The European Commission has started infringement procedures under Article 226 of the Treaty against several MS for failing to notify it of measures adopted in transposition of Directive. More than 20% of the cases submitted to the SOLVIT⁴ network are related to the recognition of professional qualifications.

First of all, the study should give:

- a) A general overview of the state of play regarding the transposition, implementation and enforcement of Directive in the 27 MS;
- b) An in-depth analysis of possible legal and administrative challenges in the transposition, implementation and enforcement, based on representative examples in different MS, in order to enhance the effectiveness and efficiency of the implementation and enforcement of Directive.
- c) Examples of good practices in MS, or with regard to other (related) regulation, to enhance the effectiveness and efficiency of the implementation and enforcement of Directive.

Secondly, case studies on problems related to Directive are included in the study. They should give a representative view of the practical problems that EU citizens encounter when they try to have their qualifications recognised abroad, and the consequences of those problems. 13 cases are included in the study.

This study should lead to conclusions concerning the transposition, implementation and enforcement of Directive, and suggests areas where further policy work could be done.

1.2. Scope of the study and key concepts

Except for chapter 5, the focus will be on **Directive 2005/36/EC**. This means that related legislation such as the European Qualifications Framework for lifelong learning adopted by the Council and the Parliament on 23 April 2008 and other closely related legislation will not be examined separately. However, if any overlaps exist or if other Community legislation has a significant impact on the transposition, implementation and/or enforcement, this will be discussed.

Moreover, the focus will be on **recognition of professional qualifications**, not to be confused with academic qualifications⁵. A profession is regulated if the national legislation of the host country stipulates that the pursuit of this profession in question is subject, directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training (or an attestation of competence). It is up to each country which professions it chooses to regulate.

⁴ SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities.

⁵ Academic recognition is the recognition of a foreign qualification for the purpose of further studies.

If a profession is regulated, the national government nominates competent authorities which decide upon recognition of foreign qualifications for the purpose of pursuit of the profession in question. In order to work in a regulated profession with foreign qualifications one must apply for recognition of these qualifications by a competent authority. If a profession is not regulated, a holder of a foreign qualification is not formally required to seek any recognition.

1.3. Method

This study has been compiled through the analysis of, primarily, three sets of data:

- Legal documents
- Interviews
- Statistics and other information from the Commission

The *Legal Documents*⁶ included the Directive and its predecessors, meaning the original proposal for a new directive and the revision documents between this and the final text, as well as the directives prevailing 2005/36/EC. The study of these documents were to provide an understanding of the original objectives behind the consolidation of the previously existing legal texts into this new directive and the changes it introduced to the system for recognition of professional qualifications compared to the preceding situation.

Interviews were carried out with representatives of the European Commission as well as the different MS⁷. Firstly, an exploratory interview was carried out with representatives from DG MARKT providing an initial overview of the state of play of the transposition, implementation and enforcement of Directive and some of the challenges related to this, from the point of view of the Commission. Subsequently, National Coordinators of eight representative MS were interviewed about their experiences with, particularly, the transposition of the Directive in their respective MS. These, among other data, provided information for the analysis of the state of play of the transposition, in particular, and the implementation and enforcement statuses in the different MS. Finally, interviews were carried out with representatives, National Contact Points and National Coordinators, of the MS on the Directive, to what extent they found that its objectives had been met, and the particular challenges they had met in transposing, implementing and enforcing the Directive. The statements from these interviews were used for the analysis of the possible legal and administrative challenges in relation to transposition, implementation and enforcement, and for the sketching of good practice examples.

Statistical data as well as other types of information from Commission databases, such as an overview of the different infringement cases relating to Directive 2005/36EC, overview of the SOLVIT cases, etc., supplemented the information gathered from the interviews for the state of play and the challenges analysis and provided information for the case studies⁸.

1.4. Structure of the report

The structure of the report follows the same logic as the method. First of all, in Chapter 2 the area of recognition of professional qualifications and the Directive is introduced. The Directive's five main objectives are described in order to provide the reader with a better understanding of the thoughts behind the Directive and what it set out to achieve. With departure point in these objectives, the questionnaire for the qualitative interviews assessing the implementation and enforcement of the Directive in the MS was developed.

⁶ An overview of the reviewed documents can be found in the bibliography.

⁷ A list of interviewees can be found with the bibliography at the back of the study.

⁸ An overview of the different sources of information can be found in the bibliography.

In Chapter 3, the transposition of the Directive is firstly assessed, mainly through the use of existing legal documents, in order to gain an overview of the status in the different MS. After assessing the transposition of the Directive, an analysis of the implementation and enforcement of the Directive in the different MS is undertaken. As mentioned, the questionnaire guiding the qualitative interviews with the MS is developed with departure point in the five objectives. In Chapter 4, after having concluded the interviews, the responses are analysed and eight challenges that the MS face in the transposition, implementation and enforcement of the Directive are identified. These challenges provide the structure for the subsequent analysis of the possible legal and administrative challenges in transposition, implementation and enforcement. In Chapter 5, this analysis leads to an identification of good practices in relation to Directive from different MS. In Chapter 6, a selection of Case Studies are presented to provide an insight into some of the problems that EU citizens face when trying to get their qualifications recognised in other MS. Chapter 7 concludes while recommendations for areas where further policy work could be done are presented in Chapter 8.

2. RECOGNITION OF PROFESSIONAL QUALIFICATIONS

The rights of EU citizens to establish themselves or to provide services anywhere in the EU are fundamental freedoms in the Single Market. National regulations which only recognise professional qualifications of a particular jurisdiction present obstacles to these fundamental freedoms. These obstacles are attempted to be managed by EU rules designated to guaranteeing the mutual recognition of professional qualifications between MS.

2.1. Directive 2005/36/ EC

The proposal for a new Directive was set out within the framework of the Lisbon Summit's intention of, among other things, further facilitating the free provision of services. The Directive 2005/36/EC was adopted on 7 September 2005 and consolidates 15 directives, 12 Main (Sectoral) Directives and three General System Directives into a single text. In this respect, recognition of professional qualifications refers to the recognition of qualifications for the purpose of both provision of services and establishment.

The main objectives of the Directive are to rationalise, simplify and improve the rules for the recognition of professional qualifications, consolidating the directives relating to the general system in order to continue simplifying the legislation⁹. Furthermore, the Directive was proposed within the framework of the *White Paper on European Governance*, published in July 2001, presenting the Commission's dedication to: "promote greater use of different policy tools including framework directives" and "simplify existing EU law including combining legal texts"¹⁰.

The overall objective of rationalising, simplifying and improving the rules for the recognition of professional qualifications has been broken down into five objectives, which are as follows:

- **Contribution to flexible labour and services markets**

An efficient system for the recognition of qualifications in the field of the regulated professions is required to ensure free movement and to ensure that employment vacancies are filled by a regular supply of qualified applicants. Conditions of free movement have also proven to have particular importance in cases of specific shortages of qualified personnel at specific times in different MS. To date, variations in different parts of the legislation have produced a system which has been criticised by migrants and professionals alike as too complicated and sometimes slow in its application and in places unsuited to the particularities of a specific profession. The single Directive comprehensively revises all of the directives founded on recognition of title while maintaining the principal conditions and guarantees, while simplifying the structure and making improvements to the working of the system.

- **Consolidation and simplification**

In terms of consolidation and simplification, procedural simplification is called for in addition to simplification of legal texts. Modern information and communication systems allow for more flexible procedures for the gathering of information and the exchange of views. In other words, simpler means should be activated to ensure a continued dialogue with interested parties and national authorities, with the purpose of clarifying issues and positions with a view to possible future action specific to each profession.

- **Improved management, clarity and flexibility**

The increasing pace of the development of society and technology must be taken into account in the application of procedures designed to maintain the relevance of the technical provisions underlying the general rules set out in Community law.

⁹ Directive 2005/36/EC

¹⁰ Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications; COM/2002/119/Final; Brussels, 07.03.2002; p. 3.

In this respect, the Directive sets out to ensure that while the main rules on professional recognition should continue to figure in the body of the Directive, the technicalities specific to their application should appear in annexes, and when suitable, be subject to up-dating through the exercise of delegated powers. The General System has proven its worth over some ten years of increasingly extensive application. However, there appears to be scope for adding further transparency, clarity and guarantees under the General System.

- **Better administration and improved information and advice to citizens**

As part of a wider initiative in the Internal Market context, the Directive also includes provisions for increased means of co-operation between national administrations themselves and with the Commission for the provision of information and advice to individuals and problem solving at the point closest to them. This implies an obligation on home and host Member State authorities and contact points to provide information to aid those qualified or seeking recognition in connection with free movement. An optimal use of existing information and advisory systems is to be developed to ensure quick information exchanges so that questions raised in one Member State about conditions of recognition and practice in another Member State are efficiently answered. Especially the National Contact Points are the means by which this aim can be achieved.

- **A simpler and more open regulatory approach**

By introducing maximum flexibility while respecting Treaty requirements, the Directive aims to provide a framework for better government at the Community. It provides for several different levels of action most appropriate to the functions in question, thereby applying the principle of subsidiarity. It introduces simplification in the interests of clarity and accessibility as well as procedural efficiency in an enlarged Union, and provides the necessary level of detail required to maintain legal security and to avoid uncertainty or overly burdensome procedures.

The previous directives, the third General System Directive 1999/42/EC and Directive 2001/19/EC, consolidated 35 transitional directives and further simplified the legal and procedural regime for professional recognition. The new Directive, 2005/36/EC, adopted on 7 September 2005, continued this development by consolidating 15 directives, 12 Main (Sectoral) Directives and three General System Directives into a single text¹¹. More specifically, instead of the General System and the Specific System being separated in several directives, they are now presented in different chapters of Directive: Chapter I contains the General System for the recognition of evidence of training, which comprises all regulated professions not included in the Specific System; Chapter II contains the recognition of professional experience while Chapter III deals with recognition on the basis of coordination of minimum training conditions, containing one section with general provisions followed by a section for each of the specific professions, formerly presented in the sectoral directives¹².

Furthermore, to allow for more flexibility within the Directive, many details and technical requirements of particularly the Specific System, which were formerly integrated in the directives, are now included in the seven annexes. This means that the technical requirements should be easier and faster to update, thus supporting the aim of faster and more efficient administration of the system for recognition of professional qualifications. Moreover, the Directive includes a wider use of the principle of automatic recognition in relation to the professions included in the Specific System¹³, meaning that for these professions, and upon the presentation of certain documents, specified in the annexes, the MS are to automatically recognise the qualifications of these professions.

¹¹ Directive 2005/36/EC, point 9.

¹² Doctors, nurses, dental practitioners, veterinary surgeons, pharmacists, and architects.

¹³ Directive 2005/36/EC, article 21-1.

The Directive also foresaw greater flexibility and simplification for the system in its implementation and general management. Chapter IV, on the common provisions on establishment, establishes a framework for, among other things, communication and exchange of information between MS and between MS and the Commission, including for instance the appointment of a National Contact Point in each Member State in an aim to streamline the system and make it simpler and more transparent.

The National Contact Points in the different MS have two main types of tasks¹⁴:

- to provide the citizens and contact points of the other Member States with such information as is necessary concerning the recognition of professional qualifications provided for in this Directive, such as information on the national legislation governing the professions and the pursuit of those professions, including social legislation, and, where appropriate, the rules of ethics
- to assist citizens in realising the rights conferred on them by this Directive, in cooperation, where appropriate, with the other contact points and the competent authorities in the host Member State.

The Directive is intended to encourage the free movement of skilled labour around the European Union while acknowledging that standards and content differ between countries; it seeks to establish some equivalence between those trained in the countries of the European Union. From an EU citizens' perspective it means that an EU citizen with a profession qualified and recognised in one member state should be able to move and practice in another member state relatively frictionless.

¹⁴ Article 57, Directive 2005/36/EC

3. STATE OF PLAY

The state of play chapter will first of all discuss the court rulings pertaining to the Directive. Afterwards, the transposition, implementation and enforcement will be analysed based on reviews of legal documents as well as interviews.

3.1. Court rulings

Each Member State is responsible for the transposition of Community law (adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system. According to Article 226 of the EC Treaty, the Commission is responsible for ensuring that Community law is correctly applied. Consequently, where a Member State fails to comply with Community law, the Commission has powers of its own (action for non-compliance) to try to bring the infringement to an end and, where necessary, may refer the case to the European Court of Justice.

Under the non-compliance procedure started by the Commission, the first phase is the pre-litigation administrative phase, also called "Infringement proceedings". The purpose of this pre-litigation stage is to enable the Member State to conform voluntarily to the requirements of the Treaty. There are several formal stages in the infringement procedure. The Commission may first have to carry out some investigation, namely when infringement procedures are launched further to a complaint.

There has been particularly one issue leading to a number of infringement cases in MS – namely failure to communicate to the Commission the measures taken by the MS to transpose and implement the directive¹⁵. By October 2007, the deadline of the transposition of the Directive, the Commission decided to open infringement procedures against 25 MS¹⁶ for failure to communicate measures transposing the Directive. In the beginning of 2008, infringement procedures were opened against the remaining two MS, Denmark and Italy, for the same reasons. In September 2008, the Commission decided to take eight MS, namely Belgium, Ireland, Greece, Spain, France, Cyprus, Austria and Portugal, to the Court of Justice for failure to communicate measures transposing Directive on the recognition of professional qualifications. The Commission send a reasoned opinion to Denmark on the same grounds. In October 2008, infringement procedures were launched against an additional number of MS for failure to implement Directive (2005/36/EC) into national law. The Commission will refer Germany, Hungary, Luxembourg, Poland, Sweden and the United Kingdom to the Court over non-implementation of this directive. In May 2009, a total of 17 MS¹⁷ had finished their notification of measures to the Commission¹⁸. In the majority of the remaining countries, only a few measures remained to be notified while, as mentioned, the transposition had still not been initiated in Greece.

The Commission insisted that the MS should communicate everything in connection with measures taken for the transposition and implementation of the Directive, including existing measures under the previous directives¹⁹. This is in line with Article 63 of the Directive, stating that MS have to inform the Commission about the laws, regulations and administrative provisions necessary to comply with it. The Commission therefore reasoned that complete notification, including measures already notified under the previous directives, was necessary.

¹⁵ http://ec.europa.eu/internal_market/qualifications/infringements_en.htm

¹⁶ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK.

¹⁷ BG, CZ, DK, EE, ES, FI, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI, SK.

¹⁸ Statistics from DG MARKT

¹⁹ Interview, DG MARKT

Failure to comply with this request resulted in the initiation of infringement cases against several MS. During 2008, from April to October, reasoned opinions were sent to 12 MS for their failure to notify the Commission of the measures taken for the transposition of the Directive. Moreover, the Commission decided to eventually take 14 MS to Court for their failure to comply with the request for notification²⁰.

The Commission suspects that the primary reason why so many MS struggled to comply with the request was the demand for notification of existing national measures used, and perhaps afterwards modified, for previous directives. It proved to be relatively problematic to gather this information in some MS, and, consequently, for some MS infringement still occurred even after they had adopted the horizontal text. Other cases, like Denmark's, were based on misunderstanding in the Member State of what exactly the Commission was requesting. The Danish authorities decided to notify everything, which of course took a lot of time, consequently delaying the notification procedure beyond the transposition of the text as such. A similar situation was the case for France, who, due to previous experience with failure to comply in relation to directives, decided to put everything on the table as well, thus delaying the transposition substantially²¹.

3.2. Overview of the transposition, implementation and enforcement of Directive 2005/36/EC in the Member States

Much European law takes the form of directives setting out broad principles and objectives but leaving MS the choice of methods. Often, this involves the transposition of the directive into national or regional legislation. In this report, **transposition** of a Directive is defined as a process by which the MS give force to a directive by passing appropriate implementation measures, and where MS have to do so within a given time period. **Implementation** refers to the carrying out of public policy. This process consists of the actual making and administration of rules. Effective transposition and implementation of a directive depends on several factors, for example the legal systems and the administrative capacity of MS. **Enforcement** refers to the process by which legislation come to have legal force and effect, and implies that compliance with EU law is monitored and non-compliance is sanctioned by national and supranational courts.









3.2.1. The transposition of the Directive

The overview of the transposition of the Directive is based on already existing and accessible information. The first step of creating an overview is to map the state of play, which has been done through a combination of transposition status mapping and infringement case analysis. The transposition status mapping has been undertaken through analysing the national execution measures available through EURLEX, and through information gathered at an interview with DG MARKT. The infringement case analysis has been carried out by analysing the Infringements and Judgments of the Court of Justice available as well as by interviewing DG MARKT. Focus has been on cases after 20 October 2007, i.e. after the end of the transposition period. The output of this exercise is found in the below table.












