

PROFESSIONAL QUALIFICATIONS RECOGNITION OF DOCTORS IN THE EU: A PERSPECTIVE OF EU CITIZENS AND THIRD-COUNTRY NATIONALS

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Abstract This article explores the applicable rules in the context of professional qualifications recognition of doctors in the EU. In the pursuit of this examination, it focuses on two groups of individuals, namely EU citizens and third-country nationals, and differentiates between qualifications obtained in the EU and qualifications obtained outside EU. While EU citizens are generally free to pursue their medical profession in any EU Member State, third-country nationals experience difficulties in the recognition of their professional qualifications as they fall outside the scope of specific rules on professional qualifications recognition and do not enjoy free movement rights. The assessment of the applicable rules is followed by a conclusion that the EU citizens are protected under the EU legal framework for the recognition of professional qualifications, however, the legal framework for the recognition of foreign professional qualifications is still absent and depends largely upon general rules applicable to third-country nationals willing to settle and work in the EU.

Keywords
professional
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1 Intrudaction

Trustworthy, accessible and reliable medical services are critically important in every society (Costigliola, 2012). As doctors and other medical care professionals are principally responsible for upholding those values, in return they deserve appropriate and stimulating working conditions. Otherwise, both patients and medical care providers might seek better standards elsewhere. However, mobility might be contrained both by push and pull factors (like education or training in another country, family, etc.) (Hadj Abdou, 2020), which are especially present in the EU, where free movement is understood as an essential part of integration (Barnard, 2019; Hojnik & Knez, 2015).

To simultaneously facilitate free movement and ensure quality of health services and safety of patients, certain common professional standards had to be introduced into EU law. The underlying objectives of professional qualifications in the EU were also accentuated by the Court of Justice of the EU (CJEU) in the case *Kohll*¹, where the Court held that once the minimum training standards under EU law are fulfilled, the person can exercise free movement without questioning the equivalence of the diplomas in host and home states.² The Court explicitly affirmed that since the conditions of taking up and practising the doctor's profession are harmonized in EU legislation, the quality of doctors within the EU is sufficiently guaranteed.³

Accordingly, mutual trust among Member States in the EU is to a certain degree presumed and thus EU citizens are generally free to pursue their medical profession in any EU Member State. However, third-country nationals (TCNs)⁴ are subject to more stringent rules and might experience further difficulties in the recognition of their professional qualifications. The rationale underlying this distinction is that education, skills and experiences are not necessarily equivalent or harmonized worldwide. Regrettably, the non-recognition commonly leads to “brain waste”, a situation in which competent professionals face a significant devaluation of their

¹ C-158/96 Raymond Kohll v Union des caisses de maladie ECLI:EU:C:1998:171.

² *Ibid.*, para. 48.

³ *Ibid.*, paras. 47–49; see also C-120/95 Nicolas Decker v Caisse de maladie des employés privés ECLI:EU:C:1998:167.

⁴ Article 3 Returns Directive and Article 2(6) Schengen Borders Code both define the notion of TCN: any person who is not a Union citizen within the meaning of Article 20(1) TFEU and who is not a TCN family member of a Union citizen exercising his or her right to free movement, and not a TCN who, under agreements between the Community and third countries, enjoys rights of free movement equivalent to those of Union citizens (EEA).

skills when entering another country's market (Elo et al., 2020; Özden, 2006). Although efforts have been made at both international and regional levels to overcome this issue, the numbers paint a pessimistic picture. In 2020, a Eurostat study (Eurostat, 2021) found that the EU's overall average overqualification rate of non-EU citizens was over 40 percent.⁵ Another study (European Commission, 2021) found that non-EU citizens are over-represented in specific sectors such as construction and domestic work, while they are under-represented in other fields especially human health and education.

This article examines whether the rules on professional qualifications recognition in the EU are suitable to tackle the threat of "brain waste" and the accompanying staff shortages of doctors in some EU Member States while at the same time ensuring that fundamental principles and freedoms of EU law remain in balance. Thus, this article is deliberately limited to EU rules and the jurisprudence of the Court of Justice of the EU, although other rules are also important, especially from the TCN point of view, where the internal market freedoms do not apply (bilateral treaties between countries, multilateral treaties,⁶ and international instruments⁷).

