

# **MUTUAL RECOGNITION AGREEMENTS IN PROFESSIONAL SERVICES AND CEFTA SERVICES INTEGRATION**

A report for the World Bank

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**This report is written by Mrs Alison Hook who was hired as an external consultant to the World Bank. Therefore, opinions expressed in this document do not necessary reflect those of the World Bank. This work was financed through the Trade Trust Fund.**

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# MUTUAL RECOGNITION AGREEMENTS IN PROFESSIONAL SERVICES AND CEFTA SERVICES INTEGRATION

## 1 Executive Summary

The parties to the Central European Free Trade Agreement (CEFTA)<sup>1</sup> are preparing to start negotiations on services trade liberalization. In the first instance these negotiations will focus on encouraging greater mobility in professional services and Mutual Recognition Agreements (MRAs) are likely to be an important component of the negotiations as they have been a cornerstone of many regional agreements designed to improve market access in professional services in many different parts of the world. These negotiations however, need to take place within the wider context of the objective that most CEFTA members share, of ultimately joining the European Union.

This study therefore considers how MRAs in professional services may be designed in such a way in order both to advance regional integration and convergence on European Union norms. It begins by setting out how MRAs work and how their use has evolved within the European Union over time. It then goes on to provide a detailed analysis of the specific EU MRA regimes which govern accountancy, architecture, engineering, and legal services – their requirements, their impact since implementation and the on-going issues that remain.

The report suggests the following:

- MRAs work best when supported by strong/well-resourced competent authorities in the different countries involved.
- They require a level of trust and information which needs professional bodies and competent authorities (where the two are different), at both a national and regional level, to promote coordination and communication.
- Information sharing amongst Member States and awareness of other Member States' regimes is a vital part of the above.
- MRAs are useful tools to help manage the recognition process but they are not necessarily catalysts for increased mobility. They therefore need to be embedded in a activist market access framework.
- In many instances MRAs do not reflect the current reality of cross-border mobility in services and many professionals are able to circumvent requirements by working virtually, on a temporary basis or outside formally reserved areas.
- MRAs also work best when supported by accompanying measures to promote convergence in underlying qualifications .

The EU experience of MRAs goes far beyond the facilitation of movement of these four professions. Since 1997 more than 300,000 people holding 558 different professional titles have benefited from the general system of mutual recognition, although the number of professionals migrating across Europe varies significantly between countries. The benefits that have been derived from EU MRAs, however, go far beyond benefits to individual migrants or recipient country labor markets. The overall quality of professional services regulation has been put under the spotlight in the EU as a result of the mobility regime and the policy responses to this has seen improvements in regulatory regimes for professionals across the board in Europe, together with increased competition, innovation and client choice.

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<sup>1</sup> Albania, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Serbia and the United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo

As the ultimate aim of CEFTA countries is membership of the EU, it is natural that they will move towards developing the EU frameworks and legislation which will eventually lead to their accession. Although there is much to be learned from the MRA experiences of EU Member States through twinning/knowledge-sharing initiatives, for example, there is also scope for CEFTA countries to use their upcoming negotiations on services liberalization to develop scaled-down MRAs within their region which could help them not only prepare for the EU experience but also arguably put them in a stronger position than some existing EU Member States who are struggling to realise all the benefits of the EU framework for professional mobility. This report therefore also considers evidence of what makes an effective MRA from a range of other regional trade agreements.

Recommendations and individual action plans for CEFTA countries to consider during their integration process and when developing MRAs can be found at the end of this report. These recommendations break down into three types: those directed at a regional level in order to create the essential infrastructure for the creation of MRAs and to support EU approximation, individual actions needed by CEFTA members and a proposed pilot project .

Overall, these recommendations draw on the following common approach:

- The need to take both a regional and an individual country approach: it is important that CEFTA members do not only focus on their own individual relationships with the EU but also pursue regional cooperation.
- The need for administrative support: CEFTA countries will have to make significant efforts to adopt the EU's framework. There are gaps in legislation, a lack of technical expertise and resources in country for the development of the sort of infrastructure required to successfully implement an MRA such as the Professional Qualifications Directive. However, there is a great deal of EU level expertise that the CEFTA Members can draw on from within the professions.
- The need to simplify and rationalise where possible: many of the mobility issues that the EU needs to address are related to the lack of harmonisation and standardisation of the professions across Europe. Differences in title, regulatory status, education requirements add to the complexity of mutual recognition. Federal states have additional challenges to face as they need to undertake internal reforms at a national level too. Full engagement with the Bologna process could help CEFTA standardise its higher education systems which would help lay the foundations and inform the process for reforming and harmonising professional qualifications.
- The potential benefits of projects and initiatives offering practical support: the development of competent authorities and other key infrastructure in the CEFTA region and the diffusion of technical expertise and good practices.
- The importance of international standards and moving towards a different concept of cross-border working and mobility, which should be factored into CEFTA MRAs and discussions on professional services integration.

MRAs can never be perfect and, in any case, are an exercise in compromise and 'best fit', rather than a blueprint solution. They rely on an appropriate legal authority and market access framework to make them effective and to increase their impact the MRA framework needs to be supplemented by initiatives and activities which engage directly with the parties using them and who are responsible for their operation.

The continuous evolution of MRAs at an EU level may seem to present a significant challenge to CEFTA countries who might feel that they are chasing a moving target. However, they may be able to use some of the new approaches proposed under the new Professional Qualifications Directive as the basis for regional initiatives (e.g. the creation

of professional identity cards to ease recognition issues and 'common platforms' to address compensatory measures).

The process of developing and implementing MRAs requires dialogue and relationships across borders, institutions, professions and businesses, which will ultimately result in closer collaboration. It is these tangible relationships and the projects that encourage them to develop, which will ultimately lead to a deepening and widening integration in the area of professional services in CEFTA. MRAs work best if they are both 'top-down' and 'bottom-up'.

## 2 Main Report

### 2.1 Introduction

#### 2.1.1 Objectives of study

The objectives of this study are threefold:

- To provide an assessment of European Union Mutual Recognition Agreements (MRAs), and other pertinent international examples of such agreements, that are intended to promote the freer movement of professional services.
- To draw lessons and recommendations from these MRAs that CEFTA countries could consider in their integration process.
- To propose prioritised actions that could be taken by CEFTA as a whole, by the CEFTA secretariat and by the individual CEFTA countries, as well as to suggest technical assistance that could be offered in order to improve the likely success of MRAs in professional services.

This study does not address the question of why freer movement of professional services is beneficial to integration, as this has been well covered in previous studies by the World Bank and others<sup>2</sup>.

#### 2.1.2 What is an MRA?

In most countries there are some products and services which cannot be automatically placed on the market without receiving prior authorization, licensing or certification to indicate that they meet a certain standard. The justification for such requirements can usually be found in a public interest test, which may be explicitly or implicitly applied. Every country (and in federal countries, this will often apply to sub-federal units) has its own interpretation of “the public interest”. As far as goods are concerned, this usually encompasses aspects of consumer protection, such as product safety, health and safety, environmental protection and product standards; whereas the requirement of prior authorization for the supply of certain services is commonly justified on a combination of consumer protection and other public policy grounds (e.g. lawyer independence from the State).

When such goods and services are traded across international borders, the question of market access for foreign suppliers becomes an issue. One way of dealing with this, which allows for the acceptance of foreign products and services without requiring duplicate authorization processes, or the undermining of domestic public policy, has been for trading countries to use Mutual Recognition Agreements or MRAs. Such agreements are intended to provide a framework which permits the acceptance of authorizations acquired in the partner country. The use of the word ‘mutual’ implies that these arrangements are reciprocal, although that does not necessarily mean that the requirements on either side are identical. Whilst the use of the word ‘recognition’ has not always implied full authorization in the importing country, it may simply mean that there is

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<sup>2</sup> Nora Dihel, Ana M. Fernandes, Aaditya Mattoo, and Nicholas Strychacz, “Reform and Regional Integration of Professional Services in East Africa”, *Economic Premise*, No. 32, September 2010  
Note by the UNCTAD Secretariat, “Trade and Development Aspects of Professional Services and Regulatory Frameworks”, TD/B/COM.1/EM.25/2, 25 November 2004

recognition of the level of testing or certification already carried out in the exporting country.

The European Commission defines MRAs as follows: “(they).. have the objective of promoting trade in goods between the European Union and third countries by facilitating market access. They are bilateral agreements, and aim to benefit industry by providing easier access to conformity assessment”. (DG Enterprise and Industry). As this paper considers later, this approach has also been applied by the EU to intra-EU trade in professional services.

The European Commission’s definition focuses on the ultimate purpose of the MRA and is usefully complemented by the definition which unpicks the content of the ‘bilateral agreements’ in more detail. The following is suggested by Professor Kalypso Nicolaidis of Oxford University: “(an MRA involves the regulatory authorities in an importing country accepting) ...in whole or in part, the regulatory authorizations obtained in the territory of the other Party or Parties to the agreement in granting their own authorization”.<sup>3</sup>

In the field of professional services, there are number of different types of MRAs that have been used over time and these can broadly be characterized into three main types:

- Harmonizing MRAs, which seek over time, perhaps through a series of successive agreements, to promote the convergence of processes leading to authorization on a broadly common, if not identical basis. This type of MRA tends to focus on ensuring that underlying qualifications in different countries are identical.
- Competency based MRAs, which focus on quality assurance rather than the process of authorization, accepting that the same outcome might be reached in different ways. This type of MRA is based on accepting that different qualifications may be equivalent even if they are not identical.
- Managed MRAs, which embed any recognition agreement in a clearly defined and proactive framework for market access. This type of MRA is a more sophisticated variant of the competency based MRA, as it may allow a modulated approach for professionals from other countries and not simply require a foreign professional to fully assimilate as a local professional but to provide some services under home title.

This typology will be used later in this paper in considering the approaches taken by trading partners both in the EU and more widely, but first it is useful to consider the key characteristics of an MRA.

### **2.1.3 The key components of a Mutual Recognition Agreement (MRA) in Professional Services**

There are seven components which are usually covered, explicitly or implicitly, in any MRA in professional services:

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<sup>3</sup> Professor Kalypso Nicolaidis, “The New Approach to the Liberalization of Professional Services” (1997) published at <http://users.ox.ac.uk/~ssf0041/managemr.htm>

- i) Governance;
- ii) mode of supply
- iii) scope of authorization;
- iv) eligibility
- v) equivalence
- vi) automaticity; and
- vii) post approval conditions

Looking at each of these in turn:

***i) Governance***

The governance arrangements in any MRA are particularly important. These arrangements usually define the bodies responsible for authorization, frequently referred to as 'competent authorities'. They will go on to outline dispute resolution mechanisms and arrangements for deepening the extent of recognition or harmonizing approaches. It is worth noting that most MRAs contain a dynamic dimension and the agreement that is signed is usually regarded by both parties as the starting point of a process of mutual recognition that will move over time towards greater automaticity, or enhanced scope

***ii) Mode of Supply***

The supply of services across borders brings additional complexities because, unlike goods, services may be provided in one of four ways or 'modes' as defined in Article 1(2) of the GATS Treaty:

"Trade in services is defined as the supply of a service:

- (a) from the territory of one Member into the territory of any other Member;
- (b) in the territory of one Member to the service consumer of any other Member;
- (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
- (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member."

