

**POLICY BRIEFING**

# Recognition of professional qualifications

Howard Davies

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**European University Association asbl**

Avenue de l'Yser 24

Rue du Rhône 114

1040 Brussels

Case postale 3174

Belgium

1211 Geneva 3, Switzerland

+32 (0) 2 230 55 44

+41 22 552 02 96

[www.eua.eu](http://www.eua.eu) · [info@eua.eu](mailto:info@eua.eu)

This policy brief consists of five parts:

- A. The EU policy framework
- B. Implementation of the Professional Qualifications Directive
- C. Recent developments in the regulated professions
- D. Relevant features of the European Education Area
- E. Brexit

The wider context is unprecedented: the ravages of Covid-19 and the appearance of new variants; the late agreement on the EU budget launching the transition to a digital and green economy; the tensions over the rule of law within the EU; the fragility of multilateral institutions, notably the World Trade Organisation (WTO) and the World Health Organisation (WHO); and the perceived need for the EU to determine what “strategic autonomy” means in practice, as China gains in strength and the Atlantic alliance appears to weaken.

Meanwhile, the EU’s Single Market is stepping up its drive for consolidation in the shadow of the UK’s protracted departure from the Union. Brexit poses problems for both parties, not least for the movement of professionals across the English Channel.

## **A. THE WIDER EU POLICY FRAMEWORK**

1.1 In September, Commission President von der Leyen delivered a trilingual State of the Union message in English, French and German. The full English version is available [here](#). She set out a range of policy priorities, of which the most relevant to professional qualifications are digitisation, health and the Green Deal.

1.2 What these priorities mean in practice is detailed in its [Work Programme](#) for 2021 and its [Annexes](#). The only priority pending proposal directly relevant to professional qualifications is a new *Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment*. No rationale is given, but it is likely that the Commission feels the need to upgrade the existing Directive 2009/50/EC, given the strong migratory flows of recent years, the EU’s own labour market needs, and probable pressure from the UK for extensive professional access post-Brexit.

1.3 The Commission’s work programme is in line with the vision spelt out by the [trio of Council presidencies](#) (Germany, Portugal and Slovenia) in June 2020. Portugal takes over the mantle for the first half of 2021. Under the umbrella of Social Europe it will oversee many of the developments outlined later in this Briefing, including those concerning the Single Market and the European Education Area. Its immediate task will be to manage the pandemic and the EU’s relations with the UK.

### **E4Health**

1.4 Calling for a stronger European Health Union, President von der Leyen envisaged boosting the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA) and setting up a new agency for biomedical research, as well as giving full support to the WHO. She also spoke of the need to re-consider health competences, the implication being both legal and medical.

1.5 The main thrust will come from the [E4Health programme](#), with a budget of EUR 5.1bi. Its fifth Specific Objective commits to promoting “the excellence of medical and healthcare professionals”. [Annex I](#) goes into detail, including:

Establishment and operation of a Union reserve of medical and healthcare staff and experts and of a mechanism to deploy such staff and experts as necessary to prevent or respond to a health crisis throughout the Union; establishment and operation of a Union Health Emergency team to provide expert advice and technical assistance on request by the Commission in the case of a health crisis; [...]

Upskilling of medical, healthcare and public health staff; [...]

Training programmes for medical and healthcare staff, and programmes for temporary exchanges of staff;

Support to improve the geographical distribution of healthcare workforce and avoidance of 'medical deserts'; [...]

Digital upskilling of healthcare professionals

1.6 The priority set on upskilling and re-skilling has a dual focus. First, as indicated in the box, digital applications: e-health as currently practised, plus Artificial Intelligence (AI) techniques, the European eHealth Record, the secure management of big data, interoperability of national health information systems and effective monitoring of healthcare products and services delivered via global platforms.

1.7 Secondly, the issue of One Health. Responding to calls by the professional bodies reported in our April Briefing, E4Health promises “actions to support investigation, risk assessment and risk management work on the link between animal health, environmental factors, and human diseases, including during health crises.” The recently [revised veterinary curriculum](#) adopted by the Federation of Veterinarians of Europe (FVE) makes a significant move in this direction.

1.8 In support of the wider healthcare policy and of strengthening the EU healthcare workforce, the Commission has also put out a tender on [European Reference Networks Capacity and Knowledge Sharing Through Short Term Mobility and Exchanges of Healthcare Professionals](#). The tender closed in May.

