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EUA - BRIEFING NOTES
European University Association

EUA SPECIAL UPDATE ON EU TRADE AGREEMENTS AND ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

June 2016

EUA reports regularly on two policy areas which have implications for higher education institutions: EU trade agreements[1] and EU legislation on the recognition of professional qualifications.[2]

As the globalisation of higher education gathers pace and as potential EU trade agreements proliferate, so the overlap of the two areas becomes more significant. The principal point of convergence – and the focus of this Update – is the Mutual Recognition Agreement (MRA).

This Update is number 15 in the professional qualifications series and number 6 in the trade series. For regular readers of both, there will be some cross-posting, for which I apologise. Please do not delete; disseminate!

[1] Updates are posted at http://www.eua.be/policy-representation/higher-education-policies/trade-agreements
[2] Updates are posted at http://www.eua.be/policy-representation/higher-education-policies/recognition-of-professional-qualifications

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1. Mutual Recognition Agreements (MRAs): why are they relevant to higher education institutions?

1.1 What is an MRA? As envisaged in current trade negotiations, it is an agreement between two (or more) Parties to a potential trade deal. They agree to recognise the comparability of each other's qualifications in specified professional fields. As a first step, professional bodies from the relevant jurisdictions meet on a voluntary basis to set the parameters of recognition, taking into consideration any criteria that may have been laid down in the over-arching trade agreement. The bodies then make a recommendation to a Committee which, if it approves, refers the draft MRA to the relevant authorities who ensure that it is consistent with the legislation in force in each of the Parties. Work on MRAs conceived on this model is now under way – but none has yet come into effect.

1.2 An MRA will not necessarily give licence to practise, although it may constitute a prerequisite. Nor will it, of itself, give access to the marketplace of the other Party. The scope of professional mobility of natural persons, whether employed or self-employed, is normally set out in detail in the schedules of each trade agreement.

1.3 Higher education (HE) is increasingly globalised. Foreign training providers contribute to the EU's professional labour force. European higher education institutions (HEIs) help provide third country labour markets with highly-qualified professionals. It seems likely that rising volumes of student mobility, both intra-EU and between the EU and third countries, coupled with the universal emphasis on employability, will – in conjunction with trade agreements – further drive professional mobility.

1.4 Many professions are already internationally networked. The European Network for the Accreditation of Engineering Education (ENAEE), for example, accredits programmes and awards its EUR-ACE label within and beyond the EU. ENAEE has accredited in Australia, Tunisia, Turkey, Ukraine and Vietnam.[3] All of these countries are in trade talks with the EU. Any discussions of potential MRAs, in whatever academic discipline, are likely to build on the basis of networks already in place.

1.5 Given the dual imperative of foreign student recruitment and employability, many European HEIs will want to maximise the extent to which their professional qualifications secure cross-border recognition. They cannot do this if they ignore trade policy. Each of the EU's intended trade partners is a potential country of origin and/or destination for students at Bachelor, Master and Doctoral levels.

1.6 The signing of MRAs by trade partners is of material interest to students, admissions officers, curriculum designers, careers advisory services, quality assurance offices, institutional strategists, and social partners. It does not follow that one bilateral MRA will be identical to all others. HEIs will want to monitor developments, by maintaining contact with professional bodies and competent authorities, and by ensuring that their international strategies are sensitive to changing trade relations.

2. Background

2.1 The EU is currently planning or negotiating a range of trade agreements. The most widely publicised is the EU-US Transatlantic Trade and Investment Partnership (TTIP). Also in view are potential bilateral agreements with (in alphabetical order) Australia, Canada, India, Indonesia, Japan,

[3] The EUR-ACE database can be viewed at http://eurace.enaee.eu/

the Mercosur (Argentina, Brazil, Paraguay and Uruguay), Morocco, New Zealand, the Philippines, Singapore, Tunisia, Turkey, Ukraine and Vietnam, as well as the plurilateral Trade in Services Agreement (TiSA).

2.2 All of these, if successfully concluded, would boost the international mobility of regulated professionals. The recognition of professional qualifications is a key issue.