More specifically, the article explores the legal bases for the pursuit of medical profession in the EU of both EU citizens and TCNs who obtained their qualifications either in the EU or outside the EU. The goal is to identify and examine different rules applicable to EU citizens and TCNs, equip them with relevant information about their statuses and set the stage for further research and policy improvement recommendations in this area.

2 Limitations

Qualification recognition can refer either to *higher education recognition*, which can be defined as "approval of courses, qualifications, or diplomas, from one (domestic or foreign) higher education institution by another for the purpose of student admission to further studies or for professional purposes", or to *professional recognition* as "the right to practice and the professional status accorded to the holder of a

⁵ The overqualification rate of nationals was around 20 percent.

⁶ Convention on the Recognition of Qualifications concerning Higher Education in the European Region (adopted 11 April 1997), ETS No. 165.

⁷ Global Convention on the Recognition of Qualifications concerning Higher Education (adopted 25 November 2019).

qualification”.⁸ This article emphasizes professional qualifications recognition, while academic qualification will be discussed only to the extent it concerns mobility for professional purposes.

Moreover, as different push and pull factors drive migration flows, mobility should not be considered in isolation. In practice, as different statutes frequently overlap various rules might be applicable. This is especially true at the intersections of labour migration and family reunification or asylum statutes, for example when a TCN professional marries an EU citizen. This paper will distance itself from the various and complex possible scenarios and focus solely on professional qualifications recognition.

3 Qualifications recognition in EU law

The system of professional qualifications recognition in the EU is complex. While the rules cover recognition of qualifications obtained in the EU,⁹ to some extent they also cover foreign qualifications recognition. This part of the paper will focus both on EU citizens and TCNs willing to pursue their profession in the EU and two scenarios will be examined: whether the individual in question obtained professional qualification in the EU or outside EU.

3.1 Competences of the EU in the field of qualifications recognition

Article 53 of the Treaty on the Functioning of the EU (TFEU)¹⁰ serves as a legal basis for the power of the EU to create and adopt legislation on professional recognition. The first paragraph enables the mutual recognition of diplomas and other qualifications required in each Member State for access to regulated professions and addresses the need to coordinate national rules on the taking-up and pursuit of activities as self-employed persons,¹¹ while paragraph 2 of the same article

⁸ Agency for Science and Higher Education, ‘Academic Recognition’. Retrieved from <https://www.azvo.hr/en/component/seoglossary/6-quality-assurance-and-accreditation-glossary-basic-terms-and/241-academic-recognition> (February 28, 2023); Recognition of Qualification and Education in the Czech Republic. Retrieved from <https://www.msmt.cz/eu-and-international-affairs/uznavani-kvalifikaci?lang=2> (February 28, 2023).

⁹ EU secondary law also extends professional qualifications recognition to nationals of EEA States.

¹⁰ Treaty on the Functioning of the European Union of 13 December 2007, consolidated version, OJ C 202, 47–360.

¹¹ C-268/99 Jany and others v Staatssecretaris van Justitie ECLI:EU:C:2001:616, paras. 34 and 70.

explicitly mentions medical and paramedical professions when it stipulates that “the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.”

This competence is further reinforced by the competence to prevent barriers to free movement. Wide recognition of diplomas and qualifications issued at national levels is required for the exercise of the internal market freedoms. The interplay between the internal market and professional recognition can also be derived from case-law of the CJEU. With regard to the provision of services, the CJEU ruled in the *Van Binsbergen* case¹² that specific requirements may be imposed on the service provider only if the rules follow the general good - in particular rules relating to organization, qualifications, professional ethics, supervision and liability.¹³ However, in this regard the CJEU explicitly mentioned that when legislation of the host Member States that requires observance of relevant national professional rules of conduct hinders or obstructs free movement or makes it less attractive, it has to be objectively justified.¹⁴ Thus, the host Member State’s legislation in the field of professions is not exempt from the Treaty’s principles (Peeters, 2007, p. 241). Lastly, in this case the CJEU reiterated the principle of non-discrimination and stated that national rules must be binding upon any person established in the State where the service is provided.¹⁵

Concerning freedom of establishment, the interplay of internal market rules and the recognition of professional qualifications was flagged in the *Commission v Spain* case.¹⁶ There, the CJEU both described the meaning of regulated professions and affirmed that the right to recognition of diplomas is guaranteed as an expression of the fundamental right to freedom of establishment.¹⁷

The aforementioned principles are a corollary to the principle of mutual recognition (Horak et al., 2014, p. 90), which forms the basis of the subsequently adopted secondary legislation mapped below. The principle was established by the CJEU in

¹² 33/74 *Van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* ECLI:EU:C:1974:131.