## Green Deal

1.9 The greening of the many relevant professions is crucial, but President von der Leyen chose to present the issue in broader terms – as a cultural renaissance. It would be focused on “a new European Bauhaus – a co-creation space where architects, artists, students, engineers, designers work together” to ensure that climate-neutrality and enhanced quality of life go hand in hand. The plan drew a warm welcome from [ACE](#).

1.10 DG EMPL, meanwhile, is compiling a taxonomy of core green skills, in the framework of Action 6 the [European Skills Agenda](#).

1.11 Led by FH Joanneum in Austria, the recently launched [GREENOVET](#) project will set up centres of vocational excellence with a strong ecological focus – in Austria, Finland, North Macedonia and Portugal. The centres will be multi-stakeholder in character: higher education institutions, industry, innovation centres, chambers of commerce, ministries.

## Single Market

1.12 Council and Parliament reached agreement in December on a [Regulation](#) launching a new Single Market Programme with a budget of EUR 4.2bi. The legislation will be completed early in 2021. The Programme will bring together and update previously disparate pieces of legislation. But this is a minor consideration. More pressing are the needs to consolidate the internal market, having successfully warded off the threat to its integrity posed by Brexit, and to progress the digital and green transitions.

1.13 The Programme will put in place measures and funding opportunities to improve the market's functioning. It will cover competitiveness, innovation, standards, procurement, health, consumer protection, with a special focus on SMEs and on the 'surveillance' of the compliance of third country goods (e-commerce in particular).

1.14 The Regulation stresses the need for training for SMEs and for the public servants engaged in compliance and monitoring.

1.15 In addition, it proposes to raise the quality of its statistical monitoring. Among other things, it has in mind "statistics to support the European Pillar of Social Rights and the Union Skills Policy, including statistics on the labour market, employment, education and training" and "on the situation and integration of migrants and education needs and qualification levels of asylum seekers" (pp. 123-4).

1.16 The higher education sector will also be interested in the measures taken to interface more effectively with Horizon Europe and with Erasmus for Young Entrepreneurs.

## B. IMPLEMENTATION OF THE PROFESSIONAL QUALIFICATIONS DIRECTIVE

2.1 In our [previous briefing](#) we mentioned the Commission's failure to review the implementation of [amended Directive 2005/36/EC](#) in January 2019 (despite the provision set down in Article 60.2). We also noted the growing use of the delegated act as a legislative instrument, as well as the persistent inadequacies of the DIR's Annex V which covers, inter alia, the knowledge, competences and skills essential to architecture and the principal healthcare professions.

2.2 It was in May that the Commission belatedly produced its [report](#) and the [staff working document](#)<sup>1</sup>. These highlighted the widespread inability of Member States (MSs) to transpose the DIR within the required timeframe and reported the outcomes of the subsequent infringement procedures. Transposition had proved particularly difficult for MSs with a high volume of regulation, as well as for those devolving regulatory competences to regional administrations.

2.3 The delay in publication was also attributable to MSs' own dilatory approach to satisfying the additional "transparency obligations" laid on them by the DIR. Which professions they regulate, how they regulate them, whether their regulation is proportionate and non-discriminatory – all information which has to be submitted in detail and regularly.

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<sup>1</sup> The two documents cover the full range of amended features, including partial access, the Internal Market Information (IMI) system, language controls, the European Professional Card (EPC), and the alert mechanism. These have no direct relevance to higher education training provision and are not addressed in this briefing.

2.4 Much of the data is required by the DIR, but some obligations derive from the [Proportionality Directive](#)<sup>2</sup>, specifically the need to justify the extent and purpose of regulation. The Commission was, and remains, unhappy: despite some improvement, “many Member States still fail to meet their obligations regarding the transparency of information on regulated professions and the proportionality of regulation with a reasonable degree of diligence.”

2.5 As of May 2020, the Commission regarded the implementation of recognition in the seven sectoral professions as “generally adequate”. It listed a number of areas in which some MSs had made progress, noting that other MSs were in ongoing discussion with DG GROW. For example, non-compliance with the DIR requirements on the minimum length of training programmes was reported in 13 MSs at the end of the transposition period in 2016; this was particularly problematic for medical doctors and general care nurses. By 2020 nine MSs had made progress and four remained at the discussion stage.