2.3 The EU has a relatively stable policy base from which to negotiate. Although there are discrepancies between member states (MSs) regarding which professions are regulated and how, there is consensus on the principles and procedures informing intra-EU cross-border recognition and mobility.

2.4 These are enshrined in the Directive on the Recognition of Professional Qualifications (DIR 2005/36/EC), now amended as DIR 2013/55/EU. They concern the automatic recognition of qualifications in seven sectoral professions (medical doctor, general care nurse, dentist, veterinary surgeon, midwife, pharmacist and architect), as well as the mechanisms for requiring compensatory measures in cases where the thresholds of entry to a profession vary between MSs. The legal profession has its own dedicated directives.[4]

2.5 The amended Directive allows the recognition of the professional qualifications held by third country nationals, if they are long-term EU residents, refugees, holders of Blue Cards, or scientific researchers.

2.6 It also accommodates existing bilateral agreements. A professional incoming from Québec, for example, and who is duly recognised by France, may be recognised by other MSs and European Economic Area (EEA) countries[5] after three years of professional practice in France.[6] This recognition is at the discretion of the MS to which the professional then wishes to move.[7] Recognition by all EU MSs is guaranteed only if underwritten by an MRA enshrined in a formal trade agreement.

2.7 Furthermore, the amended Directive envisages Common Training Frameworks.[8] Groups of MSs – at least one third of the total number (i.e. 10 of EU28) – will be able to agree on curricula based on "common sets of knowledge, skills and competences." Other MSs may then opt in.

2.8 The EU's "new generation" (i.e. subsequent to the Lisbon Treaty) of trade negotiations in general favours the putting in place of MRAs. The deals in which they will feature (no MRA has yet been finalised) will have to be consistent with the General Agreement on Trade in Services (GATS). The GATS distinguishes between different modes of trade in services. MRAs fall within Mode 4, which is "the supply of a service […] by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member."[9] It covers individuals who are employed by commercial service providers as well as those who are self-employed. Trade deals may include either or both. They may also distinguish between temporary and permanent mobility.

[4] The Lawyers' Services Directive (LSD) of 1997 and the Lawyers' Establishment Directive (LED) of 1998
[5] Iceland, Liechtenstein and Norway
[6] Article 3.3
[7] For more details on the Québec-France bilateral agreement, see http://www.mrif.gouv.qc.ca/en/grands-dossiers/reconnaissance-qualifications/entente-quebec-france
[8] Recital 25 and Article 49a
[9] GATS Article 1.2

2.9 Article 7 of the GATS addresses recognition:

> ***Article VII [emphasis added by EUA]***
>
> ***Recognition***
>
> **1.** For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member **may recognize the education or experience obtained**, requirements met, or licenses or certifications granted in a particular country. **Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.**
>
> **2.** A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford **adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it.** Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.
>
> **3.** A Member shall **not accord recognition in a manner which would constitute a means of discrimination between countries** in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
> […]
> **5.** Wherever appropriate, **recognition should be based on multilaterally agreed criteria**. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services, trades and professions.

2.10 Article 7 is the basis on which all trade agreements build. However, they contain specific mention of qualifications only when these are used to limit market access or treatment which is as favourable as that accorded to domestic concerns. In general and by default, the recognition of qualifications is not mentioned. In each agreement, the GATS principles are implicit: recognition is not automatic; it must not be discriminatory; it should be justifiable in the framework of emerging multilateral (i.e. World Trade Organisation [WTO]) consensus. The EU view is that MRAs will contribute to the strengthening of this consensus.

2.11 This Update reports on the state of play in MRAs, taking as its starting point the EU's free trade agreement (FTA) with Korea. EU-Korea was the first of the EU's new generation agreements, engineered specifically for a globalised world. It has been in force since 2011.[10] The Update then looks at other current talks, pausing to give special attention to negotiations with Canada, in which the focus on MRAs is strongest and the agreed text most elaborated.

[10] The full list of the EU's existing agreements is posted at http://ec.europa.eu/trade/policy/countries-and-regions/agreements/index_en.htm

2.12 *The Update comes with a double health warning*. First, please note that your correspondent has no legal training and writes as a member of civil society. Secondly, note too that not all trade negotiations are equally transparent. Only in TTIP, for example, has the EU's mandate to its negotiators been published.