²⁰ http://ec.europa.eu/internal_market/qualifications/infringements_en.htm










²¹ Interview, DG MARKT

Table 1: Overview of the transposition status in the MS²²

Member state	# of transposing devices	# of regulated professions	Status of communication (from DG MARKT)	# of cases	Types of cases	Severity of cases (implemented but breach of articles, failure to communicate measures transposing Directives, not implemented in specific sectors)	Infringement proceedings for late transpositions remaining open
 Austria	99	209		3	Letter of Formal Notice (1), Reasoned Opinion (1), case before the ECJ (1)	Failure to communicate measures	Open
 Belgium	30	138		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
 Bulgaria	4	101	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
 Cyprus	7	89		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
 Czech Republic	27	262	COMPLETE	2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	
 Denmark	105	135	COMPLETE	2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	
 Estonia	9	46	COMPLETE	2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	
 Finland	14	122	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	

²² The information in the table and the subsequent text was retrieved on 1 July 2008.

Member state	# of transposing devices	# of regulated professions	Status of communication (from DG MARKT)	# of cases	Types of cases	Severity of cases (implemented but breach of articles, failure to communicate measures transposing Directives, not implemented in specific sectors)	Infringement proceedings for late transpositions remaining open
 France	16	129		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Implemented but breach of articles + failure to communicate measures	Open
 Germany	116	159		5	Letter of Formal Notice (2), Reasoned Opinion (2), Case before the ECJ (1)	Failure to communicate measures + not implemented in the manual therapists sector	Open
 Greece	0 (not transposed yet)	174		4	Letter of Formal Notice (2), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
 Hungary	35	63		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
 Ireland	32	125	COMPLETE	3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	
 Italy	7	151	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
 Latvia	22	50	COMPLETE	2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	
 Lithuania	32	173		2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	Open
 Luxembourg	2	103	COMPLETE	3	Letter of Formal Notice (1), Reasoned Opinion (1), case before the ECJ (1)	Failure to communicate measures	
 Malta	8	135	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
 Poland	26	349	COMPLETE	3	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	

Member state	# of transposing devices	# of regulated professions	Status of communication (from DG MARKT)	# of cases	Types of cases	Severity of cases (implemented but breach of articles, failure to communicate measures transposing Directives, not implemented in specific sectors)	Infringement proceedings for late transpositions remaining open
Portugal 	1	172	COMPLETE	3	Letter of Formal Notice (1), Reasoned Opinion (1), case before the ECJ (1)	Failure to communicate measures	
Romania 	21	47	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
Slovakia 	36	179	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
Slovenia 	17	254	COMPLETE	1	Letter of Formal Notice (1)	Failure to communicate measures	
Spain 	24	174	COMPLETE	5	Letter of Formal Notice (3), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures transposing directives + measures taken at national level in order to comply with ECJ judgements	
Sweden 	57	111		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
The Netherlands 	71	136	COMPLETE	2	Letter of Formal Notice (1), Reasoned Opinion (1)	Failure to communicate measures	
United Kingdom 	75	210		3	Letter of Formal Notice (1), Reasoned Opinion (1), Case before the ECJ (1)	Failure to communicate measures	Open
EU 27 	893	3996	Number of MS complete: 17	66	Letters of Formal Notice (31), Reasoned Opinions (21), Cases before the ECJ (13)		Number of MS with open cases: 10

A delay in the transposition of the Directive in the majority of MS has implied that the European Commission has found it necessary to react. A letter of formal notice has been sent to all MS. The letter of formal notice represents the first stage in the pre-litigation procedure, during which the Commission requests a Member State to submit its observations on an identified problem regarding the application of Community law within a given time limit. 21 of these MS have been met with reasoned opinion. The purpose of the reasoned opinion is to set out the Commission's position on the infringement and to determine the subject matter of any action, requesting the Member State to comply within a given time limit. The reasoned opinion must give a coherent and detailed statement, based on the letter of formal notice, of the reasons that have led it to conclude that the Member State concerned has failed to fulfil its obligations of transposition.

Referral by the Commission to the Court of Justice opens the litigation procedure. In this respect, the Commission must point out that, in accordance with the established case-law of the Court of Justice, it enjoys a discretionary power in deciding whether or not to commence infringement proceedings and to refer a case to the Court. The Court has also acknowledged the Commission's power to decide at its own discretion when to commence an action. Consequently, 14 of the MS have been presented with a case before the European Court of Justice (ECJ).

However, as can be seen from the above table, in the majority of cases (24 MS) the infringement had to do with lack of communication. The Commission has insisted that the MS should notify everything, including existing measures under the previous directives, in particular for the training requirements. They may not have been changed, but MS have to some extent been modifying them over the years. So the Commission insisted that previously existing national measures had to be notified, and for certain MS this became a difficulty, meaning that for some MS, infringement is still running even after they have adopted the horizontal text. Some MS have mentioned that they do not understand the need for notifying everything, but the Commission feels that from a legal point of view, and legal certainty point of view, they have put everything together at EU level and the same should be done at national level.

In a few cases, however, the infringements have been more severe, including Greece's failure to implement the Directive and France's difficulties in transposing the Directive in all affected sectors in due time. In addition, Spain has been very slow in getting the legal text adopted, blaming this on a reshuffling of the government which resulted in competences moving between ministries. It however means that Spain now has problems in catching up with the transposition, and it is therefore the Commission's experience that the result is hurried and often poor transpositions.

The new MS have generally been doing well in transposing the Directive. At the time of the transposition of the Directive, they had just been through the accession process. Moreover, the New MS also did not have to deal with the same number of existing measures from previous directives, like the old MS. Prime examples here are Romania and Bulgaria where everything had just been prepared for the accession, so was very easy for them to adapt the legislation.

As national legal practices differ widely, it is not possible to say which of the transposition measures can be considered best practice. The Directive has allowed the MS to transpose the Directive taking into account their national legal practices, which primarily differ along the lines of a centralised vs. decentralised approach as well as one horizontal regulation vs. several measures for specific professions. In federal states (for instance, Austria and Germany) a decentralised approach was adopted, as the legal competences within this field are to be found at Länder level. Therefore these MS had to adopt a decentralised approach to implementing the Directive.

This has taken some extra time, as much coordination work between the Länder was needed. This is of course not new to the federal states, but the volume of the Directive combined with this coordination work has meant that the MS have not been able to meet the deadline. Other MS, such as France, have chosen a centralised approach, which is possible when legal competences do not differ among the regional authorities.

The choice between one horizontal regulation and several measures for specific professions is often a question of whether one size fits all. Italy used one horizontal measure for all professions and is an example of a MS that transposed the Directive on time. However, when the Commission checked, the transposition was not thorough, thus suggesting that using this approach demands much follow-up work in order to ensure that the Directive is properly transposed. Other MS have chosen to transpose the system with one or two acts with success; one for the general system and the provision of services, and sometimes one for the seven EU-regulated professions. Denmark took a different approach and implemented a great number of measures (several measures for specific professions), but nevertheless made it on time. The only issue with Denmark was that they had problems with understanding what it was that the Commission wanted them to notify, and they then chose the approach to notify everything to be on the safe side, so the procedure took longer.









In sum, the MS have generally been rather slow in transposing the Directive, mainly due to the fact that the Directive is rather complex, involving a large number of sectors. An important reason for the MS being slow in transposing the Directive has to do with the fact that the Commission requested a large number of measures to be communicated (in accordance with Article 63), including existing measures under the previous sectoral directives that were not necessarily changed, which has taken time for the MS. However, a few MS, including Greece, Luxembourg and Spain, have not invested the resources needed in the transposition phase. At the time of writing, the majority of the MS have however succeeded in transposing the Directive fully.









3.2.2. The implementation of the Directive










Most MS have now implemented the Directive fully. The exceptions are Austria, Belgium, Cyprus, Germany, Greece, France, Hungary, Luxembourg, the UK and Sweden. However, the UK just lacks the implementation in Gibraltar and in Sweden only 1 measure is still missing. The speed of the implementation has however been rather slow; as only 7 MS had implemented the Directive one year after the Directive went into force. The reason for this slow implementation in the remaining 20 MS is mainly due to the volume of the work. In some MS, over 200 professions are regulated.




In sum, 17 of the 27 MS have now implemented the Directive. Some MS have however not made sufficient progress, as 10 countries still remain to fully implement the Directive. The majority of these MS only lacks a few measures to be implemented, but Greece has yet to start implementing the Directive. Greece has not yet transposed nor implemented the Directive, although its NCP states that the preparations for doing so are in the final phase. The reason for this mainly seems to rest with the fact that the Greeks are reluctant to recognise educations obtained anywhere else but Greece. Luxembourg has been very slow in the transposition and implementation of the Directive, and has only recently (19 June 2009) transposed the Directive. Luxembourg claims that it has been due to reorganisations in the national ministries that it took them almost a year to prepare the transposition and implementation. However, once implemented, there have not been problems with the implementation of the Directive.

The below table provides an overview of the effects of the implementation of the Directive in the different MS, as viewed by the interviewed Contact Points. Departure point has been taken in the five objectives of the Directive and to what extent these have been achieved.

Member state	Contribution to services markets	Consolidation and simplification	Improved management, clarity and flexibility	Better administration and improved information and advice to citizens	A simpler and more open regulatory approach
Austria 	- Faster case handling - Easier for users to understand requirements	- Sufficient information exchange		- Increased cooperation among national administrators	
Belgium 				- Increased cooperation among national administrators	
Bulgaria 	- Simpler system - Easier for users to understand requirements	- Art 56-60 contributed to a simpler system - sufficient information exchange		- Increased cooperation among national administrators - faster advice to citizens	- More support to MS/citizens from other MS/from COM
Cyprus 		- Sufficient information exchange		- Increased cooperation among national administrators	
Czech Republic 	- Simpler system - more transparent system	- sufficient information exchange		- Increased cooperation among national administrators	
Denmark 	- Simpler system - more transparent system - faster handling of the cases	- Art 56-60 contributed to a simpler system - sufficient information exchange		- Increased cooperation among national administrators	- More support to MS/citizens from other MS/from COM
Estonia 	- Simpler system - More transparent system	- Sufficient information exchange - MS benefit from increased information exchange	- Changes in technical requirements are updated faster than prior to the transposition of the Directive		
Finland 	- More transparent system	- Sufficient information exchange	- Changes in technical requirements are updated faster than prior to the transposition of the Directive	- Increased cooperation among national administrators	- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised
France	- Simpler system				

Member state	Contribution to services markets	Consolidation and simplification	Improved management, clarity and flexibility	Better administration and improved information and advice to citizens	A simpler and more open regulatory approach
					
Germany 	- Faster case handling	- Sufficient information exchange		- Increased cooperation among national administrators	
Greece  (Directive not yet transposed nor implemented)	- <i>Expect</i> simpler system - <i>expect</i> more transparent system	- Sufficient information exchange - MS benefit from increased information exchange		- <i>Expect</i> faster advice to citizens	
Hungary 	- Simpler system - More transparent system - Faster handling of cases	- Sufficient information exchange			- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised
Ireland 	- Simpler system - More transparent system - Faster handling of cases	- sufficient information exchange - MS benefit from increased information exchange		- Increased cooperation among national administrators	
Italy 	- Simpler system	- Sufficient information exchange			
Latvia 				- Increased cooperation among national administrators	- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised
Lithuania 	- Simpler system - More transparent system - faster handling of cases - Easier for users to understand requirements	- Sufficient information exchange - MS benefit from increased information exchange	- Changes in technical requirements are updated faster than prior to the transposition of the Directive	- Increased cooperation among national administrators - Faster advice to citizens	- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised - More information to MS

Member state	Contribution to services markets	Consolidation and simplification	Improved management, clarity and flexibility	Better administration and improved information and advice to citizens	A simpler and more open regulatory approach
Luxembourg 	- <i>Expect</i> more transparent system				
Malta 	- Simpler system - More transparent system	- MS benefit from increased information exchange		- Increased cooperation among national administrators	
Poland 	- Simpler system - More transparent system	- MS benefit from increased information exchange	- Changes in technical requirements are updated faster than prior to the transposition of the Directive	- Increased cooperation among national administrators - Faster advice to citizens	
Portugal 	- Simpler system - More transparent system - Faster handling of cases			- Increased cooperation among national administrators - Faster and more accurate advice to citizens	- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised
Romania 	- Simpler system - More transparent system - Faster handling of cases	- Sufficient information exchange			
Slovakia 					
Slovenia 	- Simpler system - More transparent system - Faster handling of cases	- Sufficient information exchange		- Increased cooperation among national administrators - Faster advice to citizens	- Simpler approach to enforcement of Directive/helping citizens getting their qualifications recognised
Spain 	- Simpler system	- Sufficient information exchange			
Sweden 	- Simpler system - More transparent system - Easier for users to	- Art 56-60 contributed to a simpler system - Sufficient information			

Member state	Contribution to services markets	Consolidation and simplification	Improved management, clarity and flexibility	Better administration and improved information and advice to citizens	A simpler and more open regulatory approach
	understand requirements	exchange			
The Netherlands 	<ul style="list-style-type: none"> - Simpler system - More transparent system 	<ul style="list-style-type: none"> - Art 56-60 contributed to a simpler system - Sufficient information exchange - MS benefit from increased information exchange 		<ul style="list-style-type: none"> - Faster and more accurate advice to citizens 	
United Kingdom 	<ul style="list-style-type: none"> - More transparent system 	<ul style="list-style-type: none"> - Sufficient information exchange 	<ul style="list-style-type: none"> - Changes in technical requirements are updated faster than prior to the transposition of the Directive 	<ul style="list-style-type: none"> - Increased cooperation among national administrators - More accurate advice to citizens 	<ul style="list-style-type: none"> - Simpler approach to enforcement of directive/helping citizens getting their qualifications recognised
EU 27 	<ul style="list-style-type: none"> - Simpler system (18) - More transparent system (17) - Faster handling of the cases (9) - Easier for users to understand requirements (3) 	<ul style="list-style-type: none"> - Art 56-60 contributed to a simpler system (4) - Sufficient information exchange (19) - MS benefit from increased information exchange (7) 	<ul style="list-style-type: none"> - Changes in technical requirements are updated faster than prior to the transposition of the Directive (5) 	<ul style="list-style-type: none"> - Increased cooperation among national administrators (16) - Faster advice to citizens (6) - More accurate advice to citizens (3) 	<ul style="list-style-type: none"> - Simpler approach to enforcement of directive/helping citizens getting their qualifications recognised (7) - More information to MS (1) - More support to MS/citizens from other MS/from COM (2)

Below, the five objectives of the Directive and to what extent these have been achieved, as viewed by the contact points, will be discussed.

Contribution to flexible services markets

In terms of contribution to a flexible services market, 18 of the MS has found that the Directive has helped in securing a more simple approach to recognition of professional qualifications, while 17 of the MS believe that the Directive has increased the transparency of the system. All Contact Points have stated that they find it easier to only have one piece of legislation to refer to instead of the sectoral directives, and it is easier for them to establish whether a certain qualification from another MS is regulated. However, the Contact Points also stress that the EU citizens do not feel a large difference, as they do not study the legislation themselves.

Some MS, for instance Estonia, believe that the Directive has given them a better overview of the regulated professions and thus the need for coordination has not increased. However, a number of MS, including France, have expressed that due to the fact that the Directive spans several professions, it is regarded as rather complex by the national competent bodies. The French contact point receives numerous requests from the competent bodies regarding the deadlines, technical details of the Directive etc.

Consolidation and simplification

In terms of consolidation and simplification, especially sufficient information exchange has been witnessed as a result of the Directive by 19 of the MS. The administrative structures to facilitate sufficient information exchange often existed to begin with, but the MS state that the fact that they were formalised with the introduction of the directive has been important as it is now clearer who has the responsibility for what.

One effect that was verified by most of the Contact Points was that an increased cooperation among national administrators was brought about by the Directive due to the now formalised structures, as well as the fact that meetings between the national administrators have now been scheduled and made obligatory. For instance, Denmark, Bulgaria and Finland state that the fact that the meetings have now been formalised implies that the informal contact between the national coordinators (especially email contact) has been strengthened as well, as they now know each other better. Thus, the transparency induced by the "one Contact Point"-system has resulted in a more informal cooperation between the Contact Points as well, as they now know their counterparts in other MS. However, here too, the interviewees were more uncertain about the effects of this increased cooperation for the citizens in terms of faster and more accurate advice, but it might be an effect that can be foreseen in the future, as the national contact points increasingly know whom to turn to for advice. The resource situation in the national competent bodies should however be taken into consideration in this debate as well, meaning that even though the MS now know whom to turn to for advice, the workload in the national ministries may mean that the cases will not be handled faster than is the case today.