2.6 General care nurses featured prominently among those MSs experiencing difficulty in enshrining in their own legislation the lists of competences upgraded by the amended DIR. This was no surprise, as nursing was the profession with the most extensively elaborated list. In midwifery, transposition was least well achieved in insuring the correct balance between theoretical and clinical training.

2.7 As for the General System, it had by and large been “satisfactorily transposed”. Virtually all outstanding issues had been settled. The most problematic had been the administration of compensation measures for those applicants for professional registration who did not satisfy the Competent Authority’s requirements.

2.8 A separate [report commissioned by the European Parliament](#) confirms that “there are considerable discrepancies in the use of compensatory measures across Member States”<sup>3</sup>, ranging from Greece, where only 3% of General System decisions entailed aptitude tests or adaptation periods, to Luxembourg, where the equivalent figure was 28%.

2.9 Parliament’s Internal Market and Consumer Affairs committee (IMCO) followed up in October with a draft Opinion on impacts of EU rules on the “free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills”. Voting on the motion tabled by the lead committee (Employment and Social Affairs - EMPL) is scheduled for the spring.

2.10 The Commission found that the new provisions on traineeships, particularly in architecture, had not been adopted as required. Article 55 of the DIR enforces, under certain conditions, the recognition of professional training programmes undertaken in other MSs or in third countries. Each MS must publish appropriate guidelines, with specific reference to how the traineeships must be supervised.

2.11 In an attempt to extend the principle of automatic recognition, the DIR allows Common Training Frameworks or Tests to be set up by a minimum of nine MSs regulating a particular profession. Other MSs can then opt in. To date, the only agreed test is in the field of ski instruction. Although 30 professions expressed an interest, most could not be taken further. In some cases (osteopathy, chiropractice, fitness instruction) the threshold of nine MSs was not reached. In others, the Commission deemed that the additional national regulation required would be counterproductive. In contrast, the [European Association of Hospital Pharmacists](#) continues to report progress.

2 Directive 2018/958 ‘on a proportionality test before adoption of new regulation of professions’: The Directive represents the EU’s attempt to rationalise and limit the proliferation of regulation at national and regional levels.

3 Dahlberg, E. et al., *Legal obstacles in Member States to Single Market rules*, Publication for the committee on Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, p.84.

2.12 In the cases of healthcare assistants and engineers, the Commission took the initiative, but without success. A [study of healthcare assistants](#) revealed too great a degree of disparity regarding the level of qualification required by each national health system. As for engineers, the Commission had already shown its displeasure at the 71 varieties of regulated civil engineers. Following an unpublished study, it concluded that “although there was consensus to develop the idea of a framework for engineers, several stakeholders (in particular non-regulating Member States) and education providers were hesitant regarding process and potential consequences on the regulation of the profession in non-regulating countries and on the education system.”<sup>4</sup>

2.13 Following the Commission’s efforts to accelerate the transposition of the DIR, the volume of infringement proceedings initially declined sharply. In the May 2020 package, Reasoned Opinions were sent to Belgium (sectoral professions and traineeships) and to Spain (recognition procedures and language controls). In the July package there were no infringements of the DIR. The lull, however, was short-lived, as the [October package](#) found fault with Cyprus, Germany, Malta and Slovakia.

2.14 Finally, it is worth pointing readers to the publication by the Commission of an updated version of its [User Guide](#) to the DIR. “User” here means the intending mobile professional, rather than the regulatory authority. The Guide is accessible and comprehensive.

### **C. SIGNIFICANT DEVELOPMENTS IN THE REGULATED PROFESSIONS**

3.1 The Commission and the Romanian government have been working on an upskilling programme for those Romanian general care nurses who trained before 2017 and whose training did not meet the minimum standards required for automatic recognition. The programme is now up and running, to the apparent satisfaction of all parties. Romanian higher education institutions are among the providers. Automatic recognition, however, is not yet in place and awaits action by the Commission. Full details, including a list of the ‘train-the-trainers’ courses delivered by experts from other MSs, are given in Part V of the [Staff Working Document](#) and confirmed by Commissioner Breton in an [answer to a Parliamentary question](#).

3.2 In our April Briefing we mentioned the exercise in mapping the knowledge, skills and competences of general care nurses. It was commissioned by DG GROW, under pressure from lobby by the profession, in order to establish whether and how the basic training programme should be overhauled. The [report](#) of the study undertaken by Spark Legal Network has now been published. It found that Article 31 and Annex V could usefully be updated in terms of e.g. person-centred care, e-health, leadership and management skills.