3. EU-Korea

3.1 The free trade agreement between the EU and the Republic of Korea (i.e. South Korea) is regarded as the EU's "best FTA", by which is meant the extent to which it liberalises over and above, but not incompatibly with, the GATS. It serves as a benchmark for future agreements.

3.2 In respect of Mode 4, the FTA covers only temporary employment within the framework of an established legal entity – for such categories as business visitors, managers, specialists, graduate trainees, either for limited or continuous periods or for a certain number of days *per annum*. For example:[11]

- EU law firms are now able to set up in Korea, to provide advisory services on EU and EU MS law and to establish joint ventures with Korean firms. EU lawyers are allowed to use their national titles (e.g. *Avocat*), with the co-title "foreign legal consultant" in Korean.
- EU Certified Public Accountants enjoy access to a wider range of activities.
- EU architects can go into formal cooperation with their Korean counterparts, on the dual condition that they are duly qualified in the EU and pass a simplified examination to obtain a Korean licence.[12]

3.3 For Koreans incoming to the EU, the situation is complicated. More than 50% of EU MSs have entered reservations in respect of establishment: they concern the purchase of land, the composition of administrative boards, the ability to participate in privatisations, etc. In Mode 4, meanwhile, and by way of example:

- Eighteen MSs limit the scope of activity of Korean lawyers; seven impose limitations on accountants and auditors.
- Five MSs impose on architects and engineers either a residency or length of practice requirement.
- In the healthcare professions, many MSs specify a nationality/residency requirement or reserve the right to invoke an economic needs test.
- Twelve MSs impose a nationality requirement on tourist guides.

3.4 The full lists of EU reservations are set out in Annexes 7-A-2 and 7-A-3.[13] They do not touch on the recognition of qualifications. Article 7.21.2, however, specifies that "The Parties shall encourage the relevant representative professional bodies in their respective territories to jointly develop and provide recommendations on mutual recognition." These recommendations will go the Trade Committee, which steers the FTA at commissioner/ministerial level, and thence, if approved, form the basis of an MRA. Progress towards the MRA will be overseen by a dedicated Working Group.

[11] For full details, see OJ L 127/1254-9

[12] The examination covers only two of the regular test's six subjects: (i) Architectural Laws and Regulations; and (ii) Architectural Design.

[13] OJ L 127/1198-1250

3.5 DG Trade reported in 2014 that the Working Group was hoping to kick-start talks in the areas of architecture and engineering.[14] Should MRAs be reached, they would constitute an amendment to the FTA and would be subject to appropriate legislative approval. The 2015 Report[15] notes that EU and Korean professional bodies in architecture[16] and engineering have indeed met to exchange views. Talks are ongoing.

4. EU-Singapore

4.1 The EU-Singapore FTA has been initialled[17] by both Parties, but the ratification procedure must now wait for the Court of Justice to decide whether or not the agreement is "mixed", i.e. whether it covers policy areas in which the EU does not enjoy exclusive competence. If it does, it will have to be signed and ratified by the 28 MSs individually, as well as by the EU.

4.2 Chapter 8 of the FTA addresses the mutual recognition of qualifications. Like EU-Korea, it urges professional bodies to work towards MRAs, having established a) that they have economic value, and b) that there is compatibility of "the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers."[18]

4.3 Singapore's schedule of commitments is largely devoid of Mode 4 reservations, although certain healthcare professionals and graduate trainees may be subject to labour market tests. The position of legal professionals, currently complicated, will ease once Singapore's ongoing liberalisation programme is completed; the Parties have agreed to resume talks two years after the entry into force of the FTA.

4.4 On the EU side, while some MSs impose no restriction on incoming Singaporean professionals, others have entered reservations, usually of nationality or residence. Only one MS makes access to professional practice conditional on an MRA and that is France, in respect of architects. Beyond this reference, nothing in EU-Singapore suggests that MRAs will be confined to specified professions. An across-the-board approach is implied; no profession is excluded.