This means that MRAs covering services ought to, but don't always, address modal issues. In practice, this usually means giving consideration to the coverage of temporary presence of service suppliers as well as permanent establishment; and taking account of the role played by commercial organizations as well as authorized individuals in the supply of services. The issue of mode 1, or cross border services, as set out in (a) above has not, to date, been a common feature of most MRAs but may well become so in future, as the possibilities of providing services over the internet become increasingly sophisticated (e.g. growth of tele-medicine). It is also conceivable that future MRAs in professional services may even need to give some consideration to mode 2 supply (when a consumer travels to another country to purchase a service). Interesting issues of consumer protection and public policy can arise in these circumstances, for example in the case of patients choosing to have medical procedures undertaken in other countries, which if they cause subsequent health problems once the consumer has returned home will impose costs on the 'exporting' country's health services. The most effective MRAs are embedded in an explicit trade liberalizing framework and linked to bilateral market

access commitments. Too often however, bilateral FTAs avoid issues of negotiating explicit market access and delegate these issues to competent authorities

**iii) Scope of authorization**

An MRA will also need to set out the scope of the practice being permitted to any foreign qualified persons authorized under the terms of the agreement. These will often take their lead from UN Central Product Classifications (CPC) which exist as a basis for gathering statistics but which are also frequently used by countries in scheduling market access commitments under the GATS or in bilateral trade treaties. An outline of the UN CPC in four professional service sectors: Accountancy, architecture, engineering and legal, is set out in [Annex I](#). In some cases, specific sectors have also developed their own methods of classifying service scope, most notably the legal sector, which adopted a classification methodology put forward by the International Bar Association and adopted by a number of parties to the WTO<sup>4</sup>. This distinguished legal services by governing law (i.e. Home country, host country, international) and purpose (i.e. representational vs. advisory) rather than, as in the UN classification by type of law (i.e. criminal, civil etc) and made it easier for countries to consider making market access commitments. This methodology has subsequently been used in a number of MRAs and has even been adopted in a slightly adapted form by the American Bar Association to promote freer movement of lawyers between US States. Scope/classification issues are a particularly important element of MRAs and often one of the most complex elements in seeking agreement, as there may be a significant mismatch between what is permitted to professionals from different countries holding what appears to be the same title. It is also worth noting that there is also an interplay between professional services MRAs and issues relating to free movement of persons, which are usually covered by horizontal commitments in any market access framework. MRAs can be undermined if the complementary scope of access for natural persons as individual service suppliers, contractors or intra-corporate transferees is not made clear.

**iv) Eligibility**

MRAs will also usually set out the minimum requirements that a professional in one country has to fulfill before they can use the MRA to access the market in another country. These minimum requirements may range from detailed specifications about the content of prior training and experience through to eligibility to use the MRA on the basis of a professional title or qualification acquired in another country. It is worth pointing out that most MRAs are couched almost entirely in terms of individuals and eligibility of entities remains difficult to define and determine. The conditions under which foreign professional organisations may operate is usually defined in more detail by additional regulatory requirements outside the scope of the MRA covering issues such as foreign ownership, fee sharing, the name and corporate vehicles that may be used and marketing restrictions. This is where a sophisticated framework for MRAs, like the European Union's, is particularly effective, as it takes into account wider regulatory issues as well as market access and underlying recognition of qualifications.

**v) Equivalence**

Eligibility under an MRA does not, on its own, necessarily provide the basis for accessing the market. A foreign qualified professional who is 'eligible' under an MRA may simply be offered the opportunity to bypass part of a recognition process required in order to provide services in a host country. The foreign qualified professional may still need to undertake further training or tests in order to achieve "equivalence" and access the market. An MRA

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<sup>4</sup> Joint Statement on Legal Services, TN/S/W/37 S/CSC/W/46, 24 February 2005

will therefore often give parties the option to impose ‘compensatory measures<sup>5</sup>’ in order to help the foreign licensed professional achieve equivalence and obtain full market access.

**vi) Automaticity**

The level of automaticity offered by any MRA will determine how easy it is for a professional to access the market once their eligibility has been established. For example, is licensing, on the basis of whatever scope is offered to a foreign licensed professional, automatic on the basis of satisfactory evidence being presented, or is some discretion involved?

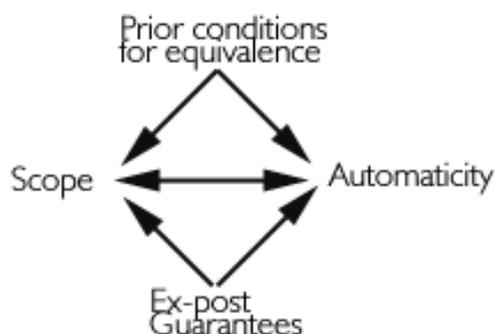
**vii) Post approval conditions**

Once recognition has been granted under an MRA, the agreement may also specify whether there are ongoing conditions attached, such as regular submission of home state approval documentation, proof of indemnity insurance cover, or compliance with continuous education and training requirements.

Professor Kalypto Nicolaidis has suggested that there are trade-offs between the main features of MRAs, as illustrated in figure 1, below.

Where, for example, levels of trust and understanding between parties are high, because of the high degree of equivalence between professional qualifications; a greater emphasis can be placed on post approval conditions (in figure 1 = ex-post guarantees), allowing a higher level of automaticity. Equally, if there is greater equivalence between professions then the scope of practice afforded to professionals from other countries can be larger.

**Figure 1: Trading off between features of mutual recognition (from Nicolaidis)**



Source: Nicolaidis, 1997

By identifying the concept of the trade-off at the heart of any MRA, it should make it easier for countries with very different prior conditions for entry and even different domestic scope of practice arrangements to negotiate such agreements. This is considered in the next section of this paper.

<sup>5</sup> i.e. measures to compensate for the differences between actual qualifications or the competences they represent. These measures may include tests, courses, further training periods or supervision requirements etc.

## **3 Practical International Experience of MRAs - The EU Approach**

### **3.1 Background**

The European Union has been a major user of MRAs throughout its history and there are a number of distinct approaches that it has adopted at different times which are worth enumerating as they illustrate very well the advantages and disadvantages of different types of MRAs.

#### **3.1.1 The harmonizing approach**

In the late 1960s and early 1970s, when the original six members of the European Community were attempting to give effect to the Treaty of Rome provisions on free movement, they did so by identifying a number of, mostly medical, professions for which mobility was particularly to be encouraged, and laying down in great detail the qualification requirements which would need to be fulfilled by any individual wishing to take advantage of the possibility of moving to another Member State. The idea was that by fulfilling these conditions, an individual would qualify for full and unrestricted access to the profession in another Member State, equivalent to that granted to a home qualified professional. This approach puts most emphasis on ensuring that academic and professional qualifications are more or less identical and consequently requires a very high level of prior negotiation and agreement between competent authorities. As an approach it is only really an option between countries with very similar education and training systems.

#### **3.1.2 The competency approach**

By the mid-1970s, the lack of success of the first generation of MRAs coupled with the expansion of the EU to include the UK, Ireland and Denmark, meant that a more flexible approach to mutual recognition was needed. The harmonization approach of the 1960s was therefore replaced by what might be called a “competency approach”. The competency based approach meant that professional qualifications were no longer to be judged on whether or not they were identical but rather on whether they were comparable. This led in turn to the definition of broad guidelines on what a qualified European professional in any particular discipline should know and the skills they should have, coupled with a requirement on the length of academic study. This approach brought about a series of what are known as the ‘sectoral’ directives, mostly focusing on medical and para-medical professions. The advantage of the sectoral directives to their users is that their qualifications confer on them a high degree of automatic recognition. In other words if you are from one of the EU Member States, you must be recognized as a doctor in all other Member States. However it proved too politically difficult to reach agreement on MRAs for many other professions including engineers, accountants and lawyers, given the diversity underlying qualifications in different Member States. The last sectoral directive which used the competency approach was the Architects Directive, which was adopted in 1985.

The mid-1980s brought a renewed focus on what by now was becoming more commonly known as ‘the single market’. The Single European Act of 1986 led to a radical new approach designed to maximize mobility. This system, known as ‘the General System’ identified the fact that, whilst the previous approach had worked for those professions which were in a position to negotiate specific agreements, it had fallen down in

circumstances in which there was an asymmetry in the definition of professions in different Member States.

The General System approach is based instead on requiring Member States to declare all professions which they regulate and to match the level of study or training required for each profession to very general levels of qualification or training. These levels were defined in two directives: The first, the Diplomas Directive (89/48/EEC supplemented by 92/51/EEC) dealt with higher level diplomas, or professional qualifications corresponding to three or more years of study; and the second directive, the Crafts and Industries Directive (99/42/EC), dealt with 'regulated activities' that required less than three years of study to enter. Both directives also recognized for the first time the importance of practical training and professional experience when assessing the totality of the equivalence of an individual applicant's qualifications against the qualification requirements of a host Member State. The underlying principle was that an individual could apply for recognition under the general system provided their qualifications were at the same level, or at the level immediately below that required in the host Member State. In other words, an individual from Member State 'A' who had required a 3 year university degree/diploma in order to qualify e.g. as an accountant would be entitled to request access to the accountancy profession in Member State 'B', even if qualification there as an accountant took 4 years of university study. Moreover, the general system allowed individuals carrying out activities that were not regulated in their home Member State to access these activities in a Member State where they were regulated, provided they could demonstrate that they had two years' of experience in this profession.

The general system is therefore very useful in helping individuals in the EU to overcome the eligibility issue when accessing professions in other Member States. It is also a permissive on scope of activities: A host Member State cannot limit the range of activities that an EU applicant can undertake within a profession and conversely an applicant cannot apply for access to only one subset of activity. However, there was a price to be paid for these advantages in the form of a low level of automaticity.

Member States were permitted by the directives to introduce "compensation measures" which could encompass periods of "adaptation" in the local market (i.e. a requirement to work for, or alongside, a locally qualified professional) and/or test requirements, in order to bridge any gaps between the initial qualifications in the applicant's home and host Member States.

### **3.1.3 Moves towards managed MRAs**

By the early 2000s, the EU had made progress in promoting professional mobility, however concerns about the level and pace of economic growth in the EU brought further initiatives designed to 'complete the single market'. In the area of professional mobility, this meant a drive to improve automaticity. In 2005, the EU passed the Professional Qualifications Directive (2005/36/EC), which endeavoured to make the recognition of qualifications more automatic, simplify administrative procedures and consolidate the different approaches to recognition by subsuming the sectoral directives, where possible, into the general system. By 2007, the Professional Qualifications Directive had replaced fifteen separate sectoral MRA directives, leaving only seven separate profession specific pieces of legislation<sup>6</sup>.

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<sup>6</sup> The six professions covered in the PQD (architects, doctors, dentists, midwives, pharmacists and nurses) and the lawyers profession' which is covered under separate legislation.