3.3 Subsequently, at the [Coordinators meeting in January 2020](#) the Commission asked MSs to submit their views of how the required knowledge and competences of general care nurses might be amplified and what might be removed from the existing list. It would then determine whether a delegated act was appropriate. This was not resolved at the June 2020 meeting; consultations therefore continued. The minutes of the October meeting have not yet been made public.

3.4 The profile of the general care nurse has come under intense scrutiny during the pandemic. DG GROW, should it contemplate a delegated act, will doubtless take note of the views of [DG SANTE and DG Education and Culture](#) and the [European Federation of Nurses Associations](#) (EFN), particularly in the context of the proposed E4Health programme (see section A above).

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<sup>4</sup> See the Commission’s [Report](#) on the implementation of the Directive, p.13.

3.5 In late 2019, the Commission tendered unsuccessfully for [mapping studies of dentists and pharmacists](#). It has since re-tendered with a February 2020 deadline. So far no public announcement has been made.

3.6 Annex V is updated annually and absorbs new professional specialisms on which – after Brexit – at least eleven MSs (two fifths of the total) agree. Cardiac surgery will feature in the 2020 revision. Discussions are ongoing in respect of periodontology, physiotherapy, and sports medicine. Likewise, the question of whether radiology and diagnostic radiology should be merged.

3.7 In the framework of the EU's [Comprehensive and Economic Trade Agreement with Canada](#) (CETA), a mutual recognition agreement has now been concluded between the Architects' Council of Europe (ACE) and the Canadian Architectural Licensing Authority (CALA). There is no public record of this in the minutes of DG Grow's Group of Coordinators: the topic was deemed sensitive in the context of the ongoing Brexit negotiation and the minute was redacted. However, full details of the MRA can be found on the [CALA website](#). In early 2021, the MRA will be processed through the CETA committee structure and formally enshrined in the Trade Agreement.

3.8 In May the Commission issued a set of [guidelines](#) which softened or waived some of the normal recognition procedures underpinning the cross-border mobility of healthcare workers. This easing of requirements was designed to help Competent Authorities grapple with Covid-19. The guidelines also addressed the need of MSs to bring healthcare graduates into full-time active service on an emergency basis: if programmes were longer than the minimum required, there was no problem; in cases where the programme might be reduced to below the minimum, formal derogation was required. As of June, no such derogations had been requested.

3.9 Discussion in the Group of Coordinators also covered the question of how far simulations might be used in the context of the Covid-led shifting of learning and teaching to remote provision. This posed no problem in the theoretical parts of the training programmes, but – the Commission ruled – simulations could not be used as a substitute for clinical training and, in any case, such a change would fall outside the scope of any delegated act.

## **D. RELEVANT FEATURES OF THE EUROPEAN EDUCATION AREA**

4.1 Readers may recall our passing references to the European Skills/Competences, qualifications and Occupations Database (ESCO), set up to calibrate qualifications against the taxonomy of the International Labour Organisation (ILO). It has now successfully migrated its data to the upgraded EUROPASS instrument, thus further tying educational processes to labour market needs. Because it is referenced also to national qualifications frameworks (NQFs), it has a learning outcomes orientation which it believes facilitates the recognition of informal and non-formal learning. The ESCO website has a useful [overview](#) of its focus on qualifications.

4.2 In September, the Commission published a major statement of intent: to complete the [European Education Area by 2025](#). It brings into shared focus the two prime drivers of the wider policy frame – health and climate change – addressing them in terms of skills, research and human rights. It sees the period 2020-25 as one of green and digital transition. Within this dynamic perspective, the Communication rehearses themes familiar to the higher education sector: mobility, recognition, graduate tracking, transnational collaborative activity, joint degrees, internationalisation and capacity building in Partner Countries.

4.3 There are also shifts in emphasis: a renewed stress on multilingualism, a stronger focus on gender, forward movement on environmental sustainability in education, and a drive to raise the quality of teacher education.

4.4. Accordingly, the Communication envisages consolidation of the Erasmus+ programme and the system of European University alliances. It tentatively floats the possibility of a European degree, but in the absence of a legal competence acknowledges that this will depend on the agreement of MSs.