Improved management, clarity and flexibility

In terms of the effects of the changes to the administrative structures, represented by articles 56-60 in the Directive, a large part of the MS said that for them this was actually not new. In these cases, the "one Contact Point, one National Coordinator"-system already existed before the transposition and implementation of the Directive. Meanwhile, for the remaining MS, to whom the administrative structures were new; it was a very beneficent change. Denmark, one of the countries who benefited from the new structure, stated that it is much easier for them to have one body responsible for all sectors, but also emphasised that they use the experts in the ministries and agencies with sector-specific knowledge when preparing for the committee meetings with the Commission. The UK has chosen a similar approach, setting up one responsible contact point (The Department for Innovation, University and Skills), which is overall responsible for the implementation of the Directive.

In addition, the UK has a de facto contact point for each regulated profession as well as one for the unregulated professions, due to the fact that many people seek to get their qualifications recognised in the UK. The Department for Innovation, University and Skills then uses the de facto contact points for support, clarification and advice. Thus, the system resembles the Danish one of using the competent bodies as experts, when needed.

Some of the interviewees who did not need to change their administrative structures replied that although they did not need to change their administrative structures as a result of articles 56-60 in the Directive, the fact that the structures were made official and mandatory by the Directive has made the national system more transparent. It has also meant that the roles of the national contact point have become clearer.

Better administration and improved information and advice to citizens

The Directive has especially helped in securing increased cooperation among national administrators, as 19 of the MS list this as an effect of the Directive. Some of the MS have established a formal cooperation between the National Contact Points and relevant ministries to ensure necessary exchange of knowledge. In the case of Denmark, the Contact Point is using sectoral experts from the ministries to provide input to them. Before the current Directive, each sector had a separate working group. In using the members of these former working groups as sectoral experts ensures that there is a logic link between the former and current legislation and that knowledge is being used to the largest possible extent.

It has also been mentioned by a number of MS, most prominently Denmark and the UK, that the Code of Conduct developed by the Commission and the National Contact Points has eased the discussions between the National Contact Points and the national competent bodies/ministries with sectoral knowledge. The Danish National Contact Point uses the document as a checklist when discussing implementation of the Directive with the competent bodies, and the UK uses the code of conduct as a guidance note when in doubt in a specific situation or as a reference document to check procedure compliance.

The objective of better administration and improved advice to citizens could however be expected to manifest itself through the citizens feeling that their cases were handled faster. 9 of the contact points found that the changes to the system have resulted in faster case handling, partly because the system is now more transparent (only one legislation for all professions), but also due to the fact that shorter deadlines for handling the cases have been given to the MS. Several MS, which did not see an effect of faster case handling as of yet, expected that it will occur once the new system has been properly embedded.

A simpler and more open regulatory approach

The degree to which the Directive has made the system more flexible and made it easier to update changes in technical requirements appeared to depend on the way in which it has been transposed in the MS. For instance, in the UK the situation prior to the Directive was that they had to update the national legislation each time there was a change in the technical requirements, to mirror the changes at EU level. When transposing the Directive, the UK chose to make references in the annexes in the actual legislation, thereby not incorporating the actual text of the annexes into the national law. Estonia has done a similar thing. This means that a change in the annexes on EU level will not require any adjustments in national legislation. Thus, the annexes have provided for more flexibility in the system than previously. In other MS, such as Austria, the legal structure made it very difficult for them to be flexible, as the Directive was implemented into the different regional laws and had to take into account the regional traditions for law-making. While the UK, based on experience with the previous sectoral directives, expected that a more flexible system would mean less paperwork, other interviewees stated that it still remains to be seen how many changes in technical requirements were needed and did not know whether to expect much paperwork as a result of the Directive.

3.2.3. The enforcement of the Directive

As the Directive is still rather new (due to late transposition and implementation), the majority of the interviewees believe that it is still too early to give a proper status of the enforcement of the Directive. In most MS, so far the enforcement is functioning rather smoothly. Many interviewees believe that the fact that the recognition of professional qualifications is now gathered in one Directive will make the enforcement of it simpler, as there is now only one Directive and one set of rules to turn to, but that the effects will still have to be seen and can probably not be expected to materialise until all MS have transposed and implemented the Directive, at the very least.

Finland is one of the few countries that provide us with input on the enforcement process. They concluded that in general enforcement is relatively smooth, but cooperation between the competent bodies and the institutions (e.g. universities) making aptitude tests has been a challenge, as the universities do not have an incentive to make these.

Bulgaria has experienced some issues with professions that are non-regulated in Bulgaria but regulated in a host country. The competent authority in the host country contacts the Bulgarian contact point asking for certificates, but as the profession is not regulated in Bulgaria the Contact Point does not see it as their responsibility to make these certificates for the non-regulated professions. It is a point of discussion and the Bulgarian Contact Point is not quite sure how to enforce this properly.

3.2.4. Summary

In sum, the transposition of the Directive is at the point of writing well underway. A few MS still needs to transpose the Directive for selected sectors or in selected geographical areas. Greece is the only MS who has not yet initiated this, and Luxembourg has also been lacking behind. However, the transposition of the Directive has been very delayed, mainly due to the wide sectoral coverage of the Directive which has proven to be challenging to nearly all MS, and because of the Commission requesting that all measures were communicated, including existing measures under the previous sectoral directives (in accordance with Article 63).

The transposition of the Directive is the basis for a sound implementation and enforcement of the Directive. At this moment, the implementation of the Directive is also well underway in the majority of the MS. Lacking behind are Austria, Belgium, Cyprus, Germany, Greece, France, Hungary, Luxembourg, the UK and Sweden. However, the UK just lacks the implementation in Gibraltar and in Sweden only 1 measure is still missing. The speed of the implementation has however been rather slow; as only 7 MS had implemented the Directive one year after the Directive went into force. The problems encountered have especially had to do with the volume of the work in terms of number of professions and number of ministries involved. As the MS have been rather delayed in the transposition and implementation of the Directive, it is too early to provide a status of the enforcement of the Directive.

The contact points especially mentioned the following effects of the implementation: A simpler and more transparent approach to recognition of professional qualifications, as the Contact Points find it easier to only have one piece of legislation to refer to instead of the sectoral directives; a formalisation of the administrative structures, resulting in better information exchange, as well as an improvement in the administrative structures for some MS as a result of articles 56-60 of the Directive; increased cooperation among national administrators; faster case handling (and expectations thereof once the new system has been properly embedded) and finally an easier update of changes in the technical requirements especially for the MS which have chosen to make references in the annexes in the actual legislation.

In the following chapter, the different challenges faced by the MS in relation to the transposition, implementation and enforcement of Directive will be analysed and discussed.

4. POSSIBLE LEGAL AND ADMINISTRATIVE CHALLENGES IN TRANSPOSITION, IMPLEMENTATION AND ENFORCEMENT

Based on the above analysis of the five main objectives of the Directive, a literature review as well as the interviews with national contact points, eight main challenges related to the transposition, implementation and enforcement of the Directive have been identified. In the following, these will be analysed and suggestions to success and failure factors will be identified for each of these challenges. Some of the identified challenges are already being well handled by a majority of the MS, while others have not (yet) been dealt with. The focus of this chapter is thus the challenges identified throughout the process of transposing, implementing and enforcing the Directive, some already handled and some not.

The eight challenges that the MS have experienced during the transposition, implementation and enforcement of the Directive are as follows:

- Transposing the Directive within the timeframe
- Establishing well-functioning administrative structures
- Creating a simpler and more transparent system for administrators
- Creating increased transparency for citizens
- Ensuring a well-functioning system both for professions with much cross border activity and for professions with less
- Establishing a mutual understanding between MS
- Establishing well functioning cooperation between stakeholders at national and at EU level
- Ensuring adaptation to changes and flexibility in transposition

In the following, the eight challenges will be discussed in more detail.

4.1. Challenge 1: Transposing the Directive within the timeframe

Timely transposition of the Directive has been a challenge in all MS, caused by the complexity and the scope of the Directive. According to the interviewed MS, the challenge is primarily caused by the interpretation of especially the technical aspects of the Directive, the large number of professions regulated, and the lack of communication of measures to the Commission. In the following, these aspects will be discussed in more detail.

First of all, with respect to the interpretation of the technical aspects of the Directive, around 25% of the MS have stated that difficulties in this interpretation has been one of the factors leading to a non-timely transposition of the Directive. The main issue with interpretation seems to concern the interpretation of the national legislation transposing the Directive. Some of the national legislators seem to have interpreted the Directive wrongly and have therefore been asked to redraft the provision and make it clearer. This question of interpretation has prolonged the transposition. One MS claimed that the last phase of the transposition was delayed due to a matter of dispute with the Commission regarding the interpretation of a certain point in the Directive.

The above seems mainly to be an issue in the MS that have transposed the Directive into a significant number of measures, such as Germany and Austria. Matters are complicated further if the competent bodies are not working closely together, thus leaving larger room for individual interpretation of the Directive by the different competent bodies. The role of the National Contact Point as a coordinator and facilitator of information between the national ministries could possibly help in overcoming this challenge.

In Denmark and the UK, where the NCP has this role, the interpretation of the technical aspects seem to be less of an issue, however, the interviews could not reveal whether the role of the NCP was the main reason for this.

Secondly, the great number of regulated professions is also mentioned by the MS as a reason for the delay of the transposition and implementation of the Directive. According to the Commission, some MS have hundreds of regulated professions, which all have to be included in the transposition and implementation of the Directive. Furthermore, in many MS the number of regulated professions changes regularly, often depending on whether a professional organisation wants the profession to be regulated or not.

One of the reasons for the high number of cases for lack of communication, and thereby the delay in transposing the Directive, was that the Commission as mentioned insisted that the MS should notify everything, including the existing measures under the former, replaced directives, in accordance with Article 63. The Commission has stated that from a legal – and legal certainty – point of view, it was relevant that all MS notified everything at the same time as everything was put together at EU level. Furthermore, the Commission believed that although many of the existing measures under the former directives might not have been changed, they had to some extent been modified over the years and this had not necessarily been notified by the MS in the meantime.

“We insisted that they should notify everything, including existing measures under the previous directives, in particular for the training requirements. They may not have been changed, but MS have to some extent been modifying them over the years. So we insisted that previously existing national measures had to be notified, and for certain MS this became a difficulty”

The European Commission

Thus, this communication has delayed the transposition and implementation of the Directive, since the MS were not well aware of the Commission’s request.

Also the MS have according to the Commission had problems with notifying their legislative measures in the Commissions database. One of the reasons for this seems to be that different people in the MS are responsible for the notification from time to time. During the transposition of the Directive, the Commission for example experienced that MS declared that the communication was complete. However, when the Commission checked there were parts which were still missing, which led to infringement procedures. Also the MS find that the database is causing them many frustrations, as it is not clear how the database works. The MS having problems with the database suggest that the Commission could make more thorough instructions for the MS on how to notify measures in the database.

The key factors for success or failure of a timely transposition are summed up below.

Success and failure factors related to Challenge 1

Success factors

- Better guidance from the Commission to MS on how to notify measures in the Commissions database would ease the workload of the persons responsible for notification

Failure factors

- The large number of regulated professions in some MS has increased the legislative workload in the transposition of the Directive
- The very extensive notification requests from the Commission contributed to a prolonging of the transposition process
- Problems with notifications in Commission database
- Lack of close cooperation between competent bodies and between competent bodies and NCPs

4.2. Challenge 2: Establishing well-functioning administrative structures

Along with the original objective of the Directive of improved information and advice to citizens, was also the aim of introducing better functioning administrative structures in the system for recognition. Behind this challenge lies an expectation of more, better, and faster cooperation within and between the national administrations in order to improve the case handling and ultimately create more flexible labour and service markets.

Around two thirds of the MS say that they have not needed to set up new administrative structures with the implementation of the Directive. Often, sufficient administration already existed, including the Contact Point and National Coordinator required by the Directive, as the previous sectoral directives required each Member State to define its competent authorities, contact point and national coordinator. In other cases, the existing structures only needed to be restructured a little, such as the setting up of interministerial groups or national councils for coordinating the information flow between the ministries involved in the Directive. However, what has been important to the MS is that with the Directive, the administrative structures have been formalised. This has meant that the tasks being carried out by the Contact Points and the competent bodies are now clear to everyone. Moreover, the formalisation of tasks has provided a better overview of who is doing what between the different MS.

"The administrative structures were already in place, but without a formal recognition. So the only change in fact was its formalisation."

Small Member State

In some MS, the National Contact Points expect that it will be necessary to introduce some changes, possibly by employing more administrators, as they foresee that mobility and thereby requests for recognition of professional qualifications in the EU will increase. However, for now the structures and the workforce remains stable.

Although the majority of the MS have not needed to introduce new administrative structures, one MS stated that introducing additional administrative structures (especially in terms of introducing a single National Contact Point) was not enough, as the competent bodies do not have the resources to cooperate effectively with the contact points. The MS does not have the funding to create the necessary infrastructure for the competent bodies or to employ the necessary number of people for helping the contact point with the recognition requests.

Albeit the structure of a single contact point to many MS is not new, the majority (a little more than 50%) of the MS agreed that the Contact Point system (and its formalisation) was a great improvement in the process of establishing well-functioning administrative structures. It has meant a better overview of who to contact in other MS, more cooperation (formal meetings as well as informal contact), and freer and faster information flows. Or at least it is expected that the structures will result in this – some MS are more reluctant to already deem it a success but suspect that the new system will have this impact in the longer run.

"I think that in most countries the administrative structures work well. We are often in touch with the other EU MS."

Small, new Member State

Some MS however were not sure how well the administrative structures put forth by the Directive would work in terms of making the process of getting qualifications recognised easier, and believed that new structures do take time to implement and to become well functioning.

“We do not see the effect yet. The changes should lessen the administrative burden but I am not sure it will happen. If a competent authority in one country could provide the authorities in another with information instead of the citizens having to collect it, it would be more efficient, but as it is now, it is still up to the citizens ... It can be that it is more a long-term effect. If the networks start working as foreseen in the Directive, it is likely that the labour markets will become more flexible, as more information will be exchanged through the networks, thus making it easier for the competent authorities to handle the cases. But this still remains to be seen.”

Small, newer Member State

To conclude, the following success and failure factors can be defined for establishing well-functioning administrative structures:

Success and failure factors related to Challenge 2

Success factors

A more successful way of handling the challenge of establishing well functioning administrative structures seems to be found with MSs who:

- Already had the required administrative structures in place and therefore did not have to implement many changes but rather just a formalisation of the existing structures.

Failure factors

A less successful way of establishing well functioning administrative structures seems to be found with MSs where:

- The competent bodies do not have the resources to cooperate effectively with the contact points

4.3. Challenge 3: Creating a simpler and more transparent system for administrators

Consolidation and simplification of the framework for recognition of professional qualifications should make the system more transparent and easier to manoeuvre for the administrators in the different MS. Therefore, an important challenge in relation to the introduction of the Directive is to make this work in reality. Overall, around two thirds of the MS found that the consolidation of the directives into a single text has made it easier for the national contact points and competent bodies to understand and operate within the legal framework of recognition of professional qualifications. The reason given by most of the contact points was that it is easier to have one legal basis to refer to instead of several. They found that it has made the system more transparent, easier to navigate in and easier to explain to others, e.g. citizens and (new) colleagues.

“[It gives a] better overview when you only have one directive. It is easy with the two systems of automatic recognition and the general system respectively. The Directive has made it simpler to understand the system.”

National Coordinator, older Member State

“It is much easier to work using only one directive...it is much easier to stay informed about changes in the Directive.”

Contact Point, new Member State

Other than the legal text per se, many of the MS (more than 50%) agreed that especially the administrative framework of a single contact point in each MS, introduced along with the Directive, helped in simplifying the system and making it more transparent.

Meanwhile, most of the MS (nearly 90%) found that though the new directive has brought about an improvement, the system for recognition is still rather complicated and complex. In spite of the streamlining of the Directive, there are still great differences between the MS in terms of how it is administered, which professions are regulated, the amount of information accessible, etc; and it appears from the statements of the Contact Points and national coordinators that these aspects contribute to the continued complexity of the system. Some of the Contact Points, however, expressed a belief that over time this will also improve as the changes to the system should bring about more, better and faster information exchange between the MS. A couple of MS also expressed a wish for more and better information from the Commission, such as simpler texts explaining the Directive, as means for further simplification and transparency in the system for recognition.