The key elements of The Professional Qualifications Directive 2005/36/EC (known as “the PQD”) were:

- Codification of the three systems for the recognition of qualifications:
  - The system of automatic recognition for those professions still covered by the second generation of MRAs (the “sectoral directives”) for which the minimum training conditions have been harmonised (health professionals, architects, veterinary surgeons).
  - The general system of assessment for equivalence and compensation measures for other regulated professions (with the exception of lawyers who have their own separate directive).
  - Recognition on the basis of professional experience alone for certain professional activities.
- Professional qualifications are grouped under five levels (Article 11) to make it easier to compare them;
- Article 14 specifies the conditions under which the host country may impose compensation measures, i.e. an adaptation period of up to three years or an aptitude test. Professional experience in the applicant’s home Member State must be taken into account.
- Article 15 outlines the concept of a “common platform”. This idea was intended to bridge the gap between the harmonization of qualification requirements of the very first generation of MRAs and the competency requirements of the second generation of sectoral MRAs. Common platforms were to be based on an ‘inventory’ of requirements in Member States for entry to any profession. This was intended to assist with the development of a ‘one-size-fits-all’ compensation system, which could, for instance, take the form of a common aptitude test, valid for obtaining the recognition in all Member States. This would overcome the disadvantages of assessing and imposing compensatory measures on a case by case basis, which requires great time and effort from the competent authority. The common platform concept was never implemented, largely because of insufficient resources in the Member States to carry out the task, a lack of guidance from the European Commission about how the organizational arrangements might work (e.g. who would design, run and authorize the ‘test’) and the general complexity of designing appropriate tests given the lack of harmonization in different professions.
- The PQD for the first time also provided recognition for temporary mobility of professionals (the assumption had always been in the past that an individual would be moving permanently to another Member State and therefore wishing to replace their home Member State qualification with the qualification of their host Member State). The temporary mobility provision permits EU professionals to work in other Member States simply on the basis of a declaration made in advance to the relevant competent authority.
- The PQD also made clear that it applied to both employed and self-employed persons.

The PQD was supplemented by the creation of the Internal Market Information System (IMI)<sup>7</sup> which is a system that allows national authorities and competent bodies to contact each other, make and handle enquiries about individual cases more effectively.

At the same time as the PQD was being negotiated, the Directorate General for Competition in the European Commission was beginning to take a greater interest in the professions and how competition policy instruments could be used to reinforce mobility. It had not gone unnoticed that professional rules of both admission and conduct in many sectors tended to have grown up organically and unless these were rigorously tested against some objective criteria, they could end up re-imposing barriers to entry that market access arrangements were intended to remove. In 2003 the European Commission commissioned a study<sup>8</sup> to assess the impact of regulation in the "liberal professions" and this was subsequently embodied into the Commission's proactive consumer focused competition policy. This new policy direction represented recognition that whilst MRAs could promote mobility, they had no mechanism for challenging the national regulatory status quo in different Member States. This competition focus fed into other work being undertaken by the Commission to promote the services economy in Europe and culminated in the negotiation of the Services in the Internal Market Directive 2006/123/EC (the "Services Directive").

The Services Directive is a horizontal instrument which is intended to complement the Professional Qualifications Directive. Its main aim is to remove unjustified and disproportionate barriers to the free provision of services across the EU. These barriers are estimated to cost up to 0.6-1.5% of EU GDP<sup>9</sup>.

The Services Directive also brought new rights for EU service providers, including migrant professionals:

- The right to establish in an EU Member State: the directive outlaws any measures that are discriminatory to the provider, that are not objectively justifiable by an over-riding reason relating to the public interest.
- The right to information which includes the right to find information about how to establish from a single contact point in any particular Member State.
- The right to participate in multi-disciplinary activities: Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities. Although regulated professions were exempt from this requirement, this exemption was supposed to be reviewed two years after the directive came into force. This has not yet happened.

In addition, the Services Directive imposes new obligations on the competent authorities responsible for authorizations in the different service sectors:

- It lays down rules for authorization schemes, such as the circumstances in which authorizations can be time limited, the procedures for gaining approval

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<sup>7</sup> [http://ec.europa.eu/internal\\_market/imi-net/about\\_en.html](http://ec.europa.eu/internal_market/imi-net/about_en.html)

<sup>8</sup> Iain Paterson, Marcel Fink, Anthony Ogus et al, Economic impact of regulation in the field of liberal professions in different Member States, IHS (2003)

<sup>9</sup> Economic impact of services directive

etc. Competent authorities were required by the directive to examine their own procedures to ensure that they did not conflict with the requirements of Section I of Chapter III of the Services Directive covering 'Establishment' issues which sets out various 'disciplines' governing authorization.

- It promotes the idea of EU-wide agreement on common codes of conduct in the professions, which would help to promote mobility.

“Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organizations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law.” (Article 37(1))

- It prohibits residency requirements or limitations on professionals holding dual licenses for both home and host Member State activities.
- It prohibits blanket restrictions on advertising.
- It requires electronic registration, although in practice this has been difficult to achieve.

Finally, Member States were required by the directive to identify a Point of Single Contact (PSC) through which service providers could obtain all relevant information and deal with all administrative formalities without the need to contact several authorities. This has realistically not always been possible and many points of single contact are in fact simply electronic gateways to the competent authorities' websites<sup>10</sup>.

### **3.1.4 The Bologna Process**

Although the EU approach has shifted away from an insistence on harmonized qualifications, it has nonetheless been underpinned by an entirely separate but complementary activity taking place outside the EU's formal structures.

The so-called 'Bologna Process' was initiated in 1999 by the Ministers of Education and leaders of universities from of 29 countries. Its overarching aim was to create a European Higher Education Area (EHEA) based on international cooperation and academic exchange. But it has subsequently developed into a major reform program which now encompasses 46 countries. Participation in the Bologna Process is a voluntary decision and it remains an inter-governmental agreement.

The Bologna Process does not aim to harmonize national educational systems but rather to provide tools to connect them. The intention is to allow the diversity of national systems and universities to continue, alongside the establishment of a European Higher Education Area which increases transparency and facilitates the recognition of degrees and academic qualifications, mobility, and exchanges between institutions. The EHEA reforms are based on ten simple objectives which governments and institutions are currently implementing. The most important of these is the agreement by all participating countries to a comparable three cycle degree system for undergraduates (Bachelor degrees) and graduates (Master and PhD degrees).

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<sup>10</sup> See report on implementation of the directive

All EU Member States are members, as are all CEFTA countries (with the exception of Kosovo), and other European countries who are signatories to the European Cultural Convention, such as Russia and Kazakhstan. Kosovo is currently not eligible for direct membership to the Bologna Process as it has not ratified the European Cultural Convention. However, Kosovo has been attending Bologna Ministerial meetings on an observer basis and ranks implementation of the Bologna process frameworks as a priority.

According to its supporters, the Bologna Process has, "...achieved remarkable results over its first decade, driving positive change in European higher education"<sup>11</sup>. It has paved the way for increasingly innovative, cooperative, cross border study programs within the EU and a growing number of joint degree programs are being developed between Bologna participants. The facilitation of mobility is one of the main objectives of the creation of a European Higher Education Area and much progress has been made.

Paradoxically, the greatest strength of the Bologna Process could also be seen as its greatest weakness. Its original participants chose intergovernmentalism and political consensus, rather than EU legislation, as the basis for cooperation. This has allowed countries to move at different speeds, enabling the process of convergence in the duration and content of tertiary level qualifications to move forwards, even if not all Member States have adopted all measures. However, the lack of underlying legal requirements has led to partial and inconsistent implementation, particularly in Member States with less developed education systems, and this means the necessary level of harmonization has not been reached in order for the Bologna process reforms to have significant impact, in areas such as professional recognition.

The interface between the Bologna process and the Professional Qualifications Directive is complex and shifting and the two approaches do not align. The European Commission decided when adopting the PQD in 2005 that it would not add complexity by factoring in the various Bologna policies and reforms, which were at that stage still in their infancy. The focus of the Bologna process and the PQD is also slightly different. The Bologna process is only concerned with academic qualifications and the PQD largely with professional qualifications. Whilst there is some crossover from Bologna into the PQD, not all professional qualifications require a higher education background.

In 2011, DG Internal Market and Services published a report which evaluated the Professional Qualifications Directive against recent educational reforms in EU Member States and the Bologna process was an obvious area of focus<sup>12</sup>. This reported that a third of competent authorities interviewed for the case studies believed that the transparency between different higher education systems brought about by the Bologna process had supported recognition of professional qualifications.

### **3.1.5 Where next for EU MRAs in Professional Qualifications?**

Against a backdrop of a stubbornly sluggish economy from 2008 onwards, the European Commission has continued to look for ways of improving the continent's growth prospects. In April 2011, it introduced the Single Market Act and this contained provisions

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<sup>11</sup> The European Higher Education Area in 2012: Bologna Process Implementation Report  
[http://www.ehea.info/Uploads/\(1\)/Bologna%20Process%20Implementation%20Report.pdf](http://www.ehea.info/Uploads/(1)/Bologna%20Process%20Implementation%20Report.pdf)

<sup>12</sup> Revised Final Report - Study evaluating the Professional Qualifications Directive against recent educational reforms in EU Member States:

[http://ec.europa.eu/internal\\_market/qualifications/docs/policy\\_developments/final\\_report\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/final_report_en.pdf)

intended to achieve further progress in cross border mobility of skilled workers in Europe. The intention was to reduce the reported mismatch between the demand and supply for qualified workers and thus to promote overall employment and output within the EU. This was subsequently supplemented by a further umbrella proposal, the Single Market Act II, in 2012.

Further work on professional mobility has been an important part of the action plans drawn up for both Single Market Acts. Table 1 summarizes the actions proposed and taken by the European Commission in this area.

**Table 1: European Commission Proposed actions under Single Market Acts I and II and progress (2011-12)**

<b>Proposed Action</b>	<b>Status update</b>
Revise system for the recognition of professional qualifications	European Commission presented legislative proposal on 19 December 2011
Ensure implementation of Services Directive	European Commission adopted Communication on 8 June 2012.
Carry out performance check to test joint application on the ground of Community legislation as implemented and applied by MS in key sectors (construction, tourism, business services)	European Commission adopted Communication on 8 June 2012.
Create European Skills Passport	European Commission preparing Passport.
Make it easier for citizens to look for a job in another Member State through an EU wide recruitment portal	Develop the EURES portal into an EU wide electronic recruitment, placement and job matching tool - Commission preparing legislative Decision establishing a revised EURES Portal

This illustrates that despite the major reforms to the Professional Qualifications Directive in 2005, the European Commission has continued to refine the EU's approach to the system of mutual recognition in order to improve and increase Europewide mobility.

Further refinements to the system were adopted by the European Parliament on 9 October 2013, in response to a proposal from the European Commission for an updated version of Directive 2005/36/EC on the recognition of professional qualifications.

The following are the key elements of this new PQD directive:

- A European professional card will offer to interested professionals the possibility to benefit from easier and quicker recognition of their qualifications. It should also facilitate temporary mobility. The card will be made available according to the needs expressed by the professions (for example, the professional bodies for nurses and engineers have expressed a strong interest). The card will be linked to an optimised recognition procedure carried out within the existing Internal Market Information System (IMI) and will take the form of an electronic certificate, allowing

the professional to provide services or become established in another Member State on an automatic basis.

- Better access to information on the recognition of professional qualifications through better application of the Points of Single Contact, created under the Services Directive, to the professional services sector. This will allow migrant professionals to obtain all the necessary information in one place about the documents they must submit in order to have their qualifications recognised and also enable them to complete recognition procedures online.
- An updating of the minimum training requirements for the 'sectoral' professions (doctors, dentists, pharmacists, nurses, midwives, veterinary surgeons and architects). The minimum training requirements for these professions were harmonised 20 or 30 years ago. The duration of the training as an architect has been increased to at least six years. This can take the form of either four years full-time academic study and at least two years remunerated traineeship or 5 years academic study and at least one year remunerated traineeship<sup>13</sup>.
- The introduction of an alert mechanism for health professionals benefiting from automatic recognition: competent authorities of a Member State will be obliged to alert competent authorities of all other Member States about a health professional who has been prohibited from exercising his professional activity by a public authority or a court. This is particularly important because there have been examples of doctors banned from practising in their home Member State, moving abroad to work, without the host Member States being aware.
- The introduction of common training frameworks and common training tests, replacing common platforms. This is intended to extend the mechanism of automatic recognition, currently only available to the sectoral professions, to new professions. Interested professions could benefit from automatic recognition on the basis of a common set of knowledge, skills and competences or on a common test assessing the ability of professionals to pursue a profession.