4.5. From the perspective of qualifications, the most interesting feature of the Communication is European Approach to Micro-credentials:

“They are useful not only for professionals, but can also complement the curriculum for students at Bachelor, Master and Doctoral levels. A growing number of adults, with or without a higher education degree, will need to reskill and upskill through more flexible alternatives than a full degree in order to overcome the gap between the learning outcomes of their initial formal qualifications and emerging skills needs in the labour market. The need for more flexible and inclusive learning paths has increased as the student population is becoming more diverse and the learning needs more dynamic. While a growing number of higher education institutions, including European Universities, are already working on the development of these micro-credentials, a common definition and a common approach on their validation and recognition is lacking. In this context, as announced in the Skills Agenda, the Commission plans to present a proposal for a Council Recommendation in 2021. The purpose of the recommendation would be that European actions will support building trust in micro-credentials across Europe and aims at having all the necessary steps in place by 2025 for their wider use, portability and recognition.” [pp.15-16]

4.6 As well as having implications for continuing professional development (CPD), over which the EU has no direct jurisdiction, this initiative may pose problems for the “essential” elements of the DIR (i.e. those which are out of reach of modification by delegated acts). Given that the Commission’s central motivation is to green and digitise the EU labour market, this is not a marginal matter. Accommodating micro-credentials in the framework of the DIR must be conditional on the existence of established and proven accreditation, quality assurance, and recognition mechanisms.

4.7 Meeting the 2025 deadline will require concerted inter-service and stakeholder consultation, presumably well in advance of the next scheduled report on implementation (2024), if the Commission is to decide whether to proceed to a full-scale review of the DIR leading to new legislation.

4.8 As the Commission finalises the next version of the Erasmus programme, it will no doubt take note of a [briefing](#) prepared for the Culture and Education (CULT) committee of the European Parliament. This pointed to the absence of climate goals in Erasmus+ now drawing to its close, while hailing their likely appearance in the future.

4.9 The CULT briefing alerted Parliament to the fact that (as of May 2020) “the Commission is not directly steering programmes in their contribution to environmental and climate goals and strategies and actions of implementing institutions are not systematically recorded. As a result, there are no coordinated instruments and activities in place to steer or support the institutions responsible for implementing the programmes<sup>5</sup> (Education, Audiovisual and Culture Executive Agency (EACEA), National Agencies (NAs)).” The briefing goes on to propose a range of methods for encouraging eco-friendly mobility and compensating for carbon emissions, praising the Dutch and French NAs for their independent initiatives in this area.

4.10 The Commission has already upgraded its [Digital Education Action Plan](#) (DEAP), acting on a stakeholder consultation which closed in September. “According to respondents, action at EU level should support professional development for teachers; guidance on digital education; enhance Member States’ efforts to improve connectivity and infrastructure, provide support to education and training institutions for the development of digital education strategies and specific measures for disadvantaged groups.”

<sup>5</sup> The emphasis is the CULT briefing’s, not EUA’s.

#### 4.11 The Plan's labour market perspective emerges prominently:

All Member States face shortages of digital experts, including data analysts, cybersecurity analysts, software developers, digital accessibility specialists and machine-learning experts. [...]

Research by the Commission shows that there is scope for increasing the EU-based Master's programmes in artificial intelligence and cybersecurity. This will give access to high-quality and relevant learning opportunities in advanced digital areas throughout the EU.

More needs to be done to promote professions and careers in the digital sector. Although many efforts and initiatives are underway, including by professional computer societies and the European Committee for Standardisation on IT professionalism and digital competences, on-going efforts must be recognised, promoted and scaled-up.

4.12 Various supporting measures are proposed: more work on digital competences; an information and good practice hub; a study of the feasibility of a European platform for the exchange of online learning and teaching resources; the mainstreaming of blended learning; virtual and face-to-face inter-university campuses; targeted capacity building in Partner Countries.

4.13 The European Education Area is also known as the European Education and Training Area, suggesting that vocational education and training have their place in a wider and better integrated space. The [Osnabrück Declaration](#), sponsored and published by the German presidency in the autumn, is insistent. Ministers of the Copenhagen Process countries stress the "relevance of VET programmes at EQF levels 5 to 8 on a par with HE in order to offer VET graduates a flexible, inclusive and valuable path to high-level jobs and career opportunities in response to current and future socio-economic needs." The future of rigid binary systems is in doubt.

## E. THE BREXIT NEGOTIATIONS

5.1 The deal is done, or almost done. Signed by both parties and approved by the UK Parliament on 30 December, it came into provisional application on 1 January. The European Parliament is expected to approve it at its plenary in March - the final step before ratification. More than an FTA, it is a [Trade and Cooperation Agreement](#) (TCA), covering cooperation in judicial, health and cyber security, as well as trade in goods and, to a limited extent, in services.