5. EU-Canada (the CETA)

5.1 The EU-Canada Comprehensive Economic and Trade Agreement (CETA) has been concluded and the final text published.[19] Although both Parties would like to see it in force in 2017, signature and ratification will be in doubt until the question of visa-free entry to Canada by Bulgarian and Romanian citizens is settled. A further difficulty, which the CETA shares with EU-Singapore, concerns its status. If it is deemed a "mixed agreement", by virtue of its incursion into areas of MS competence, it will have to be signed and ratified by the 28 MSs individually, as well as by the EU. This will pose a political problem, given that the Dutch and Walloon parliaments have already voted not to accept it. The Council of Ministers regards it as "mixed" and the debate has now turned to whether it might come into force in stages.

5.2 The CETA's arrangements for the mutual recognition of qualifications grew out of the Franco-Québecois agreement mentioned earlier (paragraph 2.6). This agreement, in turn, is based on the EU

[14] See its 2014 annual report at http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152239.PDF
[15] http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153271.pdf
[16] These are the Architects' Council of Europe (ACE) and the Korean Institute of Registered Architects (KIRA).
[17] The full text is posted at http://trade.ec.europa.eu/doclib/press/index.cfm?id=961
[18] Article 8.16.2
[19] It is available online at http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf

Directive. It covers all professions and encourages the drafting of MRAs which guarantee continuing quality of service and consumer protection. The liberal professions have seen the greatest take-up, with nurses and engineers heading the list of authorised entrants to the partner labour market. The ratio of inward to outward mobility on the French side is about 1:7.

5.3 Article 10.8 of the CETA limits entry for independent professionals and contractual service suppliers to university graduates or equivalent. Independent professionals must have six years of relevant prior experience and persons working for contractual service suppliers must have three. Many EU MSs apply economic needs tests before granting access.

5.4 A number of EU reservations require proof that the professional has the relevant special knowledge. The need for this would be obviated by an MRA. Chapter 11 of the CETA provides the greatest detail – much more than in EU-Korea and EU-Singapore. Its provisions allow relevant regulatory or professional bodies in both jurisdictions to present draft MRAs to a Joint Committee on Mutual Recognition. An MRA becomes binding once the Committee is satisfied that it is consistent with the provisions of the CETA. Professional service providers in the host jurisdiction then enjoy no less favourable treatment than home providers, irrespective of nationality, citizenship and the location of the training institution.

5.5 Certain criteria have to be satisfied by the drafters of the MRA:

> A recommendation shall provide an assessment of the potential value of an MRA, on the basis of criteria such as the existing level of market openness, industry needs, and business opportunities, for example, the number of professionals likely to benefit from the MRA, the existence of other MRAs in the sector, and expected gains in terms of economic and business development. In addition, it shall provide an assessment as to the compatibility of the licensing or qualification regimes of the Parties and the intended approach for the negotiation of an MRA.[20]

5.6 Non-binding guidelines on the negotiation of MRAs are set out in Annex 11-A. Beyond a requirement to specify the participants, purpose and scope of an MRA, the guidelines envisage a sequence of four steps:

- "Verification of equivalency": this step looks at the scope of professional qualification and practice. Specifically:

> The negotiating entities should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions**.**
>
> The examination of qualifications should include the collection of all relevant information pertaining to the scope of practice rights related to a legal competency to practice or to the qualifications required for a specific regulated profession in the respective jurisdictions.
>
> Consequently, the negotiating entities should:
>
> (a) identify activities or groups of activities covered by the scope of practice rights of the regulated profession; and

[20] Article 11.3.2

(b) identify the qualifications required in each jurisdiction. These may include the following elements:

(i) the minimum level of education required, for example, entry requirements, length of study and subjects studied;

(ii) the minimum level of experience required, for example, location, length and conditions of practical training or supervised professional practice prior to licensing, or the framework of ethical and disciplinary standards;

(iii) examinations passed, especially examinations of professional competency;

(iv) the extent to which qualifications from one jurisdiction are recognised in the other jurisdiction; and

(v) the qualifications which the relevant authorities in each jurisdiction are prepared to recognise, for instance, by listing particular diplomas or certificates issued, or by reference to particular minimum requirements to be certified by the relevant authorities of the jurisdiction of origin, including whether the possession of a certain level of qualification would allow recognition for some activities of the scope of practice but not others (level and length of education, major educational focuses, overall subjects and areas).