In addition to improving the PQD, the European Commission has made other recent proposals designed to improve transparency and the interoperability of skills and qualifications across the EU. These initiatives include:

- The further development of existing online tools, such as Europass<sup>14</sup>, which is an online skills passport and curriculum vitae tool, the European Qualification Framework<sup>15</sup> which assists in defining the eight reference levels of different qualifications and thus promoting comparability, and the expansion of EURES<sup>16</sup> (a job search website listing over 1.3 million vacancies across the EU) to cover apprenticeships and traineeships.
- Proposals awaiting adoption by the European Parliament and Council of Ministers for greater mobility for intra-corporate transferees (ICT) and seasonal workers.
- Improvements in the portability of supplementary social security rights, including pensions.

Taken together, the Single Market Acts I and II and the revised PQD illustrate that whilst MRAs are a vital component in professional mobility, they need to be supplemented by

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<sup>13</sup> This does not conform to the international standard adopted by the International Union of Architects (UIA) which is preferred by the Architects Council of Europe.

<sup>14</sup> <http://europass.cedefop.europa.eu/en/documents/curriculum-vitae>

<sup>15</sup> [http://ec.europa.eu/education/lifelong-learning-policy/eqf\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/eqf_en.htm)

<sup>16</sup> <https://ec.europa.eu/eures/home.jsp?lang=en>

other actions in order to achieve the desired results. The EU has therefore finally arrived at what might be described as a 'managed MRA' model. This also illustrates both the complexity and ongoing evolution of the EU acquis in this area.

## 4 The EU Approach – The Regimes for Key Regulated Professions

### 4.1 Accountants

Accountants in the European Union are subject to the ‘general system’ of mutual recognition under the Professional Qualifications Directive. The recognition of individual professional qualifications under the Directive is therefore carried out, on a case-by-case basis, by the designated competent authorities, in this case the professional accounting bodies which are identified in the annexes to the directive. However, Recital 42 and Article 2(3) of Directive 2005/36/EC state that the directive does not apply to professions for whom the recognition of professional qualifications is governed by specific legal provisions. Statutory auditors, who need to have knowledge of the legal and tax systems of the Member State in which they provide audit services are excluded from the mutual recognition provisions under this directive. The rules governing the profession of statutory auditor for companies in the EU are set out in the Directive on Statutory Audits of Annual Accounts and Consolidated Accounts 2006/43/EC.<sup>17</sup>

European Union nationals who are qualified accountants and who do not wish to provide auditing services in another Member State, may get their qualifications recognized by applying to the host Member State with evidence of their level of qualification. There are 76 different recognized accountancy professions in the 27 Member States, EEA and Switzerland<sup>18</sup>. As outlined in the directive, if the migrant’s level of professional qualification is at least equivalent to the level immediately below that required in the host country then they may ask for their qualifications to be assessed. Most of the qualifications required by the different Member States are at the same generic level (3 year plus degree or diploma) but there are nonetheless important differences between the underlying content of such qualifications and the requirement for compensation measures is common. Most Member States require applicants from other EU jurisdictions to undertake additional study/work experience or sit an exam to test their knowledge of local law and regulatory requirements in order to take the home title accorded to an accountant.

If an accountant wishes to conduct audit services then Directive 2006/43/EC applies. This lays down the requirements for persons who are allowed to carry out statutory audits in the EU as well as outlining the policy for mutual recognition of the qualifications of statutory auditors. Applicants who wish to obtain recognition as statutory auditors in another Member State must be:

- Licensed by their home body as a statutory auditor;
- Qualified with this body via the normal training and education route (a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organized or recognized by the Member State concerned);
- In good standing with their home body;
- An EU national.

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<sup>17</sup> Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0043:EN:NOT>

<sup>18</sup> [Annex II: List of Titles of Key Regulated Professions in the EU](#)

If applicants meet these requirements they can then apply to sit an aptitude test, designed by the host competent authority. The aptitude test must only cover the statutory auditor's adequate knowledge of the laws and regulations of that Member State in so far as it is relevant to statutory audits.

EU accountants, but not statutory auditors, may also provide services on a temporary basis, under the Professional Qualifications Directive. Member States may, however, require temporary registration with pro-forma membership of a professional organisation, which must be granted automatically. This temporary registration requires the practitioner to be subject to the professional rules of the Member State where services are to be provided and applies its disciplinary provisions to the mobile accountant.

In order to make this system of mutual recognition work, given that accountancy education and training curricula differ greatly amongst Member States, an infrastructure is required in each Member State to assess what compensation measures need to be imposed. Each competent authority needs to have employees with the right set of technical skills as well as a thorough understanding of other Member States' regimes, tax and legal frameworks. The Statutory Audit Directive has a further requirement for the maintenance of a public register, electronically available to the public, and the competent authority must also be able to manage this process.

The involvement of professional bodies is very important, as is the existence of an 'umbrella' organisation which can represent the Europe-wide views of the profession and build trust and confidence between the accountancy professions in the Member States. FEE (Fédération des Experts-Comptables Européens – Federation of European Accountants) represents 45 institutes of professional accountants and auditors from 33 European countries, including all of the 27 EU Member States, and claims to be the collective voice of the European accountancy profession for the EU institutions and other international organizations<sup>19</sup>.

## 4.2 Architects

Architects are covered under the Professional Qualifications Directive as one of the remaining seven "sectoral" professions, dating back to the second approach to MRAs taken by the EU. As a result, architects benefit from automatic recognition of their professional qualifications within the European Union.

Although mutual recognition of qualifications was achieved through the Architects' Directive 1985, the process of harmonizing educational requirements for architects within the then European Community, had begun much earlier, in 1961. The principal objectives of the Architects' Directive were to facilitate establishment and increase the freedom to provide architectural services, whilst ensuring, through qualitative and quantitative criteria, that the holders of recognized qualifications met appropriate standards. The Architects' Directive also sought progressive alignment of the education and training of architects within the EU, which were very varied at the time. The system was viewed as a success and was integrated, virtually unchanged, into Directive 2005/36/EC which replaced the 1985 Directive.

The authorities in any EU country must recognize any of the architects' qualifications listed in Annex V.5.7.1 or Annex VI of the Professional Qualifications Directive<sup>20</sup>.

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<sup>19</sup> <http://www.fee.be/>

<sup>20</sup> For list see [Annex II: List of Titles of Key Regulated Professions in the EU](#)

Qualifications are automatically recognized if they are from a university or equivalent-level institution and if studies:

- Lasted at least 4 years' full-time, or represented 6 years' study of which at least 3 years full-time (n.b. Now updated as a result of the revised 2013 Professional Qualifications Directive (see below));
- had architecture as the principal component;
- had theoretical and practical components;
- taught the basic knowledge and skills listed in Article 46 of Directive 2005/36/EC on recognition of professional qualifications.

The authorities in some EU countries require architects to have a certain amount of experience before allowing them to carry the title of an architect. But they may not apply the same requirement to architects from other EU Member States if this is not required under the rules of their own country. However, these arrangements have been updated in the light of the new Professional Qualifications Directive agreed by the European Parliament on 9 October 2013 which came into force at the end of October 2013.

The Directive also invites Member States to renounce prior checks on the qualifications of architects who are only providing services on a temporary or occasional basis. The temporary and occasional nature of the provision of services is a case by case, assessment on the part of the host Member State and will be based on factors such as duration, frequency, regularity and continuity. The Directive only allows Member States to require that they are informed by architects from elsewhere in the EU of their intention to provide services on an annual basis. Any registration must be, at most, pro-forma, without cost or delay, and cannot be used a prior requirement for the provision of architectural services in the host Member State.

This regime requires that:

- Each member state identify its 'competent authority or authorities'<sup>21</sup>. Ideally, this competent authority should be able to meet the requirements set out in the approved Code of Conduct for national administrative practices.<sup>22</sup>
- If necessary, local/national legislation or rules need to be updated to comply with the Directive
- There is dialogue between competent bodies, facilitated by a central agency (Architects' Council for Europe, or the European Network of Architects' Competent Authorities, for instance) which is able to highlight issues relating to implementation and make recommendations for future changes or additions.
- There is active engagement from relevant professional bodies to help disseminate information and promote mutual recognition and mobility throughout the EU.

### 4.3 Engineering

The engineering sector, like the accountancy sector, is subject to the 'general system' of mutual recognition under the Professional Qualifications Directive. Recognition of

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<sup>21</sup> Competent authority: any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information and to receive the applications, and take the decisions, referred to in this Directive; *Article 3 – Definitions*, Directive 2005/36/EC

<sup>22</sup> Code of Conduct approved by the group of coordinators for the Directive 2005/36/EC:  
[http://ec.europa.eu/internal\\_market/qualifications/docs/future/cocon\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf)

professional qualifications under the Directive is therefore carried out, on a case-by-case basis, by the designated Competent Authorities. There are 134 professional titles for engineering identified under the PQD<sup>23</sup> which illustrates well that the profession of 'engineer' covers various disciplines which are not identically defined, nor organized in the same way from one Member State to another. As a consequence, there are sometimes significant differences in the duration and content of the qualification processes in different countries, which has tended to lead to Member States imposing compensation measures.

An engineer's qualifications may be recognized if the migrant's level of professional qualification is at least equivalent to the level immediately below the level required in the host Member State for that activity. Recognition must also be granted to migrants whose profession is not regulated in the country of origin but who have worked full-time in that profession for two years. The host country may impose compensation measures, such as an adaptation period of up to three years or an aptitude test but must take into account previous professional experience in engineering.

As is the case for architects, the Directive also invites Member States to renounce prior checks of the qualifications of engineering professionals who wish to provide services on a temporary or occasional basis. The temporary and occasional nature of the provision of engineering services is assessed on a case by case basis and only pro-forma annual registration can be required.

This regime requires that:

- As with architecture, each member state must identify a 'competent authority'.
- If necessary, local/national legislation or rules have had to be updated to comply with the Directive.
- There needs to be a dialogue between competent bodies, which has been facilitated and supported by bodies such as the European Federation of National Engineering Associations (FEANI) and the European Network for Accreditation of Engineering Education (ENAE).
- Due to the fact that the engineering profession is diverse and there is a lack of harmonization across the EU even in specific engineering disciplines, extra efforts are required by professional bodies to understand these differences and help their members understand other Member States' systems, titles and regulatory approaches.

#### **4.4 Legal Services**

The legal services sector is one of only a handful of professions to receive special legal treatment (statutory auditors being the main other one). Lawyers are covered mostly by two special directives: The Directive to Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services (77/249/EEC – known as 'the lawyers' services directive') and the Lawyers Establishment Directive (98/5/EC – known as 'the establishment directive'). These two directives form the main body of the regime governing lawyers although the General Services Directive and the Professional Qualifications Directive do apply in certain circumstances, which will be explained below.

It may seem strange that lawyers are treated differently from virtually all other professions but the reason for this can be found in the importance attached, in both the lawyers'

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<sup>23</sup> See [Annex II: List of Titles of Key Regulated Professions in the EU](#)

services' directive and in the establishment directive, to allowing consumers and businesses to have access to the legal services of their choice – a fundamental tenet of the rule of law. This inevitably led to a recognition that the provision of legal services across borders in Europe was, in fact, different to all other services; and it wasn't a matter of finding an acceptable level of qualification that all member states could sign up to (as was the case for architects), or of simply allowing for the mutual recognition of qualifications (as in the general system). It was rather, a matter of allowing lawyers to practice elsewhere in the EU under their home-country titles, whether temporarily or on a permanent basis.