There were different experiences and opinions in the MS as to how significant the change has been. 5 of the MS expressed that, in their view, the transposition and implementation of the new directive has had only a small and insignificant impact on the simplicity and transparency of the system for the national contact points and coordinators, in the enforcement of the Directive. Of these, a couple of MS conveyed the view that since the Directive is more of a formal rearrangement of the texts rather than a substantial change of the contents, it does not really have any significance to the work of the national administrators. For new MS it appears that the introduction of the Directive did not really change much, as their joining the EU relatively shortly before the introduction of the Directive meant that everything was already prepped as prescribed for the new directive.

"Our recognition system was already at the beginning based on one contact point and one procedure. There were no changes for us as a contact point with the new directive."

Contact Point, new Member State

Moreover, it appeared that also some older MS had already, prior to its introduction, established a system for managing the recognition cases, quite similar to the one foreseen by the Directive – with one contact point, etc.; hence, their view that the consolidation had no notable impact on the everyday work of the national administrators.

In sum, it however appears that the challenge of making the system for recognition of professional qualifications simpler and more transparent for the national administrators has been overcome in the transposition and implementation of the Directive in almost all MS. Some disagreement, however, existed between the MS as to how much it has improved. This disagreement was, firstly, based on the difference in the significance ascribed to the consolidation of the legal texts: while some found this to be a great improvement, easing their jobs as Contact Points, others found that it did not really make a difference as long as there was no real change in the content of the legal framework. Secondly, the difference in perceptions seemed to be based on the differences in the administrative frameworks accompanying the legal text: some MS (e.g. some new MS) had managed to set up a relatively simple, well functioning system beforehand, foreseeing some of the changes introduced by the new Directive, thus not experiencing any real difference after its introduction. Meanwhile, other MS appeared to have been successful in improving administrative structures along with the transposition and implementation of the Directive, bringing about a sensation of greater improvement in terms of simplicity and transparency. Yet other MS appeared to have been less successful in (partly due to lack of resources) bringing about the simplification and transparency in the national administrative framework, thus inducing a feeling of some simplicity and increased transparency but not as significant as in other MS.

Success and failure factors related to Challenge 3

Success factors

The creation of a simpler and more transparent system for administrators is mainly fuelled by the creation of one single contact point.

Failure factors

The creation of a simpler and more transparent system for administrators has to a lesser extent taken place in MSs who have already had established a relatively simple and transparent administrative system and therefore did not experience a great change with the introduction of the Directive

4.4. Challenge 4: Creating increased transparency for citizens

Another important challenge identified for the transposition, implementation and enforcement of the Directive was to actually bring about more transparency in the system of recognition for the EU citizens.

In terms of the consolidation of the legal texts into a single directive, at least five of the MS specifically mentioned that it has made it easier for citizens to get an overview of the possibilities they have, if they wish to migrate. For instance, one MS stated that in the past, it was often quite difficult for the citizens wishing to migrate to know whether their qualifications could be immediately recognised or whether they would need to obtain additional diplomas. The Directive has provided some clarity over this or at the very least a better knowledge of where to look for information.

Almost 90% of the MS said that with the consolidation, the legal framework is more accessible to those citizens who *might be interested in and able to read and understand it* themselves now that the information is in one place. However, the majority of the citizens are not expected to actually read and understand the Directive. According to one national contact point, the citizens wishing to migrate simply contact their national contact point in order to inquire whether their qualifications can be recognised in the MS in question, relying on the information they get from the contact point and not checking up on the recognition procedures in other MS themselves. Several MS state that the contact points get the same type of inquiries now as they did before the Directive.

The appointment of a single Contact Point in each MS has to some extent created increased transparency for the citizens, as they now have only one place to acquire information. Of the MS stating this, most of them (almost 90% of MS, as mentioned above) considered that the Directive is now much easier for the Contact Points to understand and explain to the citizens, thus bringing a great deal of more transparency to the citizens through the aid of the Contact Points. The main requirement now is to make other, simpler types of information about the system and the contents of the Directive available to citizens. This is already being pursued by the Commission and with the introduction of web-guides and the like. Along these lines, a few MS have taken additional steps. For instance, in Denmark, the national contact point has published a number of guides to the citizens on who to contact and which steps to go through if you as a citizen wishes to have your qualifications recognised in another MS.

"It is clearer that the main information will come from the Contact Point. Citizens know who to contact for information."

"The general law transposing the Directive also contains all professions, systems and diplomas in one act. This has made it easier to explain the system to the citizens."

Small, newer Member State

One issue, that however is hindering transparency a bit, is the fact that a different number of professions are recognised in each MS. For instance, one national contact point explained that only relatively few professions are regulated in her MS, which is complicating the system for its citizens. When going abroad and trying to have their professional qualifications recognised, citizens will be asked to present documentation proving their qualifications. However, if the profession is not regulated in the citizen's home country, no official documentation can be acquired from their national authorities. In some MS, such as Bulgaria, the national contact point does not see it as its role to help the citizens acquire such documents. Hence, the differences among the legal systems in the MS can also have an impact on how transparent the system is perceived to be by the citizens.

The success and failure factors related to increasing the transparency for citizens are summed up below.

Success and failure factors related to Challenge 4

Success factors

Improved transparency for citizens appeared to be found with MS who have:

- Made an extra effort in terms of making simpler explanations of the Directive and information about the system available to administrators and citizens.
- Positive expectations that more and improved information to come from the Commission will make the system more transparent for the citizens

Failure factors

Improved transparency for citizens seems have to a lesser extent been found with MSs who:

- Do not have many regulated professions nationally, presenting their citizens with challenges when trying to get their qualifications recognised in another MS where professions are regulated and documentation is required.

4.5. Challenge 5: Ensuring a well-functioning system both for professions with much cross border activity and for professions with less

An administrative challenge in the enforcement of the Directive is to create a well functioning system of recognition both for professions with much cross border activity and for professions with less. Handling this challenge depends on the cooperation at national and at EU level and the experience by the administrative personal. A well-functioning system to a large extent depends on the exchange of information, both between the authorities responsible at national level and between the national contact points across the EU. The better the exchange of information, the easier it will be for the competent authorities to handle the cases.

Despite the fact that the Directive has not shown its full effect yet, a couple of MS pointed to the fact that the system of recognition works better in the professions where there are many cases than in the professions where there are only few cases. This is first of all due to the fact that the experience by the administrative personnel increases the more cases it handles. Furthermore, there seems to be an expectation in many MS that the system of recognition will improve with time as the system will become fully implemented in all countries and the authorities will be more used to handling the different types of cases, as can be seen from the below example:

"The competent authorities have become better equipped. For example some authorities now organise their information better not only because of the Directive but also 'normal' improvement over time [due to more experience in handling the cases], and the contact point now receives fewer requests for general information.....There is more information which is systematically at hand so the contact point is now better informed"

National contact point, small, old member state

The challenge can however sometimes be emphasised by the fact that it is sometimes difficult for the National Contact Points to get the right information. Especially the cross border information exchange on specific cases could improve, as illustrated below:

"With generic issues there is a good and sufficient flow of information between the relevant parties. With specific cases it is sometimes difficult to find the relevant counterpart in another member state, and sometimes even the contact point for the specific profession doesn't know who to talk to...."

National Contact Point, Large, old member state

Supportive steps towards a greater exchange of experiences and information have already been taken at EU level. Especially the new committee system specified in Article 58 replacing the former sector-specific committees with one committee and the idea of one contact point for all professions have led to a simplification and has improved administration. As many problems are similar for the different professions, it is found advantageous with only one committee, creating the possibilities for a greater exchange of experiences across the different professions.

The Internal Market Information (IMI) System

One of the means that could ensure a well-functioning system of recognition for all professions is the Internal Market Information (IMI) system. The IMI system is an electronic information exchange network developed by the European Commission in close cooperation with the 27 EU Member States and the 3 European Economic Area (EEA) States. In general, the MS are using the system as a source of information on the recognition of professional qualifications in other MS, for communication between the competent authorities and exchange of information with other countries, e.g. on specific cases. IMI sets out to support day-to-day administrative cooperation between public administrations in the internal market,²³ thereby providing the MS with the possibility of exchanging information about the Directive.

While the system overall has helped in ensuring the exchange of information among MS, a couple of the interviewed Contact Points pointed to the fact that the use of the system could be improved. While all MS claim to use the IMI system, there are great differences in the frequency with which it is used and what it is used for. Some MS, such as Denmark, have chosen for the time being to only register the professions with the greatest mobility and thereby the greatest need for information exchange, whereas other MS, such as the Czech Republic, have chosen to register all its relevant professions. Some MS, such as Ireland, mainly use the system for checking who the competent bodies in other MS are. Luxembourg only uses it for answering questions from other MS. Some MS have developed a close contact with the competent bodies in other MS due to collaboration through the system on e.g. specific cases, while others just check the system on a weekly or monthly basis.

²³ http://ec.europa.eu/internal_market/imi-net/imi_awareness_raising_conference_en.html

The main problem with the system is therefore not of a technical nature, but is more a problem of capacity or priority in the MS. Some MS are extremely slow in answering requests from other MS, and some MS are mainly using it because they have to, as they are getting questions from other MS through the system. The problem with enquiries that are not being answered is the main complaint of the system.

"IMI should not only be seen as a tool or a voluntary possibility. Some MSs are not prepared to take this opportunity up – they are not prepared for this kind of change. This will impact the rest of the MSs since there obviously is a high level of interdependence between MS. They need to cooperate on same terms in order to get full effect of the provisions"

National Contact Point, Old Member State

The introduction of the IMI system has made the information exchange much easier. Further improvement on procedural rules for information exchange among authorities is much welcome. In general a more proactive information exchange should be enhanced. In particular the use of the IMI system should be made compulsory for the competent authorities.

National Contact Point, Large new Member State

The fact that some MS are not using the system to its fullest extent impacts the cooperation of the MSs since there obviously is a high level of interdependence between MS. They need to cooperate on same terms in order to get full effect of the provisions. This means that in order for the system to function as well as possible, all MS will need to commit to the system. In order to fully exploit the opportunities of the system, a code of conduct or a common strategy for how to best use the system could advantageously be shared among the MS.

To sum up, it is a challenge for many MS to establish a well functioning system of recognition for the professions, in particular for those with less cross border activity. While it is expected that this in part will improve over time when the system is fully implemented in all countries, a number of steps have been mentioned which can improve the system of recognition. This among other things include a greater exchange of information and a well functioning cooperation at both national and at EU level, plus an extension of the number of professions included in the IMI system as well as a more uniform and frequent use of the system. The factors which have been pointed out as important/restricting in the creation of a well functioning system of recognition for all professions are summed up in the box below.

Success and failure factors related to Challenge 5

Success factors

A more successful way of establishing a well-functioning system for all types of professions seems to depend on:

- The cooperation and exchange of information at both national and EU level. A high level of information exchange among other things enables the National Contact Point to get an overview of relevant competent authorities and thereby to be better to advice citizens and other Contact Points
- One committee at EU level (Article 38) instead of several has made it possible to exchange experiences across the different professions

Failure factors

A factor hindering the of establishing a well-functioning system for all types of professions seems to be:

- Difficulties in finding the relevant counterpart in another MS regarding specific cases
- The differentiated use of the IMI system in different MS leaves an unexploited potential for a better exchange of information and better discussions among all MS. However, in order to fully exploit the system's potential it is important that all MS are using it fully.
- The main problem with the IMI system seems not of a technical nature, but is rather a problem of capacity or priority in the MS.

4.6. Challenge 6: Establishing a mutual understanding between Member States

Another important challenge when transposing and implementing the Directive has been to ensure a mutual understanding of the different qualification systems between MS, and to create greater flexibility and trust in the recognition procedure.

Several MS have pointed out that to ensure a true internal market for the provision of services and to achieve the full potential of the Directive, MS must increase especially trust and openness in their recognition procedures. The MS are sometimes reluctant to trust and accept each other's systems, as they believe that their own way of doing things is the best. For example, the administrative practices in each MS are still very different from each other, even though the Directive has aimed to ensure more uniform procedures.

"We are not always convinced that other MS' ways of doing things is good enough. More trust is needed in order for the citizens to getting their qualifications recognised more easily and to move freely across borders"

National contact point, small, old MS

The trust issue is further exemplified by the fact that some MS are deemed conservative and rigid in their approach to recognition. The problem especially appears if people move with 'old' qualifications which do not correspond to the requirements of the educational system today. A similar problem applies to new types of education which are not broadly recognised or educations, which content is subject to numerous changes. Improvement of the situation could entail increased adaption of and use of compensation measures to overcome the problems arising for citizens with old or new types of education. The industry organisations could possibly help in disseminating any new information about the professions to aid the recognition procedure, thus helping in removing any doubts the MS may have in whether a given professions should be recognised. The role of the industry organisations is further discussed in chapter 6.2.

Thus, it appears that if the MS succeed in establishing a greater mutual understanding and accept of each other's systems, it will create a basis for a faster and more flexible recognition of qualifications.

"Still, it is not an easy administrative system, but a rather complicated and complex recognition procedure that is too rigid, as it's not built on trust as academic recognition is. The NCP knows that academic recognition is different that professional recognition but there is not enough 'trust'. The recognition of professional qualifications could be more flexible and more inspired from the principles* in academic recognition. (*Principles: from the Lisbon convention of academic recognition, adopted by UNESCO and Council of Europe). "

National Contact Point, smaller, old MS

The solution to overcome this practice is not found with changing the provisions of the Directive, but with a change of practices in the MS. The MS believe that a part of the further improvement in making a smooth system of recognition will come in time, as the MS get more used to the system and the different sorts of compensation measures. Nonetheless, improved communication, e.g. on the interpretation of the Directive's provisions, could increase trust and thereby possibly support a smoother functioning of the Directive. As further described in section 5 several MS have expressed that, a more extensive use of the Code of Conduct could ensure a more uniform administrative practice in the different MS, resulting in an increased mutual understanding.

The MS' lack of trust in each other's systems is further exemplified by the systematic use of article 7. Article 7 of the Directive states that Member States may require that, where the service provider first moves from one Member State to another in order to provide services, he shall inform the competent authority in the host Member State in a written declaration to be made in advance including the details of any insurance cover or other means of personal or collective protection with regard to professional liability²⁴.

The article thus leaves it up to the MS to decide whether they want to make use of this possibility, and has been interpreted by the majority of the MS as the service provider being *obliged* to inform the competent authority about a possible move. The Article gives the MS this possibility, but could be interpreted (and was possibly intended) as a measure of last resort instead of a routine measure. However, the MS have generally opted for the latter.

While a few MS, including the Czech Republic, has chosen to apply the declaration to all regulated professions, the majority of the MS have used this article within selected areas. Among those, the health care sector and the veterinarians are the most prominent selected sectors. The selected professions are the ones where MS assess that the mobility is greatest. For instance, in Sweden, the declaration is only required for certain professions, such as Health professions, veterinarians, safety guards, and real estate agents. For each profession there has been a discussion of whether it was relevant and needed to use the declaration. The reasoning behind including these professions was that these have consequences for the health and safety of the Swedish people (and its animals). For the real estate agents, the declaration is required as real estate agents in Sweden need to have a very good knowledge of Swedish law, as real estate agents in Sweden have different tasks than real estate agents in other countries.

The Swedish example shows rather well the reasoning behind systematically implementing Article 7: The MS wish to have certain knowledge of the person *before* he or she is able to provide services. As the Czech National Contact Point put it, it is just to control the people coming to work in their country. This discussion leads back to the aforementioned trust discussion, showing that the MS do not have trust in each others' education systems/professional systems.

To sum up, the lack of trust between MS in each other's systems for education makes it difficult to ensure a well functioning system of recognition in practice, although the provisions supporting the system to a wide extent are in place. Especially Title II on free provision of services which aim to ensure a lighter regime for the provision of cross-border services on a temporary basis necessitates that MS are ready to show the required trust. Along these lines, some MS have called for a more flexible approach to recognition from other MS and a more extensive use of compensation measures. A more flexible approach is expected to establish a faster recognition procedure and thereby better achieve the general objectives with the Directive.

The box below sums up the factors affecting success or failure for the establishment of a mutual understanding among MS and cultural adaptation.

²⁴ Article 7, Directive 2005/36/EC

Success and failure factors related to Challenge 6

Success factors

Possible measures for a more successful way of improving the mutual understanding of the different systems could be:

- Increased communication at EU level, among other things on the interpretation of the Directive. This will ensure a more uniform application of the Directive in the different MS
- The meetings at EU level which give a possibility to ask questions and to get a better understanding of how the system works in other countries
- A more widespread use of the Code of Conduct as this could contribute to a change of practices in the more protectionist MS

Failure factors

The following points were mentioned as problems in relation to challenge 3:

- A too narrow interpretation and use of the Directive, in particular Article 7, hinders a smooth functioning
- The professional requirements laid down in detail for the professions under the specific system can be a hindrance for recognition if they are out-of-date

4.7. Challenge 7: Establishing well functioning cooperation between stakeholders at national and at EU level

Cooperation between stakeholders is a central aspect of an effective implementation and enforcement of the Directive. Both at national and at EU level it has been a challenge to ensure a sufficient exchange of information, harmonisation of expectations and involvement of all interested parties.