There is an overall equivalence between the scope of practice rights or the qualifications of the regulated profession if there are no substantial differences in this regard between jurisdictions.

- 2. "Evaluation of substantial differences": these may exist in "essential knowledge", in the content or duration of basic training, and in the lack of congruence in the component disciplines of a particular professional practice.

- 3. "Compensatory measures" taking the form of adaptation periods or aptitude tests: these mirror the provisions informing the General System in the EU Directive.

- 4. "Identification of the conditions for recognition": this consists of a summary of the above steps, setting out in precise terms what they represent for the specific profession featured in the MRA.

5.7 Annex 11-A also contains guidelines dealing with individual applications, appeals, contact points, and so on.

5.8 A number of departures from the letter and spirit of the amended Directive are worth noting:

- "Equivalency" has a wider meaning in the CETA. While in the amended Directive it covers measurable factors, such as level of attainment, course duration or credit points, in the CETA it is used more broadly to apply to course content as well as to the component disciplines of professional practice.

- In the amended Directive, "substantial differences" in the General System are no longer specifiable in terms of course duration. Moreover, they must be expressed in terms of course content, i.e. in terms of knowledge, skills and competences, rather than of knowledge alone.

5.9 The CETA, like all trade agreements, must be consistent with EU law. It cannot stand above EU legislation on the recognition of professional qualifications. MRAs will therefore be obliged to take an approach based on generic and specific learning outcomes.

6. The Transatlantic Trade and Investment Partnership (TTIP)

6.1 The mandate given by the EU to its negotiators specified that TTIP "should develop a framework to facilitate mutual recognition of professional qualifications."[21] However, it was apparently never the intention that TTIP would proceed in the manner of CETA – welcoming MRAs from all willing professions. Instead, particular professions would be selected. On the European side (for example, the European Services Forum [ESF]), there was a wish to push ahead with accountancy, architecture, engineering and law, but the US would not countenance any initiative in law. Current talks relate to architects[22] and auditors, albeit with "significant differences of opinion."[23]

6.2 Some disagreements may be "intra-professional". Others are much more wide-ranging. EU lobbyists and negotiators have to contend with an across-the-board structural protectionism on the US side. This is expressed in the extreme degree and opacity of regulation at the sub-federal level, i.e. in the 50 states of the Union. In other trade agreements ratified by the US, there exists a proliferation of reservations covering the access by foreign professionals: citizenship and residency requirements, the prerequisite of an established in-state office, etc. 26 states, for example, impose residence conditions on accountants.

6.3 It is these considerations, as well as over-arching political factors (the perception of the Obama administration as a lame duck, the stated opposition of all the likely US presidential candidates, hostile public opinion in the EU), which make it uncertain that TTIP will be agreed before the end of 2016, if at all.

7. The Trade in Services Agreement (TiSA)

7.1 Like TTIP, TiSA aims for a 2016 conclusion. There are more than 20 countries involved in the talks, which are chaired in rotation by Australia, the EU and the US. China may eventually join; Brazil and India are regarded by DG Trade as the principal absentees. Initial offers have been tabled. By agreement, they are made on the basis of each Party's "best FTA", i.e. EU-Korea in the case of the EU.

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[21] http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf, paragraph 17

[22] The Architects' Council of Europe (ACE) reported in February: "In the margins of the TTIP negotiations, ACE is negotiating an MRA [mutual recognition agreement] with the US National Council of Architectural Registration Boards (NCARB), under the auspices of the European Commission and the US Trade Representative (USTR). On 13 February an ACE delegation met its NCARB and EC and USTR representatives to discuss the basic principles enshrined in the 2005 draft ACE-NCARB agreement and the key differences between the European and US systems (academic training, licensing examination, accreditation, requirement for traineeship, etc). These discussions will continue." http://www.ace-cae.eu/uploads/tx_jidocumentsview/ACE_Info_February.pdf

[23] Report of DG Trade's TTIP Advisory Group, April 2016, at http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154394.pdf

7.2 The current focus is on the short-term professional mobility of service providers, rather than on the recognition of qualifications. DG Trade reports good progress, without giving details.[24] It does not exclude the possibility that work on professional qualifications will follow in due course – to be based on the CETA template and not on TTIP, i.e. featuring a full range of potential MRAs, into which signatory countries can opt.