The Lawyers' Services Directive came first in 1977 and was therefore a relatively early addition to the then European Community's instruments relating to free movement of professionals. Although it was not possible at that time to reach agreement on an MRA that provided for requalification, not least because of the diversity of national laws and the variety of different legal systems<sup>24</sup>, the Lawyers' Services Directive did include automatic recognition, on the basis of agreed titles for the main legal professions in each Member State. A high level of automaticity of market access was possible at this stage, only on the basis of a limited 'scope of practice' and some (though not particularly onerous) ex-post guarantees. Under the Lawyers' Services Directive therefore, an EU national who is qualified as a lawyer and holds one of the titles listed in the directive, can provide temporary legal services in another Member State in relation to his home country law, or European law, without registering with a local competent authority. Moreover, it is even possible under this directive for an EU lawyer to appear in court in another Member State provided he is introduced by a locally qualified lawyer. The main ex-post guarantee imposed is the requirement to adhere to the rules of professional conduct that apply in the host Member State.

The second pillar of the lawyers' regime – the Establishment Directive - followed much later in 1998. This was again a unique development because it was a directive negotiated by the profession itself and presented to the European Commission more or less as a final package deal. It was the result of a compromise between, notably the UK and French professions, who had very different attitudes to whether assimilation into the local profession should be required of those who were practicing law in another Member State on a permanent basis. The Establishment Directive, like the lawyers' services directive, is based on mutual acceptance of a number of national lawyers' professional titles. A lawyer with EU nationality holding one of these titles is able under the directive to move to another Member State and register with the local competent authorities. As a registered European lawyer, he may not only provide services under his home country title and in European and international law but he may also provide services in the law of the host Member State, provided that he does not practice areas of law such as transfer of property and dealing with estates in countries where those areas are specifically reserved for lawyers with particular qualifications. Appearing in courts or tribunals must also be done in association with a locally qualified lawyer.

This is a very broad scope of practice which required a high level of trust and cooperation to achieve – largely made possible by the level of dialogue between the relevant competent authorities through the European lawyers association, the CCBE. The ex-post guarantees required by the system were: Adherence to the host country code of conduct (alongside the home country code), cooperation between competent authorities and an acceptable level of professional indemnity insurance.

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<sup>24</sup> Including French civil law, German civil law, Dutch civil law, Scandinavian civil law (Denmark) and English common law.

In addition to allowing lawyers to work under their home country titles, the Establishment Directive also set down far reaching provisions to permit full integration of EU lawyers into the host Member State. A migrant lawyer can therefore choose to requalify either:

- By requesting assessment of his qualifications under the Professional Qualifications Regime (89/48/EEC – subsequently replaced by 2005/36/EC) which could require him to take additional tests or courses in order to make up any deficit in his knowledge or experience of local law; or
- By submitting a dossier outlining three years' of 'regular and effective' practice in host country law which would enable him to assimilate into the local profession without additional test requirements.

In addition to the main lawyers' directives, the professional qualifications directive also plays a part, since it enables lawyers who do not hold one of the main national lawyer titles (e.g. because they are part qualified or qualified in a specialist area, to have their qualifications assessed and be provided with a mechanism for requalifying as a fully integrated local lawyer. The General Services Directive was also relevant to the legal profession, even though that directive acknowledges that the Lawyers Directives take precedence if there is any conflict. Despite this, many provisions in the General Services Directive do apply to the legal profession e.g. the need for public interest justifications for rules in certain areas like advertising prohibitions and fee scales, the encouragement of pan-European codes of conduct, identity cards and common platforms.

## 5 The EU approach – The Impact

The EU approach to mutual recognition in the professions is constantly under review by the European Commission. The criteria generally used to measure the success of any legislative initiatives are usually:

- Numbers of individuals making use of the directives.
- Views from professions about remaining obstacles or difficulties in implementation.
- Infringement cases taken by the European Commission to the European Court of Justice.

This report will consider later, when assessing lessons that might be learned from the EU by CEFTA countries, whether there are additional criteria that could be applied but much of the evidence that has been collected to date is based on the above.

### 5.1 Accountancy

For professionals providing accountancy services other than statutory audit, the conduct of cross-border activities is generally complex because of the wide range of activities carried out by professional accountants, the differences in Member States' rules regarding the pursuit of those activities and the existence of different regulatory approaches and market access rules at Member State level. Although the Professional Qualifications Directive is generally seen positively amongst the accountancy bodies, the accountancy profession faces much bigger challenges to mobility that are not addressed by the PQD, such as differences in company law, social security law and tax regimes between Member States. These have a much greater impact on mobility, reducing cross-border activities and movement of professionals.

Between 2005 and 2012, there were 706 applications from accountants seeking recognition of their qualifications; 242 of these applicants had to sit aptitude tests and eventually 598 applicants were recognised. Over the same period there were only 8 declarations made by accountants who wanted to provide services on a temporary basis. In the period 1997-2004, only 109 applications for establishment were received across the EU and only 63 of these were ultimately successful. In terms of the statistics gathered by the European Commission on permanent establishment, accountants are the 45th most mobile profession and in terms of the provision of services on a temporary basis they are the 79<sup>th</sup> most mobile profession. However, these figures do not reflect the full picture of the mobility of accountants as many move across borders with their firms – particularly within large accountancy/professional service firms, but only advise on unreserved areas or on matters relating to their home qualification. As the accountancy profession, outside of audit, is unregulated in many Member States there is also often no need for accountants to go through the recognition process, or even to declare their intention to provide services on a temporary basis.

There have been no ECJ cases nor has the European Commission taken any legal action against Member States for poor or incomplete transposition of Directive 2005/36/EC in the accountancy sector. Moreover implementing the Professional Qualifications Directive appears to have raised no major issues for the competent accountancy bodies.

In many respects the PQD made no fundamental changes to the legislation it replaced. The only significant addition, from the accountancy perspective, was that the PQD made it possible for a professional from a country which does not regulate accountants, to be

recognized in a country which does regulate the profession. The view from the profession however is that, when faced with learning new national content in order to assimilate into the host state profession, accountants would rather choose to practice on a temporary basis, or choose positions where they do not require signing rights when moving to another Member State. In 2010 SOLVIT centers<sup>25</sup> dealt with 220 cases on professional recognition, across all professions and all Members States. They resolved 91 per cent of them. 16 per cent of cases, approximately 35, concerned recognition of professional accountancy qualifications<sup>26</sup>. The small number of SOLVIT cases and the absence of ECJ cases suggest that there are no obvious improvements to the MRA framework that could be made.

The main change that would improve mobility for accountants that has been identified by the EU accountancy profession is increased harmonization of underlying legislation. Whilst it is well understood that the PQD is about developing a framework for mutual recognition of qualifications, not harmonization, there is a growing view that these two things are not mutually exclusive and that some work around harmonization would be of benefit both for accountants, and the wider public.

Lack of harmonization of Member States' regulatory, legal and education regimes is a real barrier to mobility for accountants. In order to address this issue, the professional bodies in six Member States (France; Germany; Ireland; Italy; The Netherlands; UK) are collaborating on 'The Common Content Project'.<sup>27</sup> The organizational document setting out the project's ambitions describes it in these terms:

"A collaboration between premier accountancy bodies to develop, maintain and unify high quality professional accountancy education benchmarks reflected in the distinct qualifications of these bodies and recognized internationally as meeting the challenges posed by globalization and the needs of diverse stakeholders".

The scope of the project is wide-ranging, including setting benchmarks for knowledge, agreeing learning outcomes, setting interdisciplinary competencies and policies on education and assessment. Although it is currently an activity between a group of interested countries rather than an EU-wide approach, the expectation is that the standards set will become more widely adopted.

The PQD has been most used by accountants from the UK (69% of all migrant accountants), Italy, Ireland, France and Spain. Cyprus, the UK, Germany, Italy and Romania have been the countries most often hosting accountants from other EU Member States. These statistics no doubt reflect both the strength of the UK accountancy profession and the fact that many non-UK nationals choose to train in the UK. The PQD has also been cited by the profession as particularly useful for individuals and competent authorities.

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<sup>25</sup> SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State (as well as in Norway, Iceland and Liechtenstein). SOLVIT Centres can help with handling complaints from both citizens and businesses. They are part of the national administration and are committed to providing real solutions to problems within ten weeks. Using SOLVIT is free of charge.

<sup>26</sup> SOLVIT 2010 report: [http://ec.europa.eu/solvit/site/docs/solvit\\_2010\\_report\\_en.pdf](http://ec.europa.eu/solvit/site/docs/solvit_2010_report_en.pdf)

<sup>27</sup> Common Content Project: <http://www.commoncontent.com/>

## 5.2 Architecture

The evidence gathered through the European Commission's 2009 evaluation of the PQD seems to suggest that the system of automatic recognition amongst architects appears to be a success, not only from the perspective of architects themselves, but also the competent authorities responsible for the recognition of their qualifications.<sup>28</sup> The Architects' Council of Europe submitted a position paper on behalf of its members which stated that, "Architects support, and benefit from, the Professional Qualifications Directive (PQD). There is good (but uneven) progress by architects all across the EU in areas of consumer protection, of market access and of mobility for establishment and provision of services. Administrative cooperation between competent authorities across the EU mitigates anomalies in the laws and systems which implement the PQD at national level".<sup>29</sup>

Since 2005, 3975 architects have applied for automatic recognition of their qualification in another EU country (3816 of these were successful). In 2006 and 2007 there were approximately 1000 applications for automatic recognition each year. In the following years the annual average dropped to around 300 and in 2012 only 50 architects applied for recognition. Since 2007, 404 declarations have been provided to host countries by professionals wishing to provide services on a temporary and occasional basis. According to these statistics, architects are the 13<sup>th</sup> most mobile profession in terms of permanent establishment and the 3<sup>rd</sup> most mobile in terms of temporary mobility.<sup>30</sup>

In response to a consultation launched by DG Internal Market and Services to assess the experience of architects of the Professional Qualifications Directive, the competent authorities in the United Kingdom and Ireland were able to provide figures for applications for automatic recognition prior to the adoption of the Directive. There was a noticeable increase in applications under the new Directive in the period of 2006-2008 and a tailing-off by 2010.<sup>31</sup> The findings of the Architects' Council of Europe's 2012 sector study highlight the fact that a very small proportion of architects, only 3% of the profession, work in another European country. A much higher proportion, 35%, have reportedly 'seriously considered' working in another country in the last 12 months. The biggest concerns about working in another country are practical, relating to relocation or personal issues (66 per cent say these are barriers) although more than one third have insufficient language skills or insufficient knowledge of local planning or building regulations.<sup>32</sup>

Given the longevity of mutual recognition arrangements for architects in the European Union, implementation of the 2005 directive seems to have been relatively straight forward and many of the issues that Member States would have had to consider had already been tackled in the 1980s.