¹³ *Ibid.*, para. 12.

¹⁴ *Ibid.*, para. 10.

¹⁵ *Ibid.*, para. 11.

¹⁶ C-39/07 *Commission of the European Communities v Kingdom of Spain* ECLI:EU:C:2008:265.

¹⁷ *Ibid.*, para. 37.

*Vlassopoulou*¹⁸, where the Court was confronted with the question of whether national requirements concerning the exercise of a profession take precedence over qualifications obtained in another Member State.¹⁹ It ruled that Member States have to consider all diplomas, certificates and other evidence of qualifications obtained in another Member State²⁰ and if such an assessment proves that the qualifications correspond to the national requirements, Member States are obliged to recognize them.²¹ Although the case at hand concerned recognition of legal profession, the underlying principle established in this case remains at the heart of qualifications recognition rules in the EU.

3.2 The evolution of qualifications recognition in the EU

Apart from internal market principles, secondary legislation on qualifications recognition was adopted at the EU level. The underlying idea was to gradually introduce the principle of mutual recognition for various professions. This culminated in the adoption of three general directives. The first one introduced a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.²² The second general system established rules in respect of professions for which the required level of education and training is not as high.²³ The third general system extended the mutual recognition approach to activities such as manufacturing and processing, small craft industries, food and retail trade, intermediary and construction and sectorally regulated professions²⁴ (Peeters, 2005, p. 374).

¹⁸ C-340/89 *Irène Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* ECLI:EU:C:1991:193, para. 16; C-238/98 *Hugo Fernando Hoesman v Ministre de l'Emploi et de la Solidarité* ECLI:EU:C:2000:440, para. 23.

¹⁹ *Vlassopoulou*, para. 5.

²⁰ *Ibid.*, para. 16.

²¹ *Ibid.*, para. 19.

²² Council Directive 89/48/EEC of 21 December 1988, on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, OJ L 019, 16–23.

²³ Council Directive 92/51/EEC of 18 June 1992, on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, OJ L 209, 25–45.

²⁴ Directive 99/42/EC of the European Parliament and of the Council of 7 June 1999, establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalization and transitional measures and supplementing the general systems for the recognition of qualifications, OJ L 201, 77–93.

Harmonisation has progressed faster in the health profession system, where the professional requirements do not vary much from one country to the other. Apart from the general European secondary legislation, the recognition of medical profession recognition was regulated sectorally in the Doctors' Directive 93/16,²⁵ which introduced rules on both recognition of diplomas ("taking up" of the profession), and the "pursuit" of the profession including the requirement of documents, applicability of disciplinary measures etc. (Peeters, 2007).

These rules were later united in one, single Professional Qualifications Directive (Directive 2005/36/EC),²⁶ with the aim to simplify and modernise the existing directives, and to integrate the regulated professions of doctors, dentists, nurses, veterinary surgeons, midwives, pharmacists and architects.²⁷ The Directive 2005/36/EC was later updated by Directive 2013/55/EU²⁸ in 2013.²⁹ Although the overall system of qualifications recognition remained the same, the new Directive instituted various modernizations, for example the introduction the European professional card and the central online access to information and completion of procedures by electronic means, thus ensuring availability of online information via unique contact points, as well as the establishment of assistance centers. Most importantly, it introduced the system of automatic recognition for seven professions, namely architects, dentists, doctors, nurses, midwives, pharmacists and veterinary surgeons (Horak et al., 2014.)

²⁵ Council Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, 5 April 1993, Official Journal L 165, 1–24.

²⁶ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, on the Recognition of Professional Qualifications, OJ L 255, 22.

²⁷ The European Parliament, The mutual recognition of diplomas, Fact Sheet. Retrieved from <https://www.europarl.europa.eu/factsheets/en/sheet/42/the-mutual-recognition-of-diplomas> (February 28, 2023).

²⁸ Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (IMI), OJ L 354.