7.3 Such a move would satisfy the European Parliament, which in February adopted a report drafted by Viviane Reding. It urged the Commission "to strive to create a framework for the mutual recognition of training, academic levels and professional qualifications, in particular in the architectural, accounting and legal sectors, while ensuring the competence of the supplier and thus the quality of the services provided in line with the EU's Professional Qualifications Directives, and while avoiding the automatic and quantitative recognition of university degrees."[25]

7.4 The final phrase, added by amendment at some stage in the iterative parliamentary process,[26] is obscure. Perhaps it refers to academic qualifications, while leaving the recognition of professional qualifications safely enshrined in EU legislation.

8. Australia and New Zealand

8.1 The EU's most advanced trade talks are those involving Singapore, Canada, the US and TiSA. For the remainder, the principal issue is whether they will follow the open-ended model best described in the CETA, or the TTIP approach which designates a limited number of professions as a first step. Time will tell.

8.2 Australia and New Zealand are Parties to the recently concluded (but not yet ratified) plurilateral Trans-Pacific Partnership (TPP), which is US-led and does not include the EU. Australia is also one of the lead partners (with the EU and the US) in the ongoing negotiations on TiSA (see paragraph 7 above), in which New Zealand also participates.

8.3 Powerful pro-trade lobbyists in Brussels, such as ESF, are anxious to draw both countries into deep and comprehensive bilateral FTAs (DCFTAs) with the EU, in order to ensure favourable access to their markets. The European Parliament agrees.[27] The European Commission has launched a public consultation (which closes in June). Formal talks are expected to begin in mid-2017.

9. EU-India

9.1 Talks on a comprehensive FTA were in train for nine years, before fading into silence in 2013. Initially, the EU's statements of intent had a strong capacity-building and technical assistance flavour. Very recently, however, India has taken steps to upgrade its higher education sector. MRAs, should they appear on the agenda of resumed talks, will develop in this new context.

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[24] See its report on the 17th round of talks in April 2016, posted at http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154478.pdf

[25] Paragraph 1(d)vi, at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0041+0+DOC+PDF+V0//EN

[26] More than 600 amendments were submitted by nine parliamentary committees – but, curiously, the draft was not considered by the Culture and Education Committee.

[27] See http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0064&language=EN&ring=B8-2016-0250

9.2 The EU-India summit meeting, held in Brussels in March, was apparently positive. Without committing to a formal resumption of talks, the joint statement[28] notes, *inter alia*, that

> 26. The leaders acknowledged that trade in services is important not only for developed countries, but is rapidly emerging as a critical vehicle for developing countries for realizing development gains, including poverty reduction, and as the new frontier for enhancing their participation in international trade.
>
> 27. They encouraged EU and Indian businesses, including SMEs to deepen and support "Skill India". The EU and India expressed their intention to organise a high-level skills seminar before July 2017 and reaffirmed their commitment to the implementation of the G20 Skills Strategy.

9.3 A letter sent in April by Commissioner Malmström to Bernd Lange, chair of Parliament's International Trade Committee (INTA) gives detailed background on the breakdown of talks in 2013. It also reveals an Indian demand which it implies has been presented as non-negotiable:

> [India] has reinforced its own demands by increasing its request for temporary access of Indian skilled professionals to the EU – so-called Services Mode 4 - and by requiring the recognition by the EU of India as a "data secure" country. In this respect, President Juncker at the recent Summit confirmed our readiness to explore flexibilities on key Indian demands provided we see willingness on the Indian side to make progress on our demands as well.
>
> But we need to be realistic on how much we can offer to India at this stage. As you might know, concessions in the field of services Mode 4 are to be made by individual EU Member States. At the time when negotiations were brought down to a standstill, the EU proposed to the Indian side the most ambitious offer ever made to any of our trading partners. During the latest discussions, India asked to "double" our original offer and to eliminate the allocation of numerical quotas by individual EU Member States, thus leaving India free to exploit any agreed quota in those EU member states in which they were most interested in. Currently, it remains difficult to meet this demand made by India… [29]

10. Indonesia

10.1 The DG Trade website points out that "after Free Trade Area negotiations between the EU and a group of ASEAN countries proved difficult, in December 2009, the EU decided to pursue negotiations towards free trade agreements with individual ASEAN countries, beginning with Singapore and followed by Malaysia and Vietnam. That said, the EU is not losing sight of the ultimate goal of achieving an agreement within a regional framework." The EU and Indonesia have recently embarked on talks about talks, with a view to moving to formal trade negotiations in due course.