5.2 We mention the relevant chapters below, but first, a look at other shared or soon-to-be shared trade partners. In November, the UK and Canada successfully rolled over the CETA, giving the UK approximately the same benefits that it would have enjoyed as an EU MS. It will be able to replicate the architects' MRA, although it may decide to leave this for the fully fledged FTA which the parties intend to negotiate later this year. Also rolled over are the trade agreements with Japan, Korea and Singapore, all of which contain an MRA facility.

5.3 The UK and the EU are both negotiating with Australia and New Zealand; in effect, they are competing. While the EU will hope to include its now standard MRA provision, the UK prioritises accountants, auditors, lawyers, architects and engineers. Given the fragmented map of engineering in the EU (see para.2.12 above), the UK is likely to win this particular race.

5.4 The European Economic Area countries are covered by Directive 2005/36/EC and the UK’s agreement with them accordingly lapsed on 31 December. However, the UK has agreed with Iceland and Norway that the qualifications of professionals practising in each other’s territories will continue to be recognised, prior to the negotiation of a formal UK-EEA FTA.

**The TCA – higher education services**

5.5 The Agreement follows the same format as previous EU FTAs. In line with the GATS, it excludes public education as well as services provided for government purposes. It also conforms explicitly to WTO principles of market access, national treatment and most favoured nation, while at the same time setting out in Annex all the existing and future measures which Member States deploy to limit the scope of the over-riding principles. In previous briefings, we have reviewed these Reservations in respect of Canada, Japan and Korea.

5.6 In the TCA<sup>6</sup>, the existing measures relevant to privately-funded HE are boxed below (public education, as we have said, being excluded). They reflect the fact that MSs possess legal competence for education and therefore already have in place provisions designed to protect their systems. Overall, the set of measures confirm what was previously the case – that the UK is open to foreign HE providers, whereas a substantial number of EU MSs are, in their different ways, more defensive.<sup>7</sup>

<b>EU</b>	<u>The EU (applies also to the regional level of government): Any Member State, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity providing health, social or education services, may prohibit or impose limitations on the ownership of such interests or assets, and/or restrict the ability of owners of such interests and assets to control any resulting enterprise. With respect to investors of the United Kingdom or their enterprises. With respect to such a sale or other disposition, any Member State may adopt or maintain any measure relating to the nationality of senior management or members of the boards of directors, as well as any measure limiting the number of suppliers.</u>
<b>Austria</b>	The provision of privately funded university level education services in the area of applied sciences requires an authorisation from the competent authority, the AQ Austria (Agency for Quality Assurance and Accreditation Austria). An investor seeking to provide an applied science study programme must have his primary business being the supply of such programmes, and must submit a needs assessment and a market survey for the acceptance of the proposed study programme. The competent Ministry may deny an authorisation where the programme is determined to be incompatible with national educational interests. The applicant for a private university requires an authorisation from the competent authority (AQ Austria - Agency for Quality Assurance and Accreditation Austria). The competent Ministry may deny the approval if the decision of the accreditation authority does not comply with national educational interests.
<b>Bulgaria</b>	Foreign higher education institutions cannot establish subsidiaries in the territory of Bulgaria. Foreign higher education institutions may open faculties, departments, institutes and colleges in Bulgaria only within the structure of Bulgarian high schools and in cooperation with them.

<sup>6</sup> See Annex SERVIN-1, pp.530 *et seq.*

<sup>7</sup> The boxed material is indicative only. HEIs contemplating activity in the private education market should undertake due diligence and consider the totality of the TCA text, not merely the extracts published here. Moreover, the existing TCA text is ‘for information only’; although agreed by the EU and the UK, the parties warn that the numbering of the Articles may change before the Agreement comes into application.