²⁹ Tiedje, J., Head of Unit, DG Internal Market: The Directive on Recognition of Professional Qualifications: what is at stake for Service Professionals?, CEPI meets... Retrieved from <http://www.cepi.eu/uploads/File/CEPImeetsJurgenTiedje.pdf> (February 28, 2023); Commission published a Green Paper on Modernising the Professional Qualifications Directive and a proposal for a revision of the Professional Qualifications Directive.

The Directive 2005/36/EC remains in force together with amendments introduced by the Directive 2013/55/EU (hereinafter PQD).³⁰ The last policy attempt in the qualifications recognition was made at the beginning of the COVID-19 pandemic, when the Commission was quick to respond with a communication on facilitating the mutual recognition of health workers' qualifications.³¹ Despite the fact this is an act of soft law, it both highlighted the Commission's acknowledgment of the importance of this question and its willingness to enhance the rules and adapt them in specific situations.

3.3 The 3-systems approach

The PQD lays out three systems for the recognition of professional qualifications:

- recognition on the basis of professional experience (Article 16 PQD)
- the general system (Article 10 PQD) and
- automatic recognition for professions for which the minimum training conditions have been harmonised (health professionals, architects, veterinary surgeons) (Article 21 PQD).

3.3.1 Recognition on the basis of professional experience

Individuals pursuing industrial, commercial and craft activities³² may qualify for automatic recognition of qualifications based on their professional experience. This system requires the applicant to submit evidence relevant to the previous pursuit of professional activities, which can be proved either based on certificates issued by a competent authority in a Member State or by certificates judged by a competent professional body to be fully valid. Recognition depends on a duration and type of experience, and the possession of general, commercial or professional knowledge and aptitudes (Article 16 of the PQD; Horak et al., 2014). Further conditions for recognition for each specific profession are specified in Annex IV of the PQD.

³⁰ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, on the recognition of professional qualifications (Text with EEA relevance), Consolidated text.

³¹ Communication from the Commission Guidance on free movement of health professionals and minimum harmonisation of training in relation to COVID-19 emergency measures – recommendations regarding Directive 2005/36/EC 2020/C 156/01, C/2020/3072, OJ C 156, 1–4.

³² Referred to in Articles 17–19 of PQD.

If the authorities of the host country find significant differences between the training acquired in the home country and that required for the same work in the host country, recognition might still be possible on the basis of the general system (Article 10 of the PQD).

3.3.2 General system for the recognition of professional qualifications

If the conditions prescribed in the other two systems are not fulfilled, the general system for the recognition of professional qualifications applies. In this system, the Member States remain responsible to establish the minimum level of qualifications. However, they are not completely free in this exercise as the assessment of the requirements is subject to the principle of proportionality.³³

Generally, this system requires that the host Member State permits the exercise of a regulated profession on its territory if the applicant possesses a qualification belonging to one of the five qualifications levels according to Article 11 of the PQD (see also Rodin, 2011). If the applicant's qualifications do not meet those of the host Member State, compensation measures may be imposed. Article 14 of the PQD provides that such measures may be imposed in the form of an adaptation period or an aptitude test. According to the CJEU in case *Harald Price*,³⁴ the choice between the adaptation period and the aptitude test must be in principle given to the applicant, whereas in cases of professions requiring precise knowledge of national law, it is the Member State that may decide between the two.

Another possible scenario, predicted in the new Directive 2013/55/EU, is that the qualifications of a professional might differ too much from those required by the host Member State. In this case, Article 4f PQD³⁵ provides such professionals with the possibility to acquire partial access if (a) they are fully qualified to exercise their profession in the home Member State, (b) the differences between the home and host Member State qualifications are so large that the professional would have to go through an entire new course of study to be able to exercise the profession in the host Member State, and (c) the professional activity concerned can be separated

³³ C-55/94 Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano ECLI:EU:C:1995:411.

³⁴ C-149/05 Harald Price v Conseil des ventes volontaires de meubles aux enchères publiques ECLI:EU:C:2006:532.

³⁵ See also C-330/03 Colegio de Ingenieros de Caminos, Canales y Puertos v. Administración del Estado EU:C:2006:45; C-575/11 Nasiopoulos v. Ipourgos Igias kai Pronoias ECLI:EU:C:2013:430.

from the other activities the host Member State regulated profession encompasses (Kortese, 2016, p. 53).