There have been no ECJ cases or legal action taken by the European Commission regarding the poor or incomplete transposition of the Professional Qualifications Directive, in relation to architects. However, in general transposition of the Directive into national

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<sup>28</sup> European Commission, Evaluation of the Directive:

[http://ec.europa.eu/internal\\_market/qualifications/policy\\_developments/evaluation/index\\_en.htm](http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation/index_en.htm)

<sup>29</sup> Summary of the Architects' Council of Europe position on Professional Qualifications Directive:

[http://www.ace-cae.eu/public/contents/getdocument/content\\_id/1092](http://www.ace-cae.eu/public/contents/getdocument/content_id/1092)

<sup>30</sup> The EU Single Market Database:

[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?action=homepage](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=homepage)

<sup>31</sup> Evaluation of the Professional Qualifications Directive - Architects:

[http://ec.europa.eu/internal\\_market/qualifications/docs/evaluation/experience-report-architect\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/evaluation/experience-report-architect_en.pdf)

<sup>32</sup> The Architectural Profession in Europe 2012:

[http://www.ace-cae.eu/public/documents/sector\\_study\\_2012\\_draft\\_final.pdf](http://www.ace-cae.eu/public/documents/sector_study_2012_draft_final.pdf)

laws was slow – incurring a three year delay, resulting in the European Commission having to take action against all Member States<sup>33</sup>.

There are a few earlier cases of poor transposition of the Architects Directive 1985. The most significant was Dreessen II C-31/00 (2002), in which the Court decided that the host Member State had an obligation to take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned, as well as their relevant experience. These needed to be compared against the requirements of the national legislation, even when a directive on the mutual recognition of diplomas had been adopted for the profession concerned, but where the individual's qualification did not meet the requirement for automatic recognition under the Directive. This meant that a host member state could not simply reject an applicant for not meeting the automatic requirements of the sectoral directive but also had to give due consideration to compensatory measures under the general system. This obligation was clarified by the 2005 PQD.

The main ongoing issues identified by the architectural profession are:

- Cross-border communication/coordination. This is a key issue amongst the Member States. There is already significant and useful collaboration amongst the competent authorities through ENACA (the European Network of Architects' Competent Authorities) as well as through organizations such as the Architects' Council of Europe. Cooperation is further facilitated through the Internal Market Information System (IMI). However, based on the feedback the Commission received in the course of the evaluation, not all of the architects' competent authorities consistently use the IMI. There are even reported instances of queries not being answered at all by the relevant competent authority.
- Keeping the Directive up-to-date: the procedure for notifying and examining new diplomas is considered complex and burdensome. Automatic recognition is only available to those architects who have a diploma listed in the annex to the directive and the late notification of new diploma courses can have a direct impact on graduates who may not be able to benefit from automatic recognition of their qualifications. Some Member States have a considerable backlog of diplomas awaiting notification and publication.
- Minimum training requirements: the profession would have liked to have seen Article 46<sup>34</sup> amended to require a five-year minimum curriculum supplemented by two years professional experience. A five-year minimum is the national requirement in almost all of the EU, and in almost every country around the world given the International Union of Architects (UIA)-UNESCO Accord on Recommended International Standards of Professionalism in Architectural Practice (2005). The new PQD directive has increased the EU minimum requirement to four years of academic study plus two years of professional/practical experience, which the European Architects Association reluctantly accepted as a compromise over their preferred longer minimum curriculum.

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<sup>33</sup> Commission Staff Working Document on the transposition and implementation of the Professional Qualifications Directive: [http://ec.europa.eu/internal\\_market/qualifications/docs/evaluation/staff-working-doc\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf)

<sup>34</sup> Article 46 sets out the harmonised qualification requirements for architects in the EU (currently 4 years at university full time).

There does not appear to have any been any major opposition to the introduction of the MRA arrangements for architects in the PQD, probably because these battles had been fought and won in the negotiations leading up to the Architects Directive 1985.

In terms of how mobility could be further improved, the Architects Council for Europe (ACE) suggested that the verification of credentials would be made easier if competent authorities were required by the PQD to publish an online list of registered professionals – including those who have made prior declarations. ACE sees such a tool as more useful than the further development of the concept of a professional card.

### 5.3 Engineering

Engineers have long been internationally mobile. Many work within large businesses on 'global projects' and to a certain extent this has meant that there has been less of a need for mutual recognition of individuals' qualifications within this sector; engineers simply moved with their employers. However, the labor market has changed and there is currently a skills shortage in many engineering disciplines in certain Member States and a growing imperative to 'import' this expertise from other EU countries.

The Professional Qualifications Directive was generally welcomed by the engineering profession as a way of simplifying and streamlining the recognition process, although engineers had in fact been seeking recognition in significant numbers before the introduction of the Directive. EU statistics show that there were fewer applications for mutual recognition after the implementation of the PQD, compared to the pre-2005 scheme, although this could be attributed to a number of factors.

FEANI, a federation of professional engineering associations from 28 countries in Europe, was active in the field of mutual recognition and mobility many years before the implementation of the PQD. Arguably their work, to make national educations compatible through accrediting national educations under the 'EUR-ING' scheme as well as maintaining an 'INDEX', which lists the institutions of engineering higher education and their engineering courses recognised by FEANI has eased the recognition process, and therefore helped Member States implement the Directive. Some competent authorities report that the INDEX is used to investigate or check diplomas included in recognition applications and the European Commission acknowledged that, "...the FEANI scheme is an excellent example of self-regulation by a profession at European level and it provides a model for other professional groups in the technical and scientific sector"<sup>35</sup>.

The Professional Qualifications Directive recommended the introduction, at European level, of professional cards by professional associations or organizations to facilitate the mobility of professionals, in particular by speeding up the exchange of information between the host Member State and the migrant professional's Member State of origin. FEANI conducted a feasibility study and launched its first 'card project' based on the findings of this study and the input of its members. However, this project was abandoned in 2008 as it was too ambitious. More recently, one of the FEANI members, the VDI (Verein Deutscher Ingenieure) launched a new initiative for a professional card. The objective was to enhance mobility but also to facilitate the assessment by employers of engineering qualifications acquired abroad. This model of card was approved by FEANI general assembly in October 2010. Various national associations of engineers started issuing the EngineerING card in 2011. To date, the only professions to introduce such a

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<sup>35</sup> Statement from the European Commission

[http://www.feani.org/site/index.php?eID=tx\\_nawsecuredl&u=0&file=fileadmin/PDF\\_Documents/Statements/StatementEurCommission.pdf&t=1370694159&hash=140c1af9f6bd2c7d7923d2590236eedb0eddb116](http://www.feani.org/site/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/PDF_Documents/Statements/StatementEurCommission.pdf&t=1370694159&hash=140c1af9f6bd2c7d7923d2590236eedb0eddb116)

scheme are the engineering and healthcare sectors although some other professions, such as real estate agents and mountain guides, have expressed interest in participating in the European Commission's pilot activity in this area<sup>36</sup>.

In the period 2005-2012 there were 1080 applications for recognition from engineers, of which 995 were successful. The vast majority of these applications were treated under the General System and no compensation measures (aptitude tests or additional training requirements) were imposed. In the earlier period 1997 – 2004, Member States received over 1600 applications, of which 1393 were successful. In terms of establishment, engineers are the 15<sup>th</sup> most mobile profession<sup>37</sup> and in terms of temporary mobility engineers are the second most mobile sector (if all of the 'types' of engineering professionals are combined). The high level of temporary mobility is largely due to the fact that a large proportion of engineering work is contract and project based so temporary mobility is arguably more relevant to the profession than permanent establishment.

There have been no ECJ cases or European Commission legal action taken against Member States for poor or incomplete transposition of Directive 2005/36/EC in the engineering sector. However, there was a case in the European Court of Justice in relation to Directive 89/48/EEC, which was one of the fifteen Directives replaced by the Professional Qualifications Directive. In the main proceedings for this case, the Spanish Colegio de Ingenieros de Caminos, Canales y Puertos (Institute of Civil Engineers) had challenged a decision by the Spanish Ministry of Development to recognize the diploma of an engineer specialized in hydraulics from Italy and grant him unconditional permission to take up the profession of a civil engineer in Spain. The ECJ ruled in favor of the competent authority (the Spanish Institute of Civil Engineers) and stated in its ruling:

*“When the holder of a diploma awarded in one Member State applies for permission to take up a regulated profession in another Member State, the competent authorities of that Member State are not precluded by 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 from partly allowing that application, if the holder of the diploma so requests, by limiting the scope of the permission to those activities which that diploma allows to be taken up in the Member State in which it was obtained.”<sup>38</sup>*

In general most implementation problems reported by the engineering profession seem to be related to the general lack of harmonization amongst the profession and its diversity of titles/branches', training and regulatory regimes.

A typical problem cited arises when applicants travel with qualifications which are not regulated in their home Member State to a Member State where that profession is regulated. An example of this in the engineering sector could arise, for example, when a French civil engineer travels to Germany. As civil engineering is not a regulated

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<sup>36</sup> [http://ec.europa.eu/internal\\_market/qualifications/docs/policy\\_developments/131206\\_results-call-for-interest\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/131206_results-call-for-interest_en.pdf)

<sup>37</sup> The EU Single Market Database:

[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?action=homepage](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=homepage)

<sup>38</sup> Judgment of the Court, Case C-330/03 Colegio de Ingenieros de Caminos, Canales y Puertos v Administración del Estado

<http://curia.europa.eu/juris/document/document.jsf?text=Colegio%2Bde%2BIngenieros%2Bde%2BCamino%2Bde%2BCanales%2Bde%2BPuertos&docid=56574&pageIndex=0&doclang=EN&mode=req&dir=&occ=firs&part=1&cid=164920#ctx1>

profession in France there is no French competent authority to help the individual identify the competent authority in Germany or assist in the application process. Even more critically, the competent authority in Germany has no counterpart in France to communicate with during the actual recognition process. The German competent authority for civil engineering must however process the French citizen's application for recognition regardless of whether the profession is regulated in France or not. With no French counterpart to assist in understanding the civil engineering education in France or to help to verify the practical experience obtained, the competent authority in Germany faces the challenge of identifying information independently. This may result in a prolonged application period for the French civil engineer.

In terms of future developments, the engineering sector is positive about the concept of a common platform for engineering but the capacity of the competent authorities across all Member States to implement this, if it were introduced, is doubtful. As in many other sectors, it is also enthusiastic about the concept of the IMI and the greater sharing of licensing information between competent authorities, but feels that the current system falls short in practice. There is no central overview of qualifications and curricula for the competent authorities to consult in order to update their knowledge on developments in other Member States. None of the Member States collect this type of information systematically but tend instead to use a combination of the IMI, the FEANI INDEX and bilateral contacts in the qualification recognition process.

FEANI has identified the new professional card its members are developing as the key to greater mobility in future. This will speed up the recognition process (which can currently take between 5 months and 1 year) and will be most useful for young engineers who are in the process of building their careers and gaining experience in other countries. The FEANI card is actually likely to take the form of an e-certificate and will cover: education level (bachelor, masters and doctorate), professional experience and completed continuous professional development.

The biggest users of the PQD in engineering have been the UK, Germany and Italy. Germany, the UK, Italy, Ireland and Iceland were the markets in which engineers from other EU Member States were most likely to seek work in the period 1997-2012, whilst the migrant professionals themselves were most likely to come from the UK, Denmark, Ireland, Italy and Germany.

Despite the PQD, challenges remain in the EU labor market for engineers. There are too many engineers in Italy, Finland, Spain and Portugal but significant shortages in Germany and Benelux. There is some evidence of South to North movement of engineering professionals but not enough to fill all the advertised positions in Germany where there are more than 60,000 vacant engineering jobs at any one time.