The challenge can be characterised as an administrative challenge as the main aim is to establish a both formal and informal cooperation among the national officials and other stakeholders at national, transnational and EU level. A well functioning cooperation will affect several of the objectives of the Directive in a number of ways.

First of all, exchange of information can contribute to consistency in the interpretation of the Directive's provisions and create a basis for more simpler and flexible administrative procedures. Secondly, cooperation among administrations both at national level and cross-border cooperation can contribute to better guidance to the citizens and a faster solution of cases. Thirdly, a well functioning inclusion of professional organisations and unions will improve guidance to citizens and relieve the recognition process of citizens within professions which are non-regulated in their home country.

Especially in the transposition phase **a well functioning cooperation at national level** is pointed out as crucial in order to ensure a common interpretation of the Directive, to exchange experience and to inform external stakeholders about the provisions of the Directive. Various MS – both old and new – have emphasised the cooperation among authorities involved in the transposition²⁵.

"We started meeting shortly before the adoption of the Directive [and we] have not met at specific dates, just when necessary. The good thing about the meetings was that they made it possible to exchange views and experiences. Especially from the point of view of the Ministry of Education as the main coordinator the meetings were very helpful because some ministries had to make the sectoral laws themselves, and the Ministry of Education could then follow these processes"

National Contact Point, New member state

Also in the enforcement of the Directive a well-functioning cooperation is central. An example of this is one member state having established an advisory body to discuss questions related to the enforcement of the Directive.

The members of the body come from unions, Ministries and other competent authorities and only functions as a consultative body, creating a forum where it is possible to discuss issues in relation to the enforcement of the Directive, e.g. which professions to regulate and not to regulate, just as the body also sometimes discusses questions of interest with the national coordinator prior to meetings in Brussels.

While a number of MS have expressed a lack of change in the general cooperation among authorities and administrators at national level after the adoption of the Directive, other MS find that the cooperation has increased. Some of the increase in cooperation can be ascribed to the process of transposing and implementing the Directive which naturally involves increased contact between national administrators.

Ensuring efficient **cooperation at EU level** is also of great importance for the optimal function of the Directive. Meetings among the national contacts and the national coordinators respectively are held regularly in order to discuss themes related to the Directive. The majority of the MS find that these meetings are very relevant, as the national officials can share information on the general as well as more problematic parts of the Directive. Furthermore, the Brussels meetings are also a source of news from the Commission. Several MS have emphasised the benefit of meeting the colleagues from the other EU MS in person. The meetings give the national officials an opportunity to get to know their counterparts, meaning that when issues or cases arise at national level, the national officials will know who to contact from the other MS. The MS also find that the meetings give a better understanding of how the systems work in other MS, and the meetings can thus be used as an opportunity to find inspiration and to learn from other countries' good practice.

"The networks put in place are really useful ... [it is] better to talk to another person to solve it [and] better to exchange information through these channels. It gives a better understanding"

New Member State

However, it is still a challenge to ensure that the meetings are equally relevant for all participants. Differences in national legal practices and differences in the number of professionals wishing to have their qualifications recognised can impede the meetings as the participants can have different agendas. Some MS have also called for a greater exchange of experiences and good practices at the meetings in Brussels. In the light of the fact that not all countries have finished the transposition of the Directive, this may still be a relevant help for these countries.

The **contact and cooperation between the national officials** is in general characterised as good by the majority of the MS; among a number of reasons because many of the contact points have also been contact points under the former directives and they therefore know each other well. Again, the IMI system could be used to a greater extent in promoting the cooperation among national officials.

There is in general a high level of **information exchange at EU level to and among the national administrators** of the Directive. Both in the meetings of contact points and the group of coordinators, via the IMI system, through general information sent from the Commission to the national officials and more.

The greater part of the MS who have participated in the study were in general very satisfied with the information flow, and the level of information was characterised as sufficient. The information available from the Commission in case of specific enquiries from a MS is in general also evaluated well.

Several MS have pointed out that the Commission is helpful when MS have questions regarding the interpretation of the Directive. If a MS is in doubt about the interpretation of a specific provision or if certain parts are difficult to understand, there are good possibilities to seek advice from the Commission. The information could however be improved when it comes to more practical information and sufficient information on more specific issues. Information on court rulings is a case in point.

A few MS mention that it would be very helpful if information on new court rulings was automatically distributed to all MS. In the current set-up, each MS have to search for this information – an activity that requires resources, and further, can lead to an undesirable information asymmetry between MS.

One MS calls for increased and more formalised and structured co-operation primarily between MS, but also between the MS and the Commission, which can serve as input on how cooperation could be increased between the MS and the Commission:

We need to promote more seminars, more conferences, and we need more support from the Commission, both to promote a greater connection between the Commission and the MS, and between the MS themselves. We need to articulate everything and everyone better: the national entities between themselves and national coordinators. Provide IT resources for this, but also organise mutual visits, promote seminars and events, as it already happens with the EURES network (job market fairs, seminars, close contact).

We need to promote a more fluid network, and exchange best practices, knowledge, know more about each other's problems. So far this happens on an ad hoc basis, I call someone up, and they call me. We need to create proper channels and promote visits, campaigns, thematic seminars where we can discuss very specific problems (i.e. temporary services professions, architects, etc.) and that can help us have both a better general and a specific view.

National Contact Point, Old Member State

As can be seen in the above the cooperation between stakeholders is in general well supported by structures laid down at EU level, for example through committee meetings, meetings between contact points and national coordinators respectively, and regular information from and contact with the Commission. This promotes a frequent exchange of information and sharing of knowledge, thereby supporting a faster handling of cases, as the national officials get a better understanding of the systems in other countries and know who to contact from the other MS. A large step towards the achievement of 'Consolidation and Simplification' has therefore been taken.

One MS state that the establishment of more subgroups under the general committee, similar to an existing group for architects would allow for a more targeted representation in the meetings, as the coordinator could appoint a person from the competent authority to attend the subgroup meetings, enabling a more specific discussion.

In general, there is much contact between **the national administrators and professional organisations at national level**. In the transposition phase the cooperation with professional organisations was very limited in most countries or primarily at informative level, but in the implementation and enforcement of the Directive the cooperation has increased and in all MS there is regular contact between the national administrators and professional organisations. In some MS the professional organisations participate in regular meetings in advisory bodies or seminars. In other countries the professional organisations are contacted in case of specific requests within their profession or by questions of specific interest for the professional organisation.

The cooperation with professional organisations regarding the unregulated professions is in general more ad hoc and takes place if an organisation is interested in having its profession regulated or if citizens coming from a profession which is unregulated in their home country are planning to settle in a country where the profession is regulated. A well functioning cooperation with and among professional organizations representing the non-regulated professions is by all MS deemed important in order to be able to support citizens seeking recognition of a profession which is non-regulated in his or her member state.

Common platforms

Article 15 of the Directive provides the opportunity of waiving compensation measures on the basis of common platforms. The common platforms are defined in Art. 15 (1) as '*a set of criteria of professional qualifications which are suitable for compensating for substantial differences which have been identified between the training requirements existing in the various MS for a given profession*'. A common platform is therefore a measure that should increase the flexibility in the recognition of professional organisations. However, the possibility of establishing more flexible recognition procedures through so-called common platforms does not seem to be supported by the professional organisations. There is a concern of how this measure should work in practice and of possible consequences for the quality of the services provided. The concerns are especially related to the fear that a professional with a shorter education should be able to claim his recognition recognised in a MS where the education is longer, or that professionals with a university degree can be substituted with professionals with a number of years of practical experience. The professional organisations are afraid that this will negatively influence the professional standards in the MS where the education is longer. The discussion relates back to the issue of lack of trust between MS in each other's educational systems. None of the MS have engaged in developing this either. EFPA (European Federation of Psychologists Association) believes that instead of common platforms, a single European certificate should be created, through which a European agreement on competency requirements should ensure mobility, patient safety as well as similar services across Europe. This way, EFPA believes that the above concerns can be solved.

The differences in legislation seem to prevent mobility as long as the common platforms are not properly working. While some professional organisations are against these platforms for the reasons mentioned above, others call for more initiatives at European level to help create better guidelines for the establishment of common platforms.

The European Parliament also explored the need for a European Professional Card in its Report on the creation of a European professional card for service providers, stating that the professional cards *can* add to facilitate and stimulate mobility, but also recognises that for some non- or less harmonised professions, the introduction of professional cards seems difficult since regulation varies from Member State to Member State and data on qualifications has to be validated and mutually recognised first. The report however stresses that a European professional card could be an advantage even for non-regulated and non-harmonised professions, as it would have an information role particularly for service providers and consumers, very much along the lines of EFPA.

Along these lines, the European Council of Civil Engineers (ECCE) has suggested a certificate (an ECCE professional card) to facilitate a smooth recognition procedure of a profession with a rather differentiated education structure across the EU. According to ECCE, the certificate should be released by the ECCE member of the country in which the candidates' degree was obtained, certifying that the candidate:

- has a diploma from a recognised civil engineering professional course in that country;
- is a civil engineering professional, entitled to perform the following acts ... in that ECCE member's country, according to the national law;
- is associated or registered in ECCE's member country organisation²⁶.

However, the ECCE also stresses that the exchange of information relating to the qualification of civil engineers in the MS is very important in order to assist competent bodies and regulatory authorities in the assessment of the suitability of professional civil engineers from other MS to work in the host country.

²⁶ European Council of Civil Engineers (2008): ECCE Professional Recognition Recommendation

The exchange of information is very much related to the general exchange of information among MS stressed throughout this report, but the fact that the industry organisations can play a role in facilitate the understanding of the educational/professional structures in other MS is highly interesting and it could be investigated further whether there is a possibility to formalise this cooperation further at EU-level.

To sum up, there are, according to the national administrations in the majority of MS a well functioning cooperation with the professional organisations, taking place either in institutionalised forums or on an ad hoc basis. This cooperation can be an important support for professionals within professions which are regulated in some countries but not in all. This cooperation between national administrators as well as between the professional organisations themselves across the EU can relieve the recognition process of citizens and can therefore contribute to the realisation of a 'Better administration and improved information and advice to citizens'.

The success and failure factors in the establishment of a well functioning cooperation with and among professional organisations are summed up below.

Success and failure factors related to Challenge 7

A more successful way of handling the challenge of ensuring a well functioning cooperation among stakeholders at national level seems to be found with MS that have:

- Ensured harmonisation of interpretation of the Directive, an exchange of views and experiences and a common time plan through regular meetings between the national authorities involved in the transposition and implementation process. This has helped the consistency and coordination of the Directive.
- Established advisory bodies with a broad range of stakeholders who can discuss issues in relation to the implementation and/enforcement of the Directive. Furthermore the cooperation among the advisory body and the national coordinator makes it possible to bring issues of particular relevance 'to Brussels'
- Support, information and advice from the Commission has been helpful in the transposition, implementation and enforcement
- Regular meetings between the national officials enhances the exchange of information which gives a greater understanding between MS and opportunity to learn from other MS' good practice
- More information from both the Commission on the practical use of the Directive as well as the other MS on relevant contact persons could further help the national administrators in the enforcement of the Directive's provisions.
- Additional subgroups under the general committee can enhance the level of expertise and make discussions more effective
- An extensive work starting early to inform the professional organisations on the provisions of the Directive can create a good support to the citizens when the Directive has come into force
- Cooperation with and among professional organisations representing non-regulated professions can give a key support to citizens seeking recognition of a profession which is non-regulated in his or her MS

Challenges in ensuring a well functioning cooperation among stakeholders at national level include:

- MS who have experienced non-commitment by involved authorities: some national authorities involved in the sectoral transposition of the Directive have been known to delay the transposition as they were too slow in modifying their legislation
- The profit from the meetings in Brussels is to some extent limited by the different work tasks of the contact points in the different MS.
- Lack of use of the IMI system. The system is considered helpful by a number of countries but there is a potential which is not being used, partly because the different use of the system in the different MS, partly because the system does not cover all professions. A number of professional organisations at EU level have expressed that they do not support the establishment of common platforms (Article 15) as a measure for more flexible recognition procedures

4.8. Challenge 8: Ensuring adaptation to changes and flexibility in transposition

The many regular changes in the technical provisions of professions covered by the Directive cause a challenge of ensuring flexibility at national level and ability to adapt to changes in requirements. In the Directive it was decided to keep the main rules on professional recognition in the body of the Directive while the technicalities specific to their application appear in the annexes of the Directive. Furthermore, in order to enhance flexibility, the Directive allows for amendments to be made by delegated committees in accordance with Decision 1999/468/EC²⁷.

However, the many potential changes in the annexes of the Directive may cause a legal challenge at national level, since these changes need to be transferred to the national legislation. The potential challenge depends in particular on the national legal system or the national tradition on transposition of EU regulation into national legislation. Among the EU MS many different systems and traditions of transposition can be found.

A Member State from a federal system describes the possibility for incorporating flexibility in the transposition as limited due to the legislative competences of the provinces. The transposition process in itself was therefore complicated, as the process was handled decentralised, and every provincial government did it differently. Changes to the transposed legislation will have to be handled the same way. In general the separation of responsibility among different authorities (provinces, regions etc.) seems to have made it difficult for at least some MS to adapt to regular changes in a swift way.

Several MS have solved the problem of having to adapt to regular changes in the technical requirements by transposing the Directive into a general law combined with more sectoral, secondary law. This approach is for example used for the laws covering professions which are not mentioned in the annexes. Using a combination of primary and secondary law eases flexibility since changes to secondary law doesn't have to go through parliament.

One MS emphasises that flexibility in the legislation was a particular concern in the transposition phase. The contact point pointed out, that a focal point in the phase of transposition was to make the transposing law as flexible as possible by limiting the number of technical requirements in the law, and making a reference to the annex of the Directive. Especially the fact that the technical requirements are placed in the annexes of the Directive has relieved the legislative work in some countries. Two MS – an old large and a new small – describes how flexibility has been ensured in their national laws by making references to the annexes in the national law instead of attaching or incorporating the text of the annexes into the national law.

While the national legislation prior to the Directive had to be updated every time there was a change in the technical requirements to mirror the change on EU level, a change in the annexes on EU level will now not require any adjustments in national legislation.

"Prior to Directive 2005/36 we had to update the national legislation every time there was a change in the technical requirements (which was often) to mirror the change on EU level. When transposing Directive 2005/36 we have made references to the annexes – not attached or incorporated the text of the annexes into the national law. A change in the annexes on EU level will therefore not require any adjustments in national legislation"

Old Member State

²⁷Directive 2005/36/EC Art 11, Art 13(2) and Art 20

As can be seen from the above the challenge of ensuring adaptation to changes and flexibility in transposition is to a wide extent dependent on the national traditions and division of competences. However, also from EU level steps can be taken in order to enhance flexibility in transposition. The replacement of the former 15 directives with the current Directive and specification of the technical requirements in the annexes have made greater flexibility and faster adaptation to changes possible. Especially the possibility of referring to the annexes in the national legislation has relieved the legislative work in some MS. Also the transposition-guidance document provided by the commission was mentioned as a helpful tool in the transposition phase in general. The document was a good aid regarding practical transposition questions and issues, and thanks to this, for example Belgium, did not experience any particular issues related to transposition.

The professions under the specific system are a challenge to some MS, as these provisions are very detailed and therefore do not allow for flexibility. They do not always reflect the changes which have taken place for example in technology in education and training. This is a problem for the people applying within these professions as the requirements laid out in the Directive do not reflect their qualifications. In order to increase flexibility the description of competences could be less detailed in the provisions, and the requirements could be made competence-based instead of duration-based.

However, in opposition to the above, one MS pointed out that it was easier to migrate with qualifications falling under the specific system than under the general system due to the harmonised requirements for the sectoral professions. It can also be said that the harmonised requirements makes it easier for the MS to get a mutual understanding of the different education systems across borders, although evidence do not seem to support that the trust in each other's systems is greater for the sectoral professions.

The success and failure factors mentioned by MS are summed up below.