<b><u>Cyprus</u></b>	Nationality of a Member State is required for owners and majority shareholders in a privately funded school. Nationals of the United Kingdom may obtain authorisation from the Minister (of Education) in accordance with the specified form and conditions.
<b><u>Czech Republic</u></b>	Establishment in a Member State is required to apply for state approval to operate as a privately funded higher education institution. This reservation does not apply to post-secondary technical and vocational education services.
<b><u>France</u></b>	Nationality of a Member State is required in order to teach in a privately funded educational institution. However, nationals of the United Kingdom may obtain an authorisation from the relevant competent authorities in order to teach in primary, secondary and higher level educational institutions. Nationals of the United Kingdom may also obtain an authorisation from the relevant competent authorities in order to establish and operate or manage primary, secondary or higher level educational institutions. Such authorisation is granted on a discretionary basis.
<b><u>Greece</u></b>	Education at university level shall be provided exclusively by institutions which are fully self-governed public law legal persons. However, Law 3696/2008 permits the establishment by Union residents (natural or legal persons) of private tertiary education institutions granting certificates which are not recognised as being equivalent to university degrees.
<b><u>Italy</u></b>	An authorisation is required in order to open a privately funded university which issues recognised diplomas or degrees. An economic needs test is applied. Main criteria: population and density of existing establishments. This is based on a three-year programme and only Italian legal persons may be authorised to issue state-recognised diplomas.
<b><u>Malta</u></b>	Service suppliers seeking to provide privately funded higher or adult education services must obtain a licence from the Ministry of Education and Employment. The decision on whether to issue a licence may be discretionary.
<b><u>Slovakia</u></b>	Establishment in a Member State is required to apply for state approval to operate as a privately funded higher education institution. This reservation does not apply to post-secondary technical and vocational education services.
<b><u>Spain</u></b>	An authorisation is required in order to open a privately funded university which issues recognised diplomas or degrees. An economic needs test is applied. Main criteria: population and density of existing establishments. The procedure involves obtaining the advice of the Parliament.
<b><u>UK</u></b>	<p>The UK, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity providing health, social or education services, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests and assets to control any resulting enterprise, by investors of the Union or their enterprises. With respect to such a sale or other disposition, the UK may adopt or maintain any measure relating to the nationality of senior management or members of the boards of directors, as well as any measure limiting the number of suppliers.</p> <p>There are no other existing measures.</p>

5.7 The future measures give notice of what actions the EU and the MSs may choose at some time to undertake, with the effect of extending the limitations already in place. These future measures are the following<sup>8</sup>:

<b>EU</b>	The EU reserves the right to adopt or maintain any measure with respect to [...] Educational services which receive public funding or State support in any form. Where the supply of privately funded education services by a foreign provider is permitted, participation of private operators in the education system may be subject to concession [i.e. via public procurement] allocated on a non-discriminatory basis.
<b>Austria</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Bulgaria</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Cyprus</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Czech Republic</b>	The majority of the members of the board of directors of an establishment providing privately funded education services must be nationals of that country.
<b>Finland</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Malta</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Romania</b>	Reserves the right to adopt or maintain any measure in respect of the supply of privately funded higher education services.
<b>Slovakia</b>	The majority of the members of the board of directors of an establishment providing privately funded education services must be nationals of that country. EEA residency is required for suppliers of all privately funded education services other than post-secondary technical and vocational education services. An economic needs test may apply and the number of schools being established may be limited by local authorities.
<b>Slovenia</b>	The majority of the members of the board of directors of an establishment providing privately funded secondary or higher education services must be Slovenian nationals.
<b>Sweden</b>	Reserves the right to adopt or maintain any measure in respect of Educational services suppliers that are approved by public authorities to provide education. This reservation applies to privately funded educational services suppliers with some form of State support, inter alia educational service suppliers recognised by the State, educational services suppliers under State supervision or education which entitles to study support.
<b>UK</b>	No future measures are specified.

5.8 In addition, both the EU and the UK take reservations on GATS mode 4 (the movement of contracted or independent professionals); these can be viewed in Annexes SERVIN-3, -4 and -5.

<sup>8</sup> See Annex SERVIN-2, pp.644 *et seq.*

## The TCA – professional qualifications

5.9 The TCA does not offer what the UK wanted – seamless transition to full recognition of:

- professional qualifications falling within the scope of the DIR, both in the automatic recognition regime covering the seven sectoral professions and via the General System;
- professional legal qualifications covered by Directive 98/5/EC;
- professional auditing qualifications covered by Directive 2006/43/EC;
- professionals entitled to engage in the use of toxic products in the framework of Directive 74/556/EEC.

5.10 Instead, Article SERVIN-5.13 (p.97) and its accompanying Annex SERVIN-6 (p.770) offer a version of the standard MRA facility, by which the TCA's Partnership Council and committee structure consider joint proposals from relevant professional bodies. Pointedly, the Article footnotes that “For greater certainty, such arrangements shall not lead to the automatic recognition of qualifications but shall set, in the mutual interest of both Parties, the conditions for the competent authorities granting recognition.”