3.3.3 Full harmonization system in sectorally regulated professions and automatic recognition

While the last system is also founded on the principle of mutual trust (Peeters, 2007, 241), recognition is granted only if minimal harmonisation of training in the various Member States under Article 21 PQD is provided. This means that if minimum training standards are agreed upon across the EU, there will be no obstacles to automatic recognition of such qualifications.

Currently there are seven sectorally regulated professions with harmonised minimum training requirements in the EU: doctor (doctor with basic training and specialized doctor), nurse responsible for general care, dentist (dental practitioner and specialized dental practitioner), veterinary surgeon, midwife, pharmacist and architect. PQD establishes the minimum training conditions for each of the seven professions. For example, the training for doctors has to comprise of a minimum of six years of study consisting of a theoretical and clinical part, which can be expressed in ECTS credits (Articles 24–26 PQD; Horak et al., 2014; Kortese, 2016, p. 51.) The content of the study programme, especially with regard to the content of the theoretical and clinical parts, has to follow the description in Annex V of the PQD.

The PQD further defines the knowledge and skills that the individual has to possess after completion of the course of study. Under Article 28 PQD, there is no possibility of automatic recognition in cases where the individual has only obtained an academic diploma, but lacks the respective accompanying certificates as listed in Annex V (for example state exam).

On the contrary, if all the conditions are met, this means that the authority that oversees their profession in that country for the recognition of their qualifications, has to act positively upon the request for recognition and grant the same legal effects to those diplomas, corresponding to the minimum training requirements listed in the Directive, as they have in their home country (Article 21 of the PQD; Peeters, 2007, p. 234).

In the case *Preindl*,³⁶ the CJEU dealt with the question of automatic recognition of additional training in medicine. While Italy recognised Mr. Preindl as a dentist, it refused to recognize his qualification in surgery medicine, which was obtained in Austria after 15 months of additional training. The CJEU confirmed that the automatic recognition of both professions can be requested only if the two professions were obtained in accordance with Directive 2005/36. If the conditions identified therein are fulfilled for both profession, Italy is not allowed to verify whether the length of studies for a doctor in Austria corresponds to the length of studies in Italy.³⁷

Another situation worthy of discussion is that if individuals falling under one of the professions graduated from university before these rules were introduced³⁸ they can nevertheless benefit from automatic recognition, according to their so-called “acquired rights” under Article 23 PQD (and Article 27 PQD specifically for specialised doctors). They only have to provide additional proof (certificate) of effective and lawful three years’ work experience during the five preceding years in their country of origin (Englmann, 2009, p. 3). Thus, even if they do not meet all the minimum requirements, the formal education requirement is compensated by practical experience and training which serve as proof of knowledge of the field. As already stated, if the two possibilities are not met, recognition can still be obtained through the general system.

3.4 Freedom of establishment v. free provision of services

For clarification purposes it is important to distinguish between professional qualifications recognition in the context of establishment and provision of services. The three recognition systems of the PQD relate to the freedom of establishment (Kortese, 2016, 53–54), which denotes that the professional activity is pursued on “a stable and continuous basis” in another Member State.³⁹ The PQD also deliniatees rules for the free provision of services, where the professional migrates to another Member State to provide services “on a temporary and occasional basis”

³⁶ C-675/17 *Ministero della Salute v Hannes* ECLI:EU:C:2018:990.

³⁷ *Ibid.*, para. 38.

³⁸ The reference date is usually either the initial date of the directive’s entry into force or the date of the Member State’s accession of the Member State, in the case where this Member State only became a member after the entry into force of the Directive.

³⁹ Gebhard, para. 28.

(Articles 5–7 of the PQD). In this regard, pursuant to Article 5 PQD, Member States are not allowed to impose restrictions as to qualifications for professionals. The only exception is that the host Member State is allowed to check the service provider’s qualifications if that provider exercises a regulated profession that has public health or safety implications.⁴⁰ Moreover, the host Member State can require certain documents from the service provider (like a prior declaration informing the host Member State of his provision of services, a certificate of legal establishment, and a certificate that the person holds the necessary diploma, certificate or title) (Peeters, 2005, 380).