Success and failure factors in the adaptation to changes and flexibility in national laws

Success factors:

A successful way of handling the challenge of adapting to the regular changes in Directive 2005/36/EC seems to be supported by:

- The insertion of the (often changing) technical requirements in the annexes of the Directive
- The references to the annexes in the national laws which ensure that the laws are automatically updated
- Using a combination of primary and secondary law in the national transposition
- Guidance documents provided by the Commission

Failure factors:

A factor to mention that increases the legislative workload at national level is:

- Frequent changes in the main text of a Directive which cause extra legal activity at national level in order to update national legislation

5. EXAMPLES OF GOOD PRACTICES IN MEMBER STATES WITH REGARD TO DIRECTIVE 2005/36/EC OR OTHER (RELATED) REGULATION

Section 4 described the 8 most dominant challenges related to the transposition, implementation, and enforcement of the Directive. With each of these challenges success factors were identified where MSs had done well in overcoming the challenge. These success factors could add up to be *good practices* (in the relevant MS). Meanwhile other good practices were also identified; this section is dedicated to describing additional good practices of implementing the Directive.

For a measure to be categorised as a *good practice* a minimum of proof of its functioning is required. Focus of this section is on *good practice* and not *best practice*. The conditions in the 27 MS vary greatly. Some MSs will for example experience a high magnitude of migration and immigration of professionals – others less. A practice or an administrative set-up that works well in one MSs will therefore not necessarily work well in another MS. The presentation of good practices instead of best practices allows for such diversity.

In addition to the good practices, the interviews have pointed to some 'promising practices'. The full effect of these suggestions is not known yet, but as they hold a potential for improvement we have included these in the text below.

The interviews pointed to the fact that transferring experience from transposing and implementing other – similar – types of legislation was not common practice. The main reason expressed by the representatives of the MS was the comprehensive difference in complexity between the Directives, but also the fact, that the officials responsible for the transposition were placed in different Agencies or Ministries. Thus, we have not been able to detect examples of good practice related to other related regulation, as the national ministries and in the National Contact Points generally not seem to cooperate closely on the transposition and implementation of different directives. The main reason for this seems to be lack of resources.

As both the Directive on Recognition of Professional Qualifications and the Services Directive are cross-sectoral directives, dealing with the free movement of individuals and services, respectively, one could expect a certain amount of cooperation between the national contact points and/or responsible ministries. However, interviews have shown that this is seldom the case. Denmark is one of the few countries where the National Contact Point for this Directive and the Points of Single Contact (PSC) of the Services Directive have an informal contact, in order to help each other refraining from reinventing the wheel when transposing and implementing a cross-sectoral directive. Apart from this example, the National Contact Points for this Directive have limited (if any) contact with national contact points of other directives, such as for instance the PSC. One MS, the Netherlands, have stated that they have regular contact with the PSC if any discussions on recognition of professional qualifications arise that have to do with the exchange of services. The Netherlands and Ireland also state that their NCPs sometimes are in contact with the PSCs when it comes to the IMI system, which both types of contact points are using. Beyond these examples, the NCPs do not have regular contact with the PSCs.

The main reason for this simply seems to be that the contact points are located in different ministries, and that these ministries traditionally do not work together. As with the transposition, implementation and enforcement of the two directives, the MS state that in theory, the contact points may benefit from closer cooperation, but in practice, this does not happen. For the majority of the MS, this seems to rest with the fact that the ministries do not have the resources or incentives to work closer together.

5.1. Good practices

Close cooperation between several departments seems to have paved the way for a smooth transposition and implementation of the Directive in several MS.

Overall, MS who had established **interdepartmental working groups** to support the transposition phase, found this to be key for a successful transposition. To match the cross-sectoral functioning of the Directive the working groups were set up with members from several different Ministries and Departments. Some of the MS even included local governments and representatives from some of the larger professions to contribute to the working groups work.

The representatives of the Members States expressed variations in the reason for establishing the groups, but;

- creation of ownership,
- information sharing,
- setting up a common time plan,
- ensuring a common understanding of the Directive and of the single provisions,
- establishing cross references in the documents, and
- discussions of potential issues

were emphasised by several as the key objectives.

Some of the MSs dissolved the groups after transposition. Other MSs have maintained the groups, and the groups play a central role in the day to day work of recognition of professions. Below are a few examples of different ways of coordinating the transposition:

Germany has been very focused on coordinating the transposition of the Directive in the different Länder, which overlook the enforcement of directives. The coordination has meant that there now is a good overall understanding of the demands, which is crucial when a horizontal directive is to be transposed and implemented. As the structure in Germany is true for many MS, including Austria and some of the new MS, and as Germany has done rather well in its coordination work, it will be used as a good practice case for MS with this particular setup.

The **UK** has also been coordinating the enforcement, but has had a more centralised approach than for instance Germany. The UK chose as far as possible to work with one horizontal measure, but has many sectoral regulations and for certain sectors (doctors, nurses, vets, architects etc), amendments were made. It implies that at least 8 pieces of legislation have been made for the UK. The UK serves as a good practice example as it has been very focused on setting up an interdepartmental working group was set up with members from each of the departments (Department for Innovation, University and Skills, Health, Environment and Local government), with representatives from Scotland, Wales and Northern Ireland and from the Treasury. The working group was set up just a few months before the adoption of the Directive in 2005 and it still exists. The purpose of the working group was in the beginning to share information, to look at issues that could arise and to discuss issues from Brussels in a UK perspective.

All the departments from the working group were involved in all pieces of legislation because of all the cross references. Furthermore it was important to get a common understanding and to ensure consistency in the implementation. The working group implied that the entire process became very transparent and that everyone involved had a say. In the working group, it was possible to look at the implementation, make a common time plan, to ensure that there is a common interpretation of the common provisions and so on. A legal working group of lawyers from the different ministries was also set up, thus contributing to further ensure transparency.

Belgium quickly realised the complications in transposing a horizontal directive and has had extensive consultations with many of the professions. This has not proved to be the fastest way to implement the Directive (in fact, Belgium was rather late in a number of cases) but has now provided a mutual understanding of the demands.

Regular contact with competent bodies dealing with both the regulated and the non-regulated professions is also enhanced by most MS as key to a successful implementation of a Directive of this kind. In terms of the level of corporation, different arrangements were found. Some MS arranged regular meetings and seminars inviting representatives for both the regulated and the non-regulated professions. Other MS kept the contact with the non-regulated professions on a more ad-hoc basis, and contacted the representatives when they had question related to the specific profession, or when they wished to pass on information.

Some MS has found it necessary and beneficiary to **establish new supporting administrative structures**. Of the more comprehensive kind, one (new) MS established a new department on regulated professions and academic recognition under the Ministry of Education, to support the functioning of the Directive. Other MS (often larger) found it necessary to establish several contact points – in most cases, one per individual regulated profession and one for the unregulated professions which is more than what is required by the Directive. As a last example, one MS, in which the architectural profession is not regulated, has established a committee for recognition of architect degrees in order to assist their national architects who wish to go abroad. The committee's purpose is to explain their national system to the host countries. Another example is a MS that has established a "national council of recognition of regulated professional qualifications", a consultative body with members from unions, ministries, and other competent authorities. It, for instance, deals with requests from institutions to make a non-regulated profession regulated. Another MS is pursuing something similar to the first example in trying to establish an authority responsible for providing all non-regulated professions with some sort of certificate to present for recognition in other host countries.

Creating and using a network is also highlighted by more MS as a rewarding source of important information. Both the formal structures, i.e. the meetings arranged for the coordinators, but importantly also the informal structures are used intensively by some MS to clarify issues, to get a better understanding of how the system works in other countries, etc. Especially the informal meetings, which some MS used as inspiration and as a source to learn how other MS do, and are seen as a valuable source of potential best practice information. Apart from the immediate benefit of solving a specific problem the increased use of an established network would, in the longer run, also be beneficiary to overcome the 6th and 7th challenge of establishing mutual understanding and more cooperation, mentioned in the previous section. Especially the MS with less cross border activity is expected to benefit from an increased level of information exchange, as the increased level of information exchange would create acquaintance with cases that were less common in the specific MS.

A swift exchange of information is a precondition for an efficient function of the Directive. Several MS have already invested resources in **establishing well functioning information infrastructure**. Web-sites have substituted leaflets as the main source of information, and specific agencies and authorities have in general developed well functioning websites, enabling the users to go straight to the right source of information. Scanned documents and e-mails are also used by most of the MS to optimize the communication process. According to some MS, these procedures are being hampered by other MS, who still uses more old-fashioned ways of communicating, like sending hard-copy files and using ordinary mail for sending messages.

Clear communication and explanations on how to understand the national legislation are also decisive for an optimal functioning of the provisions of the Directive. **Guiding documents or handbooks** explaining the provisions in layman terms have been produced by some MS as an aid for the involved authorities.

A clear and 'non-legal language' was highlighted by the MS as one of the main reasons for the applicability of the produced documents. In addition, guidelines on how to handle specific cases have proved useful in some MS. The usefulness of these guiding documents is highlighted by the fact that exactly this kind of documents is being called for by MS who have not yet produced such documents. One smaller MS mentioned that even a very short 10-15 page user-friendly guide could be very helpful.

Several of the MS had **integrated the Code of Conduct document in the everyday work**, and found this very useful. The document was considered a kind of guidance note, or checklist. The document is used as a reference document to check procedure compliance, or as a checklist when in doubt in a specific situation. Moreover, it helps to standardise practices amongst national administrations, as one of the greater problems faced is the inadequate interpretation and implementation of the directive. Any document that may help the creation of similar norms across countries is therefore considered beneficiary. Most MS have distributed the Code of Conduct document to the relevant authorities. Others have made the document available on their web-page.

5.2. Promising practices/ suggestions

As mentioned, some of the interviews pointed to a number of promising practices, or measures, that in the view of the representative of the Member State hold potential for improvement of the functioning of the Directive.

A very concrete suggestion, put forward by an older MS, is **the establishment of more subgroups** under the committee, similar to the existing group for architects. More subgroups would allow for a more targeted representation in the meetings, as the coordinator could appoint a person from the competent authority to attend the subgroup meetings, enabling a more specific discussion.

Another specific suggestion put forward by a smaller MS, is the **allocation of more resources on national level** to handle the work related to recognition of professionals. A specific case is often handled most efficiently when the competent authority in one MS provides its counterpart in the other MS with the requested documents. The current practice in some MS is that the citizens themselves have to handle this transaction.

Overall, most of the MS found that the largest potential for improvements lies with using the available structures more intensively;

A more active use of the IMI system²⁸ should be encouraged. It is mentioned that some MS are not prepared to take this opportunity up, as they are not prepared for this kind of change. Because of a high level of interdependence between MS, this will have an impact on the rest of the MS. All 27 MS need to cooperate on same terms in order to get full effect of the provisions of the Directive. Moreover, for the moment, the IMI system only covers a limited number of professions which is regretted by many of the national administrators using the system. It is the hope and expectation of the MS that the IMI system in time will include a greater number of professions and thereby also cover the professions with less mobility. The importance of the MS **keeping the Database of regulated professions 100% up to date** is also mentioned as a practice that will enhance the functioning of the Directive.

Lack of trust across borders is seen as one of the main hampering factors for the smooth recognition of professions. In addition, this lack of trust is found to be the reason why some MS maintain some rather rigid and old-fashioned structures.

²⁸ The Internal Market Information System (IMI) is an electronic information exchange network developed by the European Commission in close cooperation with the 27 EU Member States and the 3 European Economic Area (EEA) States. IMI sets out to support day-to-day administrative cooperation between public administrations in the Internal Market, c.f. http://ec.europa.eu/internal_market/imi-net/imi_awareness_raising_conference_en.html

Therefore, **even more intense cooperation between the national Contact Points** is pointed out as key to improvement. Despite the already acknowledged and satisfactory collaboration between contact points, some MS see potential in a strengthened group effort. The gain lies with the exchange of both formal and informal information and anything done on EU or national level to support an enhanced collaboration is considered positive.

Several of the MS recognise that such initiatives are difficult to support. However the initiative taken on Commission level of setting up an interactive web-page is considered an example of such an enhancing measure.

The effects of a more intense cooperation should not be expected overnight; it is a potential long-term effect that is heavily dependent on how the contact points and other networks are prepared to work. If the networks start working as foreseen in the directive it is likely that the labour market will be more flexible, as more information will be exchanged through the networks, thus making it easier for the competent authorities to handle the cases.

6. CASE STUDIES

6.1. Selection of cases for the study

The case studies should give a representative view of the practical problems that EU citizens encounter when they try to have their qualifications recognised abroad, and the personal consequences of those problems covering different MS and different professions. 13 case studies have been selected. A key factor in deciding which professions to include has been to illustrate the “good case” – i.e. with interesting aspects – rather than whether the case concerns a hairdresser or a mechanic.

A representative selection of cases in the MS (covering small, large as well as old and new MS) has been included in the study in order to obtain a better understanding of the problems encountered in MS in relation to individuals getting their professional qualification recognised in other MS. We have both included cases where the recognition went relatively smooth as well as cases where the individuals had problems or failed to get their qualifications recognised.

In selecting the cases both white-collar and blue-collar jobs has been included, in order to properly reflect the European workforce. In addition, case studies on professions such as doctor, general nurse, midwife, veterinary surgeon, dental surgeon, pharmacist and/or architect have been particularly relevant to include as they have their own sectoral directives.

The cross-border statistics available has also been taken into consideration when selecting the cases. This statistics shows the decisions taken by host countries on recognition of professional qualifications obtained in a different country of origin. When selecting the professions to focus the figures in ‘the Ranking Statistics’ where each Professions is ranked by the number of decisions taken on applications for recognition of qualifications within the EU MS, EEA countries and Switzerland has been included. The top 10 in 2007 include Secondary School Teacher, Doctor of medicine, Nurse, Physiotherapist, Social Worker, Painter-decorator, Veterinary Surgeon, Mason/Bricklayer, Second Level Nurse, and Lawyer/Barrister/Solicitor, together representing 67% of the decisions taken in 2007²⁹:

In order to properly select the cases for this study, departure point has been taken in the SOLVIT website as suggested by the Parliament services. The cases on the SOLVIT website are mainly success stories, but there are also cases where it has taken some time for the individual to get his or her qualifications recognised. To obtain cases where the individuals have had larger problems or failed to get their qualifications recognised, the national contact centres in the MS and in the EEA countries has been contacted. Moreover, DG MARKT’s SOLVIT-unit has been contacted in order to discuss the cases as well. Cases (in particular of non-regulated professions) have been found through trade unions or other professional organisations such as ETOA (European Tour Operators Association), CEPI (European Council of Real Estate Professions), EFPA (European Federation of psychologists’ associations), Danish Construction Architects and The Belgian Federation of Psychologists. Both European umbrella-organisations as well as national trade organisations have been contacted.

In general, there are especially two types of challenges that the individuals face when attempting to get their qualifications recognised abroad:

- Deadlines are not respected for delivering a decision. This can be a large problem for the individual having to wait up to 12-18 months to get the decision from the MS. There are especially problems with this in Spain and Italy. It seems that the delay mostly is an administrative problem. Moreover, the individual MS do not know sufficiently well the situation in the MS where the education is delivered, so they put the burden on the professional to prove that his or her qualifications match the demands.

²⁹ Top 10 account for 67% of the total number of decisions taken (11.053/16.450)

- Deciding upon a compensatory measure. In some MS the problem is that even though the professionals are allowed to require a compensatory measure but not offered the choice to go through an adaptation period. The legal framework is there, but in practice it does not function because the MS do not have sufficient places to put the people during the adaptation period if they for instance have to practice under supervision. This is a problem for example in the UK and Spain.

Some of the professions highlighted as having many problematic cases include interestingly enough nurses and doctors, in other words, some of the separately regulated professions. Paradoxically, these were turned into separately regulated professions in order to ensure automatic recognition, meaning that the competent authorities of the host MS should not examine the training leading to these qualifications, but merely examine whether the applicant has fulfilled all the requirements necessary to practice that profession in the home Member State. Reasons suggested why there is still problems with the recognised professions include that the education systems in the different MS differ, especially when it comes to specialisation, and the automatic recognition is therefore not easily applied. Another reason mentioned is that the automatic recognition is a procedure regulated in a more detailed manner, and that it can be difficult for the competent authorities and the citizen to obtain all necessary documents. Moreover, it should also be noted that thanks to the automatic recognition, doctors and nurses are more mobile than other professionals, which also might contribute to the comparatively large number of cases, an assumption supported by the above numbers on top-ten professions in decisions taken for recognition of professions.

Based on the above sources, discussions and the selection criteria, 13 cases have been selected. The cases are presented below.