## **5.4 Lawyers**

Lawyers are now one of Europe's most mobile professions. A reported 3,544 have used the Establishment Directive to register and work in other EU jurisdictions<sup>39</sup>. However, many other EU lawyers have assimilated fully into their host Member States and are therefore no longer counted as lawyers from another jurisdiction. In addition, lawyers using the Professional Qualifications Directive to requalify are also not included in this number. The European Commission's own database on regulated professions records

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<sup>39</sup> Evaluation of the Framework of the Free Movement of Lawyers, Study by Panteia and Maastricht University funded by the European Commission, 28 November 2012

6720 requests for registration as a lawyer in another Member State, of which only 405 (6%) were rejected.

By far the largest recipient of migrant lawyers based on the European Commission's statistics (by positive decisions made) is the UK which has received 48% of all migrants. Other major recipient countries are Germany, Italy, Ireland and Belgium. The largest migrating professions were from the UK (18% of the total), Spain (17%), Germany (12%), France (12%) and Greece (9%). The country most likely to refuse registration by another European lawyer has been France (172 of the 405 negative decisions on lawyers taken by all Member States i.e. 42%). According to the European Commission's statistics, over 20% of all the requests for recognition by European lawyers in France were negative decisions. This compares to figures of 5% of negative decisions in Italy, 4% in Germany and 3% in the UK. France was also one of the Member States that was subject to ECJ proceedings for slow transposition of the Directive. The other countries either threatened with, or actually subject to Court proceedings for slow or poor transposition were Luxembourg, Slovakia and (still ongoing) Bulgaria.

A recent independent study funded by the European Commission<sup>40</sup> concluded that the regime to encourage mobility of lawyers in the EU was, in general working well. The key findings were:

- Nationality and residency requirements had been successfully removed and lawyers were generally able to work in each other's Member States either under their own home title or by requalification.
- Temporary working was considered likely to be very much more important than the limited statistics available suggested, based on survey evidence.
- The main benefits to host countries had been felt in terms of a wider choice and depth of legal specialism, rather than in terms of price competitiveness.
- The newer Member States had been in a weaker position to benefit from the directives because of the lack of capacity to carry out cross border work and the lack of experience in EU law. This is potentially something that acceding countries could learn from and adapt their training and education systems for lawyers in advance of accession in order to benefit from the lawyers' directives.

The remaining difficulties to mobility for lawyers seem to revolve around the professional indemnity insurance market, which has sometimes acted as a barrier to allowing lawyers to practice under their home country titles; restrictions on in-house or company lawyers; and the administrative burden required by the need to comply with both home and host country rules of professional conduct.

Importantly, this study (known as 'the Panteia report') also assessed whether or not it was necessary for lawyers to retain a separate directive rather than be assimilated into the PQD (as the architects had been in 2005). The researchers concluded, however, that there was an enduring case for the existence of separate directives, because unlike other professions, lawyers might make use of their home country title as well as a host country qualification when providing services.

Lawyers, perhaps not surprisingly, however, have also been the biggest users of the European Court of Justice in establishing their rights to free movement. Key judgments in

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<sup>40</sup> Ibid

relation to lawyers have included: *Wouters* (case C-309/99) which upheld the right of the Netherlands Bar to ban MDPs between lawyers and accountants, and the *Morgenbesser* judgment (Case C-313/01), which extends the right of European mobility to those who have only partially completed their legal training. This latter judgment confirmed and extended to partially qualified lawyers, the application of a pre-Establishment directive case, the *Vlassopoulou* judgment (Case C-340/89) which had recognized that the general system applied to lawyers. Interestingly, this latter case and others like it, may well have helped to accelerate the adoption of a more specific lawyers' regime, as bar associations realized that they would have much less control if the Court were to continue to apply the general system to lawyers in the same way as to any other profession.

The main area of contention in the lawyers' mobility regime, remains this 'Morgenbesser' issue of recognition of qualifications and experience which only partially fulfill the requirements of any of the lawyer's titles recognized in the Establishment Directive. The *Pésla* judgment (Case C-345/08), for example, gave competent authorities wide-ranging discretion to impose compensatory measures in cases where trainees were seeking to obtain recognition for their partial qualifications obtained in another Member State. Another interesting case was the *Köller* case (Case C-118/09). This concerned an Austrian national who had used the provisions of the recognition of qualifications directive to qualify as a lawyer in Spain, which only required a law degree, and then had applied for admission back in Austria via the examination route offered under the Professional Qualifications Directive, thus circumventing the Austrian post university training stage for lawyers. The Austrian authorities were required by the ECJ to permit Herr Köller to sit an aptitude test.

This case illustrates an interesting, and not always expected consequence of mutual recognition. The fear amongst authorities is usually that mutual recognition between systems that have very different base levels in terms of qualifications, will lead to jurisdiction 'shopping'. In other words, individuals will seek out the softest entry point to the profession and then use this to 'trade up' and get a more respected qualification. It was feared in some quarters that the absence of a requirement in Spain for any further study or experience post-university in order to become a lawyer, would create such a problem with the introduction of the Establishment Directive. In fact, there has been little evidence of this happening, beyond a small number of court cases, and the Spanish authorities have also been prompted by such cases to upgrade their requirements for qualification to bring them into line with other Member States. This illustrates that MRAs can act as an influence to raise standards not to reduce them to the lowest common denominator.

One final interesting aspect of the Establishment Directive, which is unique to the legal sector is the question of the treatment of groupings of professionals, or law firms, covered under Article 11. The directive contains a few provisions relating to law firms. It permits their establishment but allows host authorities to require foreign law firms to take only the corporate forms permitted to law firms in the host member state and it allows them to keep their home country name but if local rules require it to add the name of a locally qualified lawyer; it allows EU and locally qualified lawyers to work in partnership. Despite these provisions, Article 11 remains one of the other major ongoing challenges in the Establishment Directive, as the firms most likely to establish in other EU jurisdictions are large international law firms with multiple offices and complex structures and there are certain forms which these firms prefer, such as limited liability partnerships which are not recognized in all jurisdictions. There are also increasingly different structures and percentages of minority non-lawyer ownership being adopted by Member States as mechanisms for allowing more diverse forms of practice.

## 5.5 Experience of MRAs in other sectors

Outside of the core liberal professions described above, the EU has experienced fairly wide use of its MRAs. In total, 558 different professional titles have been used under the general system since 1997 (of the 740 regulated professions (and nearly 5000 titles) recorded by the European Commission) and more than 300,000 professionals have benefited from mobility provisions. More than forty titles have been used more than 1000 times and these most frequently used titles tend to break down into: Medical and para-medical professions, educational professions, social professions (e.g. Social work) and skilled crafts. Table 2 illustrates the top 25 most mobile professions in Europe on the basis of establishment in other jurisdictions. It should be borne in mind however that these statistics will underestimate the true level of mobility in certain professions which are not regulated in most member states e.g. building trades.

These statistics are interesting when compared to those for temporary mobility. Table 3 shows the top 25 professional titles that have been used by individuals making declarations of temporary practice under the Professional Qualifications Directive since 2007 when the provisions on temporary recognition came into force.

This table illustrates that there is very little overlap between those professions engaging in temporary mobility and those that are using establishment provisions. Over the same period, the only professions which feature amongst the top 25 most mobile professions for both establishment and temporary mobility are: Secondary school teachers, architects and civil engineers. The legal profession would be expected to appear on both lists but as lawyers' temporary mobility is not regulated under the PQD and lawyers do not need to make declarations, then these statistics are not recorded.

These tables illustrate the importance of the general system embodied in the Professional Qualifications Directive, as this has helped to ensure that many more individuals, working in jobs outside the traditional 'liberal' professions, were able to exercise their professions across the EU internal market.

It is also worth looking at where the migrant professionals were coming from and where they were going to as this also illustrates some useful lessons for other MRAs. Table 4 sets out the establishment of professionals by country both in terms of outbound and inbound flows.

**Table 2: EU Establishment, 1997-2012: 25 Most Mobile Professions**

<b>Title</b>	<b>Number of professionals establishing in another EU or EEA Member State</b>
Secondary school teacher	50752
Doctor of Medicine	48582
Nurse	43954
Physiotherapist	18555
Second level nurse	14151
Electrician / Senior electrician /Specialised electrician	13555
Primary school teacher	13033
Dental Practitioner	9660
Lawyer/Barrister/Solicitor	6720
Veterinary Surgeon	6609
Pharmacist	5987
Social worker	5663
Architect	4019
Psychologist	3256
Engineer	2749
Midwife	2637
Occupational therapist	2548
Radiographer / Radiotherapist	2539
Kindergarten teacher/ Nursery school teacher/Preparatory school teacher	2380
Civil engineer	2172
Speech and language therapist	2035
Medical/Biomedical laboratory technician	2026
Mason /Bricklayer	2017
Painter-decorator	1907
Child care worker	1902

**Table 3: Temporary Mobility within the EU, 2007-2012**

<b>Recognised Profession</b>	<b>Number of declarations</b>
Tourist guide	820
Machinery operator	466
Master builder	465
Architect	417
Sports instructor	378
Secondary school teacher	354
Fork lift truck operator	313
Physiotherapist	295
Civil engineer	292
Electrical Engineering / Electromechanical engineering	278
Construction/Civil engineering: building of roads, bridges, railways)	277
Joiner/Carpenter	274
Locksmith	232
Painter-decorator	232
Doctor of Medicine	217
Radiographer / Radiotherapist	188
Air conditioning technician/Heating/Central heating technician/installer/repairer/Maintenance-Installation of ventilation equipment	180
Child care worker	142
Plasterer	142
Welder / steel worker	132
Gas network system engineer	119
Civil and environmental engineer	119
Building engineer	119
Tiler	103
Tax advisor/accountant	100

**Table 4: Mobility of professional workers within the EU/EEA 1997-2012, by country**

	<b>Number of locally qualified prof'ls moving to another Member State</b>	<b>Share of total number of prof'ls moving within EU</b>	<b>Number of prof'ls accepted from other Member States</b>	<b>Share of total EU mobile prof'ls hosted</b>	<b>Net migration of prof'ls</b>
<b>Austria</b>	7958	2.39%	18997	5.71%	11039
<b>Belgium</b>	15086	4.53%	23909	7.18%	8823
<b>Bulgaria</b>	6657	2.00%	366	0.11%	-6291
<b>Cyprus</b>	411	0.12%	18877	5.67%	18466
<b>Czech Republic</b>	4392	1.32%	7044	2.12%	2652
<b>Denmark</b>	8578	2.58%	8496	2.55%	-82
<b>Estonia</b>	3877	1.16%	62	0.02%	-3815
<b>Finland</b>	2522	0.76%	4023	1.21%	1501
<b>France</b>	15919	4.78%	9432	2.83%	-6487
<b>Germany</b>	45821	13.77%	30048	9.03%	-15773
<b>Greece</b>	18067	5.43%	4574	1.37%	-13493
<b>Hungary</b>	8402	2.52%	804	0.24%	-7598
<b>Ireland</b>	11032	3.31%	20214	6.07%	9182
<b>Italy</b>	14006	4.21%	12493	3.75%	-1513
<b>Latvia</b>	1627	0.49%	532	0.16%	-1095
<b>Lithuania</b>	3397	1.02%	76	0.02%	-3321
<b>Luxembourg</b>	521	0.16%	6655	2.00%	6134
<b>Malta</b>	755	0.23%	177	0.05%	-578
<b>Netherlands</b>	12625	3.79%	11966	3.60%	-659
<b>Poland</b>	35569	10.69%	1961	0.59%	-33608
<b>Portugal</b>	5469	1.64%	2212	0.66%	-3257
<b>Romania</b>	22768	6.84%	452	0.14%	-22316
<b>Slovakia</b>	12363	3.71%	941	0.28%	-11422
<b>Slovenia</b>	807	0.24%	737	0.22%	-70
<b>Spain</b>	17449	5.24%	7375	2.22%	-10074
<b>Sweden</b>	21371	6.42%	8131	2.44%	-13240
<b>United Kingdom</b>	29041	8.73%	73292	22.02%	44251
<b>Iceland</b>	1414	0.42%	3379	1.02%	1965
<b>Liechtenstein</b>	268	0.08%	305	0.09%	37
<b>Norway</b>	2316	0.70%	37007	11.12%	34691
<b>Switzerland</b>	2334	0.70%	18285	5.49%	15951
<b>Total</b>	332,822	100.00%	332,822	100.00%	

Table 4 illustrates that a number of countries were major beneficiaries of inflows of regulated and skilled professionals. The biggest importers of professional services in absolute terms were the UK, Norway, Switzerland, Cyprus, Austria and Belgium. Ireland was also a large importer and its experience during this period stands in sharp contrast to its traditional role as a labor exporter. The biggest exporters of professionals in absolute terms were Poland, Romania, Slovakia, Germany, Sweden and Spain. Over 70% of the professionals establishing in Cyprus were from Greece and 57% of those establishing in Austria were from Germany. This underlines the enduring importance of language as a factor influencing cross border mobility.