[28] Accessible via the Commission's press release of 30 March, at http://europa.eu/rapid/press-release_IP-16-1142_en.htm
[29] The letter has been posted at https://ec.europa.eu/carol/index-iframe.cfm?fuseaction=download&documentId=090166e5a7def00f&title=Letter_to%20BL%20-%20India%2007.04.2015.pdf

11. EU-Japan

11.1 Talks on the EU-Japan FTA, which began three years ago, were first broached by Japan with the intention of obtaining an agreement similar to EU-Korea. Latterly, however, they have stalled as Japan prioritises TPP. The Dutch presidency is attempting to bring them back to life.

11.2 A draft text on Mode 4 exists, but it is not clear whether it holds out any prospect of MRAs. Japan has not typically made MRA-related commitments in trade deals. TPP, however, encourages professional bodies to cooperate and it is fair to assume that an eventual EU-Japan FTA might echo this. DG Trade's sustainability impact assessment concludes as much, while noting that "qualification issues concern a broad range of legal and professional services relating to accounting, architects, medical and dentists and midwives/nurses, and engineers."[30]

12. EU-Mercosur (Argentina, Brazil, Paraguay and Uruguay)

12.1 The EU-Mercosur trade talks provide another example of a lapsed dialogue which might be revived. Certainly, the new Argentinian government hopes so, but some EU MSs, notably France, fearful of the impact on agriculture, are wary. The disarray in Brazil might also prove an obstacle. A roadmap has nevertheless been agreed and market offers were exchanged in mid-May.

12.2 Whether talks will eventually yield MRAs is difficult to say. As in the case of the CETA, talks might well be based on existing bilateral agreements. Inevitably, given the number of countries involved, they would be more complex. The friendship treaty between Brazil and Portugal, signed in 2000, provides not only for reciprocal access by professionals, but also for access to each Party to be extended throughout the EU and the Mercosur.[31] This would appear to go beyond the competence of either Party, but it could be carried forward in a series of MRAs.

13. EU-Morocco

13.1 The intention of both Parties has been to extend their Association Agreement, which came into force in 2000, into a DCFTA. This would allow a focus on agriculture and fisheries to widen into a fully blown deal covering services and greater volumes of Mode 4 mobility. However, talks broke down following a recent Court of Justice ruling invalidating an existing agreement, on the grounds that the EU had failed to undertake a human rights impact assessment. The difficulties arise from the ongoing challenge to Moroccan claims to the Western Sahara.

14. EU-Philippines

14.1 EU talks with the Philippines to seal an FTA have only just begun. The EU initiative is in line with its strategy of dealing with the ASEAN countries one by one. The eventual FTA will grow out of a partnership and cooperation agreement (PCA) signed in 2011. Among other commitments, the Parties "agree to start a dialogue on matters of mutual interest relating to the modernisation of education systems, including matters pertaining to core competencies and development of

[30] http://trade.ec.europa.eu/doclib/docs/2016/may/tradoc_154522.pdf p.189
[31] Tratado de Amizade, articles 46 and 47, http://www.embaixadadeportugal.org.br/docs/tratadoamizade.pdf

assessment instruments benchmarked with European standards."[32] Future MRAs will be able to take agreed competence-based curricula as their starting point.

15. EU-Tunisia

15.1 Tunisia is in a position similar to that of Morocco, with the difference that negotiations are under way. In February, Parliament welcomed this development, but insisted that a future FTA have a capacity-building rationale. It made no mention of MRAs, instead calling "for regular dialogue to be developed between entrepreneurs, professional organisations and training bodies, so that good practices can be promoted and the difficulties and expectations of each side better understood."[33]

15.2 Meanwhile, the EU has published its draft proposal on services. Here the opportunity to develop MRAs is expressly encouraged. It follows[34] the text of EU-Singapore (cf. paragraph 3.2 above).