6.2 Cases

Nurses

As mentioned above, the nurse profession is one of the professions where many cases arise. One of the problems with this particular profession is that the education levels differ among the MS, thus making it difficult to automatically recognise qualifications obtained in another MS. For instance, in **Germany** the education as a child nurse is a bachelor education while in **Sweden**, the education is a graduate study obtained after being trained as a regular nurse. This means that German nurses has experienced problems with working as a child nurse in Sweden, as the Swedish authorities claimed that the two types of education differed widely. A similar problem was true in a case of a **Slovakian nurse failing to get her qualifications recognised in Italy**. In Slovakia she completed her studies of "paediatric nurse" which are not harmonised in the Directive and wanted to be recognised as a general nurse in Italy. She was refused as her studies reached the "b" level of qualification (according to Art. 11 of Directive) and in Italy the level "d" was required, and the case was closed in the SOLVIT system as unresolved.

A Czech nurse in Italy

A Czech nurse turned to SOLVIT with request for help with recognition of professional qualification in Italy. She acquired her qualification as a nurse in Czech Republic, graduating in 1988 in children's nursing. Afterwards she took a postgraduate degree in general nursing in 2000 and acquired a Certificate from General Teaching Hospital in Prague in 2007. She would like to start working in Italy and therefore she asked the Italian Ministry of Health for recognition of her professional qualification in April 2008. But over the telephone, the Ministry refused to recognise her qualification for the reason that she graduated as a children's nurse.

According to the academic transcript related to the nurses' diploma, the training consisted of 4920 hours of training, from which the 1753 hours related to subjects of general nature (Czech Language and Literature, Physical Education, Russian language etc). The latter could not be considered as training hours in the sense of Article 31(3) of the Directive. Consequently, this training consisted of only 3176 training hours. Besides the fact that the nurse did not possess the title as nurse responsible for general care listed in Annex V.5.2.2, she did not satisfy the minimum training requirements for nurses responsible for general care stipulated in Article 31 of the Directive as some of the compulsory training subjects listed in Annex V.5.2.1 of the Directive were missing from her training, admission of the training was not subject of a general education of 10 years, and the duration of the training was significantly lower than the 4600 hours mentioned in Article 31. The nurse therefore completed a part-time specialisation training of one and a half year duration in 2000 and in 2007 she obtained a certificate after successfully completing a course in intensive care of 60 hours duration. These trainings could not be taken into account for assessing compliance with the requirements for automatic recognition, as in its judgement of 29 November 2001 of the European Court of Justice (C-202/99., Commission v. Italy) hold that in case of the professions where the minimum training requirements were harmonised for the purpose of automatic recognition, each of the qualifications obtained shall be assessed separately for the assessment of the conformity of the training to the harmonised minimum requirements.

The complainant was not entitled to the automatic recognition of her qualification as a nurse responsible for general care under Title III., Chapter III of the Directive, but it took the Italian authorities very long to reach this conclusion. The Italian authorities did not compare, in accordance with Article 13(1)(b) of the Directive, the nurses' training with the Italian training requirements, nor did they, if necessary, propose a proportionate compensatory measure. Moreover, the Italian Ministry of Health worked too slowly in solving this case by not sending a letter acknowledging the receipt of the application within one month after receiving it, thereby breaching Article 51(1) of the Directive. They also breached Article 51(2) which states that in cases falling under Title III., Chapter III the competent authority shall issue its duly substantiated decision within 3 month after the applicant submitted her complete file.

Finally, after 13 months the Italian Ministry took the decision at the Conference of Services and proposed variants of the compensatory measures. The client could then choose either – the exam or adaptation period for two years.

Doctors

As mentioned above, although doctors is a separately regulated profession (subject to automatic recognition), there are examples where the recognition of qualifications did not go as smoothly as the Directive foresees. Lengthy handling of the cases, thus ending in a breach of the 3-month deadline, has been seen in some examples, such as a case of an **Estonian doctor trying to get her qualifications recognised in Spain**. First, the client applied for approval of her diploma to the Spanish Ministry of Education and Science, but was informed that the application was incomplete. The client added additional documents and was informed that her dossier had been forwarded, but did not hear more from the competent authority. The Estonian citizen waited 10 months for the Spanish competent authority to recognise her qualifications; a case which should not had taken more than 3 months.

A similar example concerns a **Polish citizen applying for recognition of her medical qualifications in Spain**. She provided all the relevant documents. The Spanish Ministry contacted the applicant and asked for a certificate of the Polish Authorities on the fulfilment of art. 33 2 b), of Directive 2005/36 i.e. that she has exerted her profession in Poland during five years within the last seven years. Because she could not deliver such a document, her qualifications could not be recognised automatically.

However, according to article 14(2) of the Directive the host MS "must offer the applicant the choice between an adaptation period and an aptitude test" (art. 14(2)), which the Spanish authorities failed to offer her. The Polish citizen subsequently obtained and delivered the needed certificate of her provision of services in Poland, but is still waiting for an answer from the Spanish Ministry. The case has been open for 16 months and no significant progress has yet been made, which is very long to wait given the fact that the Polish citizen has submitted all relevant documentation.

Other examples, where doctors have problems with getting their qualifications recognised, is often concerned with specialist qualifications. The next case is an example of this.

Hungarian doctors in the UK

The case concerns two doctors who have obtained their basic medical qualifications and specialist qualifications in Hungary. They have applied for the automatic recognition (Article 21 of the Directive) of the specialist qualification in the United Kingdom, at the General Medical Council (GMC) which is the responsible body for automatic recognition of medical diplomas. The GMC has refused the automatic recognition saying that the title of the specialist qualification submitted by the applicants is not the same as it is included in the Annex V of the Directive. Though the Hungarian competent authority issued a certificate attesting that the content of the qualification in question fulfil the requirement of the Directive, the GMC does not recognise the qualification automatically if the title is different.

The GMC forwarded the application to the Post-graduate Medical Education and Training Board, which is a body which pursues a detailed assessment of the qualification. This procedure is much longer than the automatic recognition and it is longer than 3 months. The 3 months deadline is in Article 51 the Directive, and it must be respected even if the automatic recognition does not apply.

The procedure of the GMC examining only the title of the qualification without taking into account the content, forwarding the applicant to another body may disproportionately hinder the recognition of a qualification, which seems to be the case in this example. The cases are still open, but the SOLVIT centres in the UK and Hungary are trying to solve the issue.

Danish ski instructor in Italy

The case revolves around a Danish ski instructor wishing to have his qualifications recognised in Italy. Although a ski instructor is a regulated profession in Italy (Maestro di Sci – recognised under article 11 of the Directive), he had to pass an aptitude test in order to be nominated as a ski instructor along with Italian nationals. The Danish national has a Danish ski instructor education, but the aptitude test was according to the Danish SOLVIT centre still in accordance with EU-law in the form of a Commission Decision of 25 July 2000, according to which the Commission has authorised Italy to derogate from the right of migrants to choose between an aptitude test or a training period, in the case of substantial differences between training courses for ski instructors.

According to the Danish SOLVIT centre, article 5 of the Decision states that "the number of aptitude tests held must be sufficient and that the migrant must be given the opportunity to take the aptitude test several times". However, on numerous occasions the invitation to participate in the test was sent too late for the Danish national to prepare for the test and be able to arrange the trip to Italy. On one occasion, the Danish national received the invitation on the day of the test. This notice is deemed too short, as the Commission has informed the SOLVIT centre that the tests should be held so that all participants have the same possibilities to participate in and prepare for the test. Given the length of the ski season, information provided one month prior to the test does not seem unreasonable to the Commission.

According to the SOLVIT centre's experience, it seems that the Italian ski union (COLNAZ) is not living up to its responsibility of providing the possibilities for all participants to enter the aptitude test on equal terms. COLNAZ is not an authority, but the responsible Italian Ministry is bound to ensure that no discrimination takes place against migrant workers by demanding different or more difficult tests from them, or by inviting them to the tests on such short notice that it is not possible for them to prepare properly for the test.

That the Italian ski union do not inform the Danish ski instructor of time and venue for the aptitude test in due time is a breach of article 15 of the Commission decision according to SOLVIT. The case is still listed as a SOLVIT case as the Italian SOLVIT centre is still trying to get an answer from the relevant ministry. The ski instructor in question has tried to have his qualifications recognised since 2005.

Construction engineers in Latvia

This case concerns a situation where a Latvian construction association, LBS, demanded that the engineers of construction had to have knowledge of Latvian legislation. The Latvian SOLVIT centre did not think that it was necessary in order to comply with the Directive; however the end result was that the association had it their way. The Latvian construction association has not changed its practice and consequently, knowledge of Latvian legislation is part of the final recognition assessment.

The Academic Information Centre (AIC) of Latvia has informed that in practice the Union of Latvian Construction Engineers and organisers of public tenders require double examination for all citizens of other MS who already have obtained foreign qualifications (including those whose qualification have been recognised as fulfilling the requirements of Latvian legislation, e.g. Lithuanian construction engineers, where the legislation is similar). Such practice infringes Article 14 of the Directive, which permits to require aptitude test only in a case of there is a sufficient difference in the length, contents of training, or in professional activities, and that person has not compensated this difference with his professional experience, which AIC has not detected, and more over the choice between aptitude test and adaptation period shall be provided.

As an example of the consequences of this the Latvian SOLVIT centre knows of Dutch construction engineers who could not work in Latvia, as they did not have sufficient knowledge of Latvian legislation, although their qualifications could be recognised according to the Directive. The Dutch company consequently had to hire Latvian workers.

Hungarian personal trainer in France

A citizen obtained his diploma as physical trainer in Hungary, at a Hungarian university. He wished to work as a personal trainer at a hotel in France and therefore turned to the relevant French competent body, the Ministry of Health, Youth, Sports and Associative Life in France. The committee doing the assessment of the application however refused the recognition because it found that the education at the University does not cover the requirements of the personal trainer in France. However the committee based on its decision only on the titles of the subjects studied at the University without examining the content of the training programme, a similar situation to the aforementioned case of Hungarian doctors in the UK.

Article 14 (1) of the Directive states that the host Member State can require the applicant to complete either an adaptation period of up to three years or to take an aptitude test, if "the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State".

Hence, the host Member State should first of all carry out a detailed examination of the content of the training programme, and should propose the possibility of an aptitude test if the difference is significant. The competent authority should describe the requirements that must be fulfilled and on which area an aptitude test should be taken. According to the Hungarian SOLVIT centre the French authorities failed to do that.

German engineer in Greece

This case is about a German citizen holding a German Ingenieur diploma since 1993. He could attest of relevant professional experience needed according to the Directive. The German citizen applied for recognition of his qualifications in Greece and obtained a negative decision. As he had all the needed documentation and therefore could not agree on the decision, he filed a new application, but did not receive any reply, contrary to the Directive.

Even though Greece has still not implemented the Directive, citizens can derive direct rights from the Directive. In addition, according to the former directives 85/384/EEC and 89/48/EEC, the qualification of the complainant had to be recognised with or without the condition of measures of compensation. The Greek competent body was therefore in no position to deny the German citizen the recognition of his professional qualification. However, SOLVIT Greece decided that it was not able to intervene because the Directive has not been transposed in the matter and closed the case as unresolved. The citizen was therefore denied recognition of his professional qualifications on false grounds.

Italian architect in Spain

An Italian citizen had obtained an architect diploma in Spain, which is listed in the relevant annex to the Directive. She was also a member of the Spanish Order of architects.

She introduced a request for recognition of her qualifications on the basis of the Directive 89/48/EEC (now general system under the Directive). However, the Italian authorities refused to recognise her qualifications on the ground that her training allegedly focused mainly on architecture and that the substantial differences between her training and the training required in Italy to become an engineer cannot be bridged by any compensatory measure.

The architect contested this decision and argued that construction projects in Italy fall under the competence of engineers whereas they fall under the competence of architects in Spain, bringing forward Spanish and Italian legislation in support of her arguments. The architect also stressed that the holders of some Italian architect diplomas listed in Annex V.7.5.1 are entitled to become engineers in Italy.

The case was initially closed as unresolved as according to Italy the recognition of the title would be contrary to their legislation. As this legislation referred to was not the new legislation transposing the new the Directive, but the previous directive (89/48/EEC), Spain could not accept this position and argued that the host State authorities should carry out an analysis of this in order to decide whether the substantial differences that may have been identified in terms of duration or content of the training could be bridged, or whether recognition was to be refused as the differences in the qualifications/scope of activities are so large that no compensatory measure could be envisaged. The case is still pending and it has taken the Italian citizen a long time and much paperwork to try to get her qualifications recognised.

Non-regulated professions

As to general problems in relation to the Directive it seems that most problems arise from people with non-regulated professions in their home country trying to enter Member States where their profession is regulated, which can lead to a situation where they do not comply with the requirements but simply work without being registered.

Below two cases on citizens having trouble getting their qualifications recognised abroad are presented.

Danish construction architects

Danish professionals with degrees as Bachelor in Architectural Technology and Construction Management, in short 'constructing architects', or in Danish 'bygningskonstruktører' experience problems with having their qualifications recognised abroad, as the Danish profession as constructing architect overlaps with the work of architects in other countries.

A lot of the work made by architects in other countries is in Denmark carried out by constructing architects, and constructing architects are trained, and in Denmark considered competent, to do g) to k) listed in art. 46. However, due to the rights given to architects in Directive 2005/36, Danish constructing architects are unable to work as constructing architects in other MS. To travel they will in many cases have to be recognised as architects, which they are not.

An example of this is a Danish constructing architect trying to settle in Germany and do what he/she is trained and competent to do in Denmark. The constructing architect will not be allowed to work as the professional he/she is, but will have to seek recognition within a different profession (architect).

There is under the Directive a possibility of constructing architects being recognised as architects after 6 years of professional experience (as architects) and a rigorous test. But this is not, by constructing architects, considered an opening towards free movement. A positive achievement is that the Directive has made it easier for Danish constructing architects to have their qualifications recognised in Spain, as the Directive has made it possible for Danish constructing architects to be recognised as technical architects (Arquitectos Tecnicos) in Spain and thereby improved the possibilities for mobility of citizens between Denmark and Spain. But in other MS the problem still persists.

UK-based French real estate agent in France

The last case is an example of a French real estate agent, where the French authorities are unsure how to handle the case as the profession of real estate agent is regulated in France but not in the UK. During the course of last year CEPI (European Council of Real Estate Professions) had contact with the European Commission concerning the case of an estate agent of French nationality based in England who wanted to supply services in France on an occasional basis. He was advised by the French authorities that it would be necessary to form a company in France. The French authorities told him that any activity related to property transactions would be subject to the "Loi Hoguet" (The French Property Law, for individuals selling real estate) and require him to have a professional card as an estate agent. They also advised him that he would need to satisfy conditions of professional aptitude and submit a complete file to them. In order to obtain a professional card he would need to create a company in France. He had the necessary academic qualifications, but questioned the need to establish a company in France. The Commission confirmed that this requirement was in contradiction with the Directive. Thus, it took much longer for the citizen to be able to establish him occasionally in the French market as the French authorities had problems understanding how to handle the legislation.

7. CONCLUSIONS

All MS except Greece have now transposed the Directive, and 17 out of 27 MS have fully implemented the Directive. However, both the transposition and the implementation has been at a rather slow pace for nearly all MS, not meeting the initial deadlines put forth by the Commission.

The reasons why the MS have been slow at transposing and implementing the Directive are mainly:

- The Directive is complex in the sense that it covers many sectors, thus involving many national ministries (competent bodies) in the transposition and implementation phase.
- In the transposition of the Directive, the Commission requested a large number of measures to be communicated (in accordance with Article 63), including existing measures under the previous sectoral directives. It has taken the MS a lot of time both to figure out what they should communicate and then actually do it, thus causing delays in the transposition phase.

Different legal approaches

The transposition and implementation of Directive has been quite differentiated across MS in terms of method, time span, and ease of the process. In the majority of the MS with a federal system (for instance Austria, Germany and Spain), the legislation has been transposed at regional level, as the legal competences are here. This means that any change to the Directive will have to be reflected at regional level as well. This system makes the transposition and implementation of the Directive rather complex. However, the regional authorities will also have to undertake a great deal of coordination in the enforcement phase, as individuals seeking to get their qualifications recognised otherwise will be met with different regional demands.

Some MS, such as UK, Denmark, Lithuania, Finland and Estonia have chosen a transposition strategy of one main law combined with sector-specific secondary legislation. This means that if there are technical changes to the annexes of the Directive, allowing for more flexibility. This strategy is expected to prove valuable when technical changes to the Directive arise. However, it is not possible to say in general whether a transposition using one horizontal measure or a transposition into several existing laws is the preferable strategy.