On the other hand, the PQD enables the host Member State to exempt service providing professionals from an authorization or membership of, or registration with, a professional organization or body and forbids the compulsory registration with a public social security body, required for the settlement with insurance bodies of accounts relating to services rendered (Articles 6 and 7 PQD; Peeters, 2005, p. 380).⁴¹

3.5 EU citizens⁴²

3.5.1 Professional qualification in the EU

As to the scope, Article 2(1) of the PQD applies to “*all nationals of a Member State wishing to pursue a regulated profession in a Member State (...) other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.*” The underlying principle is that when a host Member State requires from its citizens a certificate of good standard before they can practise the profession, it can ask the same from another EU citizen (Peeters, 2005, p. 380).

Under Article 3(1)(a) of the PQD, the term regulated profession refers to a professional activity whereto access is subject to specific professional qualifications due to legislative, regulatory or administrative provision. As explained, all Member States accept that there are seven professions which are regulated in the EU: doctors,

⁴⁰ Articles 6 and 7 of the PQD.

⁴¹ Although exceptions to this also exist pursuant to the same Articles.

⁴² The Directive applies to EEA countries. This is in line with the fact that freedoms of the internal market are generally applicable also to the whole EEA territory.

general care nurses, dentists, veterinarians, midwives, pharmacists, and architects.⁴³ They fall under the system of automatic recognition.

When a certain specialized training does not fall within the scope of the (list of the) Directive, the host Member State can require its own training qualifications. However, additional requirements can be justified only on the basis of the proportionality principle,⁴⁴ which would take into account especially the length of the training, the professional experience, additional training and medical refresher courses and postgraduate training of the concerned person.⁴⁵

A frequent additional requirement imposed by Member States upon foreign doctors is a language control test. In light of the duty to inform and explain in a clear and comprehensive manner the rights of the patient, having a language requirement seems a proportionate measure. However, while the choice of the control of the required linguistic knowledge is left to the individual interpretation of the Member States, the linguistic requirements can not go beyond the objectives strived for, as was confirmed in the *Haim II* case.⁴⁶ Thus, in the exercise of the proportionality test, Member States should take into account that different medical specialities use verbal communication to a different extent, thus the degree of the knowledge should be adapted accordingly.

3.5.2 Professional qualification outside EU

Member States recognize third country qualifications in accordance with their national rules. However, when the professional is exercising one of the seven designated professions⁴⁷ of the PQD, the minimum training conditions established by the PQD have to be maintained (Article 2(2) PQD). Moreover, under the PQD, qualifications obtained by EU citizens outside the EU may be considered evidence of formal qualifications and recognized in the EU under the conditions that the person holding those qualifications has three years of professional experience in the

⁴³ C-39/07 *Commission of the European Communities v Kingdom of Spain* ECLI:EU:C:2008:265.

⁴⁴ C-55/94 *Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* ECLI:EU:C:1995:411.

⁴⁵ C-340/89 *Irène Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden Württemberg* ECLI:EU:C:1991:193; C-319/92, *Salomone Haim v Kassenzahnärztliche Vereinigung Nordrhein* ECLI:EU:C:1994:47.

⁴⁶ C-424/97 *Salomone Haim v Kassenzahnärztliche Vereinigung Nordrhein* ECLI:EU:C:2000:357.

⁴⁷ For example with regard to automatic recognition of dentistry qualifications, see: C-154/93 *Abdullah Tawil-Albertini v Ministre des Affaires Sociales* ECLI:EU:C:1994:51.

Member State that has recognized the qualifications in question. In practice this means that this situation can come within the scope of application of the PQD (and the applicable system of recognition) if two conditions are fulfilled: one Member State recognizes these qualifications and the professional gains three years of experience in that Member State (Article 3(3) PQD; Kortese, 2016, p. 51).

3.6 Third-country nationals (TCNs)

3.6.1 Professional qualification in the EU

Economically active TCNs that are willing to pursue their profession in the EU do not fall under the scope of the PQD nor the internal market rules. However, a community element is still present if a TCN obtained education in the EU. For this purpose, the Students and Researchers Directive 2016/801/EU⁴⁸ provides the conditions of entry and residence of TCNs for the purposes of studies, as well as research, training, voluntary service, pupil exchanges and *au pairing*. While these rules should not be compared to the qualifications recognition systems under the PQD as they do not address economic activities, several Directive rules are intended to ensure that the qualification obtained in a Member State is further pursued in the EU.