16. EU-Turkey

16.1 Turkey's Customs Union with the EU covers only industrial goods, but moves are afoot to upgrade it into something more akin to an FTA, which would include services and the mobility of professionals under Mode 4. The Commission is currently running a consultation[35] which will close on 9 June. Parliament has published a useful background paper,[36] which examines the range of scenarios that lie between Customs Union and FTA. It should be remembered too that Turkey is a Party to the TiSA negotiations (see section 7 above).

17. EU-Ukraine

17.1 The EU has a DCFTA with Ukraine which came into provisional effect (i.e. pending ratification) at the beginning of this year. (The Dutch referendum which voted against ratification in April has no legal force, as the discontinuation of the DCFTA would require unanimity in the Council.)

17.2 The "A" in the acronym stands not for Agreement, but for Area. This means that, rather than a classical bilateral agreement, the DCFTA is contingent upon Ukraine's alignment with the *acquis communautaire* and its effective entry into the internal market. This would bring it into the ambit of the amended Directive on the Recognition of Professional Qualifications. The Europa website does not carry the full text, only an explanatory note[37].

18. EU-Vietnam

18.1 The full text of the EU-Vietnam FTA was published in February,[38] but has yet to be ratified and is likely to come into force only in 2018. (Human rights considerations may intervene.) Section 2 of

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[32] EU-Philippines PCA, Article 46.2, http://www.eeas.europa.eu/delegations/philippines/documents/eu_philippines/eu_philippines_pca_20120712.pdf

[33] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0061+0+DOC+PDF+V0//EN paragraph 38

[34] http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154487.pdf Chapter V, article 26

[35] At http://trade.ec.europa.eu/consultations/index.cfm?consul_id=198

[36] At http://www.europarl.europa.eu/RegData/etudes/STUD/2016/535014/EXPO_STU%282016%29535014_EN.pdf

[37] At http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf

[38] See http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437

Chapter V encourages professional bodies to explore the viability of MRAs, in the manner of EU-Singapore and EU-Tunisia.

19. Evolving EU policy on higher education, the professions and trade

19.1 EU policy continues to evolve in the three fields considered in this Update. There are a number of developments of which HEIs should be aware:

- The new generation of EU trade initiatives are notably offensive (in contrast to defensive) where services are concerned. Legal and transportation services are historically associated with trade in goods. This is not true, however, of architecture, engineering or healthcare. The EU focus on its knowledge-based society prompts it to maximise the export potential of its liberal professions and to integrate them, where appropriate, into global value chains. The mobility potential of qualified professionals will increase accordingly.

- Now that the Directive on the Recognition of Professional Qualifications has been amended (and is being transposed into MS legislations), the Commission is giving a higher profile to its mutual evaluation exercise. In an attempt to reduce the number of regulated professions (more than 5 000) and their convoluted incongruences, each MS was evaluated in terms of the proportionality of its regulatory practices. The Commission asked whether regulation across the EU could be rationalised, retaining quality of service provision while eliminating protectionism. It fervently hoped that it could. Rationalisation would increase mobility and ease some of the recognition difficulties associated with partial access to a profession and with multidisciplinary companies.

- The effect of MRAs will be to bring certain third country qualifications into the European Qualifications Framework (EQF). In order to harness the EU's mobility instruments more tightly to employability, the Commission is aligning the EQF with the International Labour Organisation's (ILO) taxonomy of occupations.[39] Further articulation of the EQF with labour market needs is envisaged, as is a re-structuring of the Europass bundle.[40] Proposals on a New Skills Agenda are likely to be published in June.

19.2 HEIs will wish to note these developments as they refine their institutional strategies. They will no doubt seek the best possible ways of accommodating employability alongside the many other desirable individual and social outcomes of higher education.

Please feel free to comment and to forward this Update to other interested parties.

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[39] See the Commission's European Skills, Competences and Occupations (ESCO) portal at https://ec.europa.eu/esco/home
[40] The European CV, Language Passport, Mobility, Certificate Supplement and Diploma Supplement (see https://europass.cedefop.europa.eu/en/home)