5.11 Beyond the MRA facility, Article 3.3 of the DIR applies. It gives recognition to a qualification throughout EU27 once a professional has completed three years of practice in a particular MS. But this simply underlines the fact that, for would-be mobile UK professionals, it is to the migration regulations of each MS that they must first direct their attention.

5.12 The TCA outcome is not surprising, given that the UK's need for qualified professionals is greater than that of the EU. The *Financial Times*<sup>9</sup> has reported that 17% (6,800) of practising dentists are from the European Economic Area, notably from Poland, Romania and Spain. This number seems bound to shrink. The possibility of boosting recruitment from India has been mooted, but this would depend on an appropriate UK-India trade deal; as the EU has already discovered, trade agreements with India are not easy.

5.13 In nursing, too, supply has reached crisis level. While the UK government has plans to raise the number of training places for UK citizens in the medium term, the combined effects of Covid-19 and Brexit will surely deplete numbers that are already low and heavily dependent on nurses from EU27. An OECD survey in 2019 scored the UK at 7.5 nurses per one thousand inhabitants, while twelve other nations (including seven MSs) scored over 10, and Norway, Switzerland and Iceland over 15.

5.14 On the UK side, [UK NARIC](#) is advising the government on how to manage professional recognition. This is in the framework of a consultation which will yield a report in early 2021. In September, UniversitiesUK put out a call to its members, prior to finalising its contribution to the consultation. It sought evidence on which students in which subject areas would suffer from exclusion from the scope of the DIR, which departments would experience difficulties in student recruitment as a result, and how these developments would affect professional mobility in the international labour market.

9 Financial Times, October 26, beyond the paywall at <https://www.ft.com/content/fca7362c-dee3-4158-8486-88f248f41716>

### **The TCA – public procurement**

5.15 As an EU MS, the UK was an actor in both the EU public procurement architecture and the WTO's 2014 [Revised Agreement on Public Procurement](#) (GPA). It is now a free agent in the GPA. Accordingly, the TCA contains an Annex PPROC-1.

5.16 Each member of the GPA publishes Schedules detailing in which sectors it is prepared to extend tenders to service providers in GPA partner countries. The WTO website has not yet posted the UK's Schedules. It is clear, however, from the text of the TCA that the EU and the UK are keen to open their procurement markets more widely. The EU goes beyond its published Schedules to include, among other things, education services, a commitment reciprocated by the UK. Trade experts characterise the arrangement as GPA+.

### **The TCA – Horizon Europe**

5.17 Part Five of the TCA deals with the conditional participation of the UK in EU programmes. It cites a Protocol I which details the agreed list of programmes, as well as the duration and conditions of UK participation, reviewable in 2025. The Protocol is not included in the text of the TCA, but the two parties have agreed a mode of access to the Horizon Europe research programme. Some of the financial provisions are set out in Annex UNPRO-1, clause 6 (p.1051).

5.18 EUA will of course monitor developments. Readers are invited to note the [statement issued jointly by EUA and UniversitiesUK](#) on 30 December.

### **The TCA - Erasmus**

5.19 Much to the dismay of many stakeholders, the UK has opted to quit the Erasmus programme, ostensibly on the grounds of cost, and because it had no wish to participate in Actions 2 and 3. On the topic of Erasmus, the TCA is therefore mute.

5.20 Instead, the UK has announced the launch of the [Turing scheme](#), which in its first year will commit GBP 100m to fund 35,000 outgoing students. Minister of Education Gavin Williamson has presented Turing as “a truly international scheme”, with the implication that Erasmus was not. Details are not yet available, but it appears that UK HEIs will be invited to bid for participation in a programme which makes no provision for incoming mobility. Reaction in UK academia has been predominantly negative. It is feared that the principal mobility flows will be to anglophone countries and carry reduced inter-cultural value. The choice of name, while it signals diversity and innovation, nonetheless carries echoes of World War II triumphalism. With the leaving of Erasmus, a potent soft power instrument has been lost to the UK.

5.21 Students in Northern Ireland, however, will retain Erasmus eligibility, thanks to the Irish government which has decided to allow them to register in Irish HEIs and to cover the necessary participation costs.

Comments and corrections are welcome:

[empl@eua.eu](mailto:empl@eua.eu)

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