The Students and Researchers Directive 2016/801/EU aims, among other things, to simplify the student permit approval process, give them access to the labor market for at least 15 hours per week, and provide them with the right to move within the EU (intra-EU mobility) (see also Iglesias Sánchez, 2009). Some Member States are even softening the requirements for recent graduates by eliminating labor market tests and lowering salary thresholds.

Additionally, in the pursuit of the goals mapped in the New Pact on Migration and Asylum 2020⁴⁹ the proposed amendments to the Directive will include a new right for students and researchers to look for a job or set up a business for nine months

⁴⁸ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and *au pairing* (recast), OJ L 132, 21–57.

⁴⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final.

after the end of their studies or research. This way, professional qualification obtained by TCNs in the EU would be recognized to a higher degree compared to foreign qualifications and TCNs would be further motivated to remain economically active in the EU.

3.6.2 Professional qualification outside EU

Even if the professional qualification recognition is generally not afforded to TCNs under the PQD and TFEU, this does not mean they are prohibited from pursuing their profession in the EU (Moritz, 2012). For these cases, a “patchwork” of secondary legislation (Directives) that regulates their status within the EU applies (Kortese, 2016, 51). More specifically, secondary legislation will trigger the extension of the application of the Treaties and the PQD.⁵⁰ In other words, TCNs who obtained professional qualifications abroad will be subject to EU law, including the principle of equal treatment (also with regards to professional qualifications recognition), if they can be protected under EU secondary law such as: TCN falling under the Single-permit Directive,⁵¹ highly skilled immigrants granted a Blue Card,⁵² long-term residents,⁵³ third country family members of EU citizens,⁵⁴ refugees⁵⁵ or researchers.⁵⁶ Since specific rules for TCN doctors and their qualifications recognition are not established, recognition of their qualification will therefore

⁵⁰ At the same time this means that as falling under one of the statutes triggers the extension of the application of the Treaties and the PQD, recognition can be afforded with regards to regulated professions, while the PQD subjects the recognition of unregulated professions to national law.

⁵¹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 1–9.

⁵² Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 17–29.

⁵³ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 44–53.

⁵⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 77–123.

⁵⁵ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 9–26.

⁵⁶ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast), OJ L 132, 21–57.

depend on the status they fall under pursuant to one of the directives (Kortese, 2016, p. 55).

4 Conclusion

The rules on recognition of professional qualifications in the EU are complex, especially if one considers that in practice different statutes might overlap. The emphasis in this paper was on qualifications recognition of EU citizens and TCNs willing to pursue their profession in the EU. It can be concluded that the EU has established a legal framework for the recognition of professional qualifications of EU citizens, but the legal framework for the recognition of foreign professional qualifications is still absent. It rather relies on the general set of rules on EU labour migration. While free movement of doctors without harmonised professional standards could seriously disrupt the health system and endanger patients, public health crises, such as the COVID-19 pandemic, show that the professional qualifications should be harmonised to some extent also with third countries, particularly when it comes to medical professionals, who are, unlike other professions, similarly trained. As a result, the EU should consider developing further legal instruments to tackle the issues.

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Povzetek v slovenskem jeziku

Članek obravnava veljavna pravila v zvezi s priznavanjem poklicnih kvalifikacij zdravnikov v EU. Pri tem se osredotoča na dve skupini posameznikov, in sicer na državljane EU in državljane tretjih držav, ter razlikuje med kvalifikacijami, pridobljenimi v EU, in kvalifikacijami, pridobljenimi zunaj EU. Medtem ko lahko državljani EU na splošno svobodno opravljajo zdravniški poklic v kateri koli državi članici EU, imajo državljani tretjih držav težave pri priznavanju svojih poklicnih kvalifikacij, saj ne spadajo na področje uporabe posebnih pravil o priznavanju poklicnih kvalifikacij in nimajo pravice do prostega gibanja. Na podlagi ocene veljavnih pravil je bilo ugotovljeno, da so državljani EU zaščiteni s pravnim okvirom EU za priznavanje poklicnih kvalifikacij, vendar pravnega okvira za priznavanje tujih poklicnih kvalifikacij še vedno ni in je v veliki meri odvisen od splošnih pravil, ki se uporabljajo za državljane tretjih držav, ki se želijo ustaliti in delati v EU.