Generally, it is still too early to provide a proper **enforcement** status due to the delayed transposition and implementation. Still, the non-timely transposition of the Directive has led to yet another challenge: The lack of implementation of the Directive in some MS affects other MS as well, as cooperation across borders is inherent in the provisions of the Directive. MS with citizens trying to having their qualifications recognised in a MS which has not transposed and/or implemented the Directive fully, have therefore trouble themselves to fully enforce the Directive. This means that when MS such as Greece and Luxembourg have been slow in transposing the entire or parts of the Directive, making it more difficult for the citizens in other MS to get their qualifications recognised in these countries.

When discussing the **challenges** that the MS face in the transposition, implementation and enforcement of the Directive, it should be noted that even though there is room in the Directive for national interpretation, it is of utmost importance that all MS are working towards the same goal. A successful enforcement of the Directive is very dependent upon the MS trusting each other's systems. Nonetheless, mutual trust and understanding is of utmost importance if the identified challenges are to be eliminated.

The 8 challenges identified are as follows:

Transposing the Directive within the timeframe, which has been a large challenge due to the complexity of the Directive and the number of measures to be communicated. The non-timely transposition of the Directive has led to yet another challenge: The lack of implementation of the Directive in some MS affects other MS as well, as cooperation across borders is inherent in the provisions of the Directive. MS with citizens trying to have their qualifications recognised in a MS which has not transposed and/or implemented the Directive fully have therefore experienced challenges themselves in fully enforcing the Directive. This means that when Greece and Luxembourg have not transposed the entire or parts of the Directive, it mainly works as a protectionist measure, making it more difficult for the citizens in other MS to get their qualifications recognised in these two countries.

Establishing well-functioning administrative structures. Even though the contact point system in the majority of the MS is not new, the Directive's formalisation of this gives both the competent bodies and the National Contact Points a better overview of the structure in other MS and makes it easier to know whom to contact in the different MS. The formalisation also provides a freer and faster information flow by providing a more transparent system, thus making it easier to identify whom to contact. Some MS however believed that new structures do take time to implement and to become well functioning, and suggest allowing time for the Directive's effects to fully materialise.

Creating a simpler and more transparent system for administrators has to some extent been done by the fact that the Directive has put together several sectoral directives. While most of the MS (nearly 90%) found that the Directive has brought about an improvement, the system for recognition is still rather complicated and complex. In order for the *system* of mutual recognition of qualifications to be simple and more transparent for the contact points and the competent bodies, the majority of MS (22 out of 27) feel that more guidance on how to interpret the Directive from the Commission would be helpful.

Creating increased transparency for citizens, which mainly has to do with the fact that there is now one single contact point handling all inquiries. However, the national differences in the legal systems contribute to make the Directive less transparent for the citizens. For instance, in some MS, if the profession is not regulated in the citizen's home country, no official documentation can be acquired from their national authorities. For this reason, it was suggested by the National Contact Points that a simple text explaining the Directive to the citizens could be advantageous in order to make it more transparent to the citizens.

Ensuring a well-functioning system both for professions with much cross border activity and for professions with less. A well-functioning system comes with experience, which means that the system of recognition will probably more rapidly function smoothly for professions with much cross-border activity. The new committee system specified in Article 58 already helps in ensuring a well-functioning system for professions with less cross-border activity as well. As many problems are similar for the different professions, it is found advantageous with only one committee, creating the possibilities for a greater exchange of experiences across the different professions. Also the IMI system can support ensuring a well-functioning system, by being used as a key source of information on the recognition of professional qualifications in other MS, for communication between the competent authorities and exchange of information with other countries, e.g. on specific cases. However, the MS need to find a common ground on which to use the IMI system. If the IMI system is not used to its fullest extent, it is not a question of technical barriers, but more a question of capacity and priority in the MS. The systems are there, but the use of them needs to be more formalised.

Establishing a mutual understanding between MS is very dependent upon the MS trusting each other's systems. To ensure a true internal market in which people can move freely, there is a need to ensure confidence and openness in the recognition procedures. The MS are not always willing to trust and recognise each other's educational systems – some of the MS are even deemed conservative and rigid in their approach to recognition. The problem especially appears if people move with 'old' qualifications which do not correspond to the requirements of the educational system today.

A similar problem applies to new types of education which are not broadly recognised, or to educations that are not typically found in the MS in question. The industry organisations could possibly help in disseminating any new information about the professions to aid the recognition procedure, thus helping in removing any doubts the MS may have in whether a given professions should be recognised.

The MS' interpretation of Article 7 as the service provider being *obliged* to inform the competent authority about a possible move symbolises the current lack of trust in each other's systems. The Article gives the MS this possibility, but could also be interpreted as a measure of last resort instead of a routine measure. However, the MS have generally not opted for this and state that they feel the need to control the people coming to work in their country and protecting their citizens by demanding that a service provider informs the competent authority of a possible move.

Establishing well functioning cooperation between stakeholders at national and at EU level needs to be done within the relevant bodies in the MS, across MS and between the MS and the EU institutions. A well-functioning cooperation is dependent upon a mutual understanding (essentially, trust) and vice versa. Trust in each other's systems is especially relevant when it comes to the cooperation across MS and between the MS and the EU institutions. The MS mention that regular meetings help in ensuring that the contact points in the MS know each other better, which makes it easier to cooperate and in the end hopefully ensure more trust in each other's systems. When it comes to the cooperation within the MS, lack of resources is often the main reason for not working enough together across ministries and agencies.

Article 15 of the Directive provides the possibility for establishing common platforms to help ensuring more flexible recognition procedures. However, the professional organisations interviewed are generally sceptical about the benefits of these platforms. There is a concern that a professional with a shorter education should be able to claim his recognition recognised in a MS where the education is longer, or that professionals with a university degree can be substituted with professionals with a number of years of practical experience. The professional organisations are afraid that this will negatively influence the professional standards in the MS. Instead, the European Federation of Psychologists Association (EFPA) and the European Council of Civil Engineers (ECCE) has suggested that a certificate (a professional card) could be created, containing a European agreement on competency requirements. Also the European Parliament explored the need for a European Professional Card, containing certified information on qualifications. Such a card or certificate entails that the industry organisations can play a role in facilitating the understanding of the educational/professional structures in other MS, thus assisting the competent bodies in assessing the suitability of a certain profession from another MS. However, a certificate or card should not become another bureaucratic hurdle for professionals who want to work in another Member State and conditions regarding up to date and valid information should be met. This approach could then contribute to a common understanding between the MS of the professions in question.

Ensuring adaptation to changes and flexibility in transposition. In the MS, a system is needed to be receptive of changes in the technical provisions of the directive, but not all MS' legal structures support this. In order to ensure this flexibility to as large extent as possible, the transposition strategy of one main law combined with sector-specific secondary legislation is advised to use when possible. However, it is also highly important to support any changes in the Directive with interpretation guidance from EU-level or national level, especially in MS where the legal structures do not allow a uniform transposition throughout the country.

Turning to the **Good practice** examples from different MS, it is interesting to note that using the experience from the transposition and implementation of the Directive when transposing and implementing other, seemingly related directives (such as for instance the Services Directive) is not common practice in the MS. Similarly, in the transposition and implementation of the Directive, the MS have in general not drawn on the knowledge obtained from transposing and implementing other legislation.

The main reason for this is that, when the directives are implemented in different agencies/ministries, these agencies/ministries do not have a tradition for information exchange or exchange of experiences and do not have the resources to carry out such information exchange. Denmark is one of the few countries where the National Contact Point for this Directive and the Points of Single Contact (PSC) of the Services Directive have an informal contact, in order to help each other refraining from reinventing the wheel when transposing and implementing a cross-sectoral directive. Other than that, few MS cooperate on directives with related issues. Nevertheless, the cooperation between the National Contact Point for this Directive and the Points of Single Contact (PSC) of the Services Directive is an area that could be exploited more as synergies are expected. Both directives are cross-sectoral directives, dealing with free movement of services and people, respectively. For instance, if a UK company wishes to provide services in Germany (which involves the services directive), the next logical thing could be to actually move people from UK to Germany (thus involving the recognition directive), and the contact points could probably benefit from working together on such cases. It could be that these synergies are to be reaped with time, as both directives are very new, but it is definitely an area that should be focused on.

The creation of interdepartmental working groups to support the transposition phase has been essential to a successful transposition. To match the cross-sectoral functioning of the Directive, working groups were set up with members from several different Ministries and Departments. Some of the MS even included local governments and representatives from some of the larger professions to contribute to the working groups work.

Creating and using a network is also highlighted by more MS as a rewarding source of important information. Both the formal structures, i.e. the meetings arranged for the coordinators, but importantly also the informal structures are used intensively by some MS to clarify issues, to get a better understanding of how the system works in other countries, etc. Especially the informal meetings, which some MS uses as inspiration, and as a source to learn how other MS do, and are seen as a valuable source of potential best practice information. Especially the MS with less cross border activity is expected to benefit from an increased level of information exchange, as the increased level of information exchange would create acquaintance with cases that were less common in the specific MS.

Clear communication and explanations on how to understand the national legislation are also decisive for an optimal functioning of the provisions of the Directive. Guiding documents or handbooks explaining the provisions in layman terms have been produced by some MS as an aid for the involved authorities. A clear and 'non-legal language' was highlighted by the MS as one of the main reasons for the applicability of the produced documents. In addition, guidelines on how to handle specific cases have proved useful in some MS. Along these lines, several MS had integrated the Code of Conduct document in the everyday work, and found this very useful. The document was considered a kind of guidance note, or checklist. The document is used as a reference document to check procedure compliance, or as a checklist when in doubt in a specific situation. Moreover, it helps to standardise practices amongst national administrations, as one of the greater problems faced is the inadequate interpretation and implementation of the directive.

Lastly, the IMI system provides a good practice for the exchange of information, but a more consistent and active use of it should be encouraged. It is the hope and expectation of the MS that the IMI system in time will include a greater number of professions, thereby also cover the professions with less mobility, and that the MS will agree on a more uniform way of using the system. The importance of the MS keeping the Database of regulated professions 100% up to date is also mentioned as a practice that will enhance the functioning of the Directive.

In terms of the **lessons learned from the cases**, it can be seen that there are numerous problems with the professions regulated by the specific system, which were turned into separately regulated professions in order to ensure automatic recognition, meaning that the competent authorities of the host MS should not examine the training leading to these qualifications, but merely examine whether the applicant has fulfilled all the requirements necessary to practice that profession in the home Member State. Nevertheless, problems still exist, mainly due to the fact that the education structures differ among MS. For instance, as the example of a child nurse shows, master's degree in child nursing one MS is only equivalent to a bachelor's degree in another. However, coming back to the aforementioned issue of trust, if the MS could trust each other's education systems and believe that a child nurse is well educated in the EU, regardless of the formal degree he or she has obtained, there might be fewer problems with recognition of professional qualifications.

The lessons from the specific regulated professions are also true for the remainder of the cases. Other lessons learned from the cases include that problems with the recognition procedure are often due to **delays**, in the sense that the MS are not respecting the 3-month deadline stated in the Directive, and **protectionism**, meaning that the MS favour own nationals and delay/hinder the recognition of professionals from other MS.

8. RECOMMENDATIONS

Based on the above conclusions, a number of recommendations have emerged, which are discussed below.

1. **Ensure that transposition and implementation is concluded in all MS as soon as possible.**

The recommendation is rather obvious, but nevertheless of utmost importance if citizens are to benefit fully from the Directive. When dealing with a cross-sectoral Directive, it is very important for its proper implementation and functioning (and for the citizen's and National Contact Points' ability to rely on the Directive) that all MS are "on board" and working towards the same goal. The regular committee meetings between the Commission and the national contact points could possibly be used to put pressure on the remaining MS.

The transposition and implementation in one MS affects the enforcement of the Directive in other MS. This means that in order for the Directive to function properly, and thus for the citizens to benefit fully from the provisions in the Directive, the MS will have to be able to depend upon each other and have a common platform to refer to, something that can only be reached if all MS have transposed and implemented the Directive.

A lesson learned from the transposition and implementation of this Directive is that the deadline should probably be less ambitious, as all MS have had trouble reaching the deadline. Thorough discussions between the Commission and the responsible national ministries could possibly be undertaken prior to setting the deadline, consulting each responsible ministry on when it will be possible to transpose and implement the Directive and setting the deadline with departure point in these discussions.

2. **Overcome the MS' lack of trust in each other's systems**

The legal systems in the MS are rather different due to different legal traditions, and so are the educational systems and the number of regulated professions. The Directive takes these differences into account by allowing for a national interpretation of the provisions. This however means that in order for the Directive to function properly and thus for the citizens to be able to move rather freely within the EU, the MS need to trust each other's systems and interpretation of the Directive. The interviews and the case studies have revealed that this trust is not always present. As it seems rather imperative to the well-functioning of the Directive, it is therefore recommended to focus resources on increasing the trust among the MS.

One of the ways in which these trust issues could be overcome is to continue the regular meetings between the national contact points. The contact points themselves point out that both the formal structures, i.e. the meetings arranged for the coordinators, but also the informal structures which have arisen as a result of the formal meetings, are good forums to clarify legal and technical issues, and to get a better understanding of how the system works in other countries.

Another tool that could be used in increasing the MS' understanding of each other's systems is the IMI system. The technical framework is there for the MS to exchange knowledge and to help each other with specific cases, but there are large differences in the way in which the MS use the IMI system. A Code of Conduct developed by the Commission and the national contact points on the use of the IMI system could probably help better exploit the opportunities for sharing knowledge that the system offers. One of the regular committee meetings between the Commission and the national contact points could be used to develop this Code of Conduct.

3. Exploit the synergies between related directives

As mentioned, the contact points of especially this Directive and the Services Directive potentially have much in common and could probably benefit from synergies if working closer together, as the two Directives are closely related. However, there is a lack of resources in the different agencies/ministries implementing the directives to carry out such information exchange, as well as a lack of tradition for cooperating between national ministries seem to prevent the contact points from achieving these synergies. What could be done at EU level is to arrange regular meetings between all contact points for the two Directives, thus providing them with a forum to exchange knowledge. However, the contact points could also take the initiatives of setting up forums for better and more cooperation. At EU level, steps could be taken to identify the most active contact points in terms of cooperation, bring them together and have them act as an inspiration towards other MS. Given the budget restraint, focus could especially be on how results can be reached without spending a large amount of money.

4. Increase the communication from the Commission to the national contact points as well as the coordination among National Contact Points

As the Directive leaves room for national interpretation of the transposition and the implementation, several national contact points stress the need for more communication from the Commission on how the Directive's provisions should be interpreted, how the MS can explain the Directive to the citizens in a similar fashion, and on new court rulings of relevance to the Directive. The following areas have been highlighted:

- The national contact points request a simple text explaining the interpretation of the Directive that they can provide to competent bodies. Some MS, such as Denmark, is already working on providing such a text to its competent bodies, but it would be easier for the national contact points if the framework for such a text was provided by the Commission. It would ease the coordination work for the national contact points, and would also ensure consistency in the communications from the national contact points to the competent bodies, thus ensuring a similar platform across the MS. What the national contact points are requesting is both help in interpreting possible current ambiguities, but also future changes in the technical provisions, in order to continuously support changes in directive with interpretation guidance.
- Also a simple text explaining the directive to citizens has been requested, to ensure consistency in the communication from all national contact points towards its citizens. As mentioned, the majority of citizens do not read and/or understand the legal text and could therefore benefit from a simpler explanation of the Directive.
- The national contact points are also requesting that the Commission informs them of specific themes such as new court rulings etc. At present, each MS is spending time looking for this information. Getting the information directly from the Commission via a newsletter or the like would not only minimise the resources spent in the MS on this exercise, but would also ensure that the same amount of information is available in each MS. The latter is highly important when dealing with a Directive, which success depend on the MS interpreting it the same way and on the MS having a common platform to do so.

As some MS are already working on providing the needed documents, increased coordination between the National Contact Points could also help in securing a more uniform approach across MS. The regular meetings between the national contact points could serve as a forum for this.

5. Include industry organisations in the assessment of professions from other MS

Industry organisations can play a role in facilitating the understanding of the educational/professional structures in other MS, thus assisting the competent bodies in assessing the suitability of a certain profession from another MS. A better understanding of the educational/professional structures can help MS gain a better understanding and thereby trust in other MS' systems. It is therefore recommended to include industry organisations more in the assessments of professions from other MS and to formalise this cooperation further. This could for instance be done through the use of certificates, as suggested by two professional organisations. When properly implemented, these certificates would contain a European agreement on competency requirements assisting the professional to get his qualifications recognised within the EU. Another (simultaneous) approach could be to facilitate meetings at EU level between industry organisations and competent bodies, where sectors of certain interest could be discussed and competent bodies could have the opportunity to ask for clarifications where necessary.

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