There are also a number of interesting observations to be made on how Member States applied the PQD outside of the liberal professions. Table 5 summarizes the percentage of total applications that were approved under the PQD and the percentage that were approved without additional compensatory measures. This illustrates that on average across the EU around 82% of applications for recognition were approved and around 76% of these approvals required no compensation measures.

Table 5 also illustrates that the countries that are most likely to require compensatory measures are federal jurisdictions (e.g. Switzerland and Austria) or net exporters of professionals.

The European Commission surveyed the PQD professions in 2010 to find out how practitioners were using MRAs and where they could see improvements. The following were the main issues identified:

- The key role of educational reforms - Reforms of national education systems (in particular in the context of the Bologna process) were seen by many as helpful in facilitating the recognition of professional qualifications.
- Professional cards – Forms of identity and verification of credentials are seen in certain professions (e.g. engineering) as crucial for mobility.
- Common platforms - were seen as continuing to have a role in future, even if implementation of the concept to date had been disappointing.
- Temporary mobility – this was seen as something that would become increasingly important in future. Some professional organizations argued that the requirement for professionals from a Member State which does not regulate their profession to have two years' experience constituted a market access barrier (for example for tourist guides).
- Labor markets - Professional organizations did not seem to agree on whether the PQD had a positive effect on reducing unemployment but there was consensus that professional regulation needed to be more attuned to the needs of the labor market.
- Permanent establishment under the general system in the PQD – was widely felt to have improved but there was still evidence of "protectionist cultures" in certain Member States and poor application of the Directive.

**Table 5: Approvals under the PQD by Member State, 1997-2012**

	<b>% of total decisions which approved applications under the PQD</b>	<b>% of applications approved automatically (without compensatory measures)</b>
<b>Malta</b>	88.21%	85.96%
<b>Norway</b>	86.61%	83.85%
<b>Iceland</b>	86.35%	83.31%
<b>Estonia</b>	86.30%	82.38%
<b>Greece</b>	83.75%	81.72%
<b>Slovakia</b>	85.69%	81.18%
<b>Germany</b>	86.76%	81.03%
<b>Finland</b>	85.57%	80.85%
<b>Ireland</b>	84.48%	80.42%
<b>Portugal</b>	83.43%	80.18%
<b>Denmark</b>	86.02%	79.84%
<b>Sweden</b>	89.10%	79.64%
<b>Romania</b>	82.97%	77.87%
<b>Hungary</b>	81.77%	77.60%
<b>Netherlands</b>	82.53%	76.67%
<b>Belgium</b>	85.83%	75.20%
<b>United Kingdom</b>	81.77%	72.52%
<b>Czech Republic</b>	77.00%	71.70%
<b>Poland</b>	76.69%	71.65%
<b>France</b>	78.38%	70.70%
<b>Luxembourg</b>	80.81%	70.63%
<b>Latvia</b>	72.22%	69.21%
<b>Bulgaria</b>	76.54%	68.87%
<b>Spain</b>	76.49%	68.42%
<b>Austria</b>	73.39%	67.30%
<b>Switzerland</b>	74.25%	66.71%
<b>Italy</b>	73.68%	66.66%
<b>Lithuania</b>	71.98%	65.79%
<b>Cyprus</b>	66.91%	63.02%
<b>Slovenia</b>	68.77%	60.97%
<b>Liechtenstein</b>	79.10%	55.22%

In the period 1974 to 2009, the European Court of Justice has issued 100 judgments relating to professional services mobility. The areas of professional activity most often covered by these cases where the case was on a point of interpretation of EU law were medical (doctors/dentists - 17 cases), lawyers (11 cases), education (6 cases), architects (4 cases), vets (3 cases), crafts and industries (3 cases), sport (2 cases) and auditors (1 case). The member states most often identified for non-transposition of directives or for

poor transposition were: Italy (8 cases), Greece (7 cases), Spain (5 cases), France (4 cases), Luxembourg (2 cases), Belgium (1 case), Portugal (1 case).

## 6 Other international experience of MRAs

Before going on to address what the EU's experience might mean for CEFTA members, it is worth looking briefly at the experience and lessons to be learned from other international MRAs, as this throws into sharper relief the other factors that must be taken into account in developing an effective MRA framework.

Most successful MRAs are embedded in a wider trade or economic integration framework and must therefore conform to WTO rules. Soon after the GATS agreement came into force in 1995, MRAs were highlighted as an important tool for the promotion of free movement of services<sup>41</sup>, given the role that they were expected to play in enabling individual professional service suppliers to move between countries and gain recognition for their existing qualifications and experience whilst simultaneously allowing a host member state to uphold its public policy goals through the imposition of additional requirements prior to authorisation. The goal was that a series of bilateral MRAs in any professional services sector would become multilateralized over time as more parties engaged.

An important starting point was the "Decision on Professional Services" annexed to the Uruguay Round Agreement. This decision called on WTO members to elaborate multilateral disciplines in the accountancy sector, in order to "give operational effect to specific commitments". The decision required these disciplines:

- To be based on objective and transparent criteria, such as competence and the ability to supply the service;
- not to be more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;
- to use international standards and to involve the relevant international organizations in doing so;
- to help in the establishment of guidelines for the recognition of qualifications.

The accountancy disciplines did not, in practice, make much of an impact on rulemaking or liberalisation in the accountancy sector. This sector was already relatively highly internationalised, but saw in the 1990s and 2000s an even greater use of international standards coupled with a shift towards public oversight regulation as opposed to professional self-regulation. These trends and the impact of regional initiatives such as the EU Statutory Audit Directive were arguably far more important in developing a transnational culture in the regulation of accountancy than the WTO disciplines<sup>42</sup>.

The accountancy disciplines were initially seen as a potentially powerful tool to promote cross border delivery of services but the attempt to turn this approach from a sectoral one into a horizontal approach led to its downfall. Many WTO members, notably those from federal states with low levels of national standardisation, were unable to accept disciplines which would have affected sectors in which they did not have competence. The result was a draft discipline, which remains on the table to be finalised as part of the Single Undertaking of the Doha Round, but which has been watered down to the extent that it really only emphasises transparency requirements.

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<sup>41</sup> GUIDELINES FOR MUTUAL RECOGNITION AGREEMENTS OR ARRANGEMENTS IN THE ACCOUNTANCY SECTOR WTO S/L/38 28 May 1997

<sup>42</sup> John Hegarty, Head, World Bank Centre for Financial Reporting Reform, "International Trade in Accountancy Services - A World Bank Perspective", Paper for the Meeting of the Council for Trade in Services, Geneva, 30 June 2010

It remains to be seen whether the newly launched plurilateral approach to services trade liberalization embodied in the Trade in Services Agreement (TiSA) negotiations is able to make any headway in this area of accompanying rules and disciplines. Regulation is on the agenda for the discussions but has not yet been addressed.

## **6.1 MRAs in Regional Integration Initiatives**

Despite the lack of much concrete progress at the multilateral level on rules, or even best practice, for the promulgation of MRAs, they are a widely used tool in regional integration initiatives that cover trade in services.

### **6.1.1 Trans-Tasman Agreement**

The Trans-Tasman Mutual Recognition Agreement was signed between Australia and New Zealand in 1997. This provides for automatic recognition and requires licensing boards to license professionals registered under each other's jurisdiction on an automatic basis. The level of automaticity of this agreement is therefore high; and the migrant professional may only need to provide documentation in verification of his home jurisdiction license or he may not need to interact with host state authorities at all, depending on his profession. The only requirement may be for the applicant's home state to notify the host state authorities directly, confirming that the person in question is licensed and authorized to operate in its territory.

The interesting aspect of this agreement was that Australia had to introduce its own internal legislation to improve freedom of movement between states in Australia before it could enter into negotiations with New Zealand, because the states in Australia hold responsibility for licensing in many areas. There are lessons in this experience for other federal jurisdictions and it also illustrates the important role that MRAs, like other trade agreements, can play in promoting more general regulatory reform. It is also worth noting that the levels of automaticity achieved by this agreement were most likely high because of the shared legal heritage and cultural fit between Australia and New Zealand.

Nonetheless, a review of the Trans-Tasman MRAs undertaken by the Australian Productivity Commission in 2009<sup>43</sup> found that the MRAs had been less effective in promoting mobility for professions compared to trade in goods. Issues raised in the review of the agreement are not unfamiliar:

- There were concerns about the mismatch of coverage of regulated activities – the TTMA did not address the question of what happened when a regulated professional moved to a state in which that profession was not regulated, or vice versa.
- There were concerns about the definition of the occupations covered, which did not always coincide.
- There were concerns about 'jurisdiction hopping' in order to find the easiest point of entry.
- There were concerns about gaps in the legislation which meant that migrant professionals were not subject to ongoing post-authorization requirements such as continuous professional education.
- There were concerns about standards and gaps in the ability of licensing authorities to carry out some checks (e.g. for criminal records).

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<sup>43</sup> <http://www.pc.gov.au/projects/study/mutual-recognition-schemes/report>

Interestingly, many of these issues have been experienced in the successive generations of EU MRAs and to some extent addressed.

### **6.1.2 APEC**

APEC has also undertaken a number of initiatives to promote professional mobility. The APEC Engineer project, for example, was developed under the auspices of the APEC Human Resources Development Working Group. The project aimed to facilitate mobility for professional engineers in the region by reducing barriers to the recognition of engineering qualifications. The agreement created two frameworks: the Substantial Equivalence Framework, which represents the eligibility component, and the Mutual Exemption Framework, which defines scope of practice and equivalence. The Substantial Equivalence Framework sets the criteria against which applicants are assessed for status as an APEC Engineer, these are:

- Completion of an accredited or recognized engineering program,
- Eligibility for independent practice within home jurisdiction
- Completion of a minimum of seven years practical experience since graduation,
- Completion of at least two years in responsible charge of significant engineering work, and
- Continuing professional development at a satisfactory level.

Candidates meeting these criteria will be entered APEC Engineer Registers maintained by their home country and this information will be made available to other licensing authorities electronically. Engineers on the APEC Register who then wish to move to other APEC countries may then use the Mutual Exemption Framework to obtain partial or total exemption from registration or licensing requirements in another participating economy. Each APEC member participating in the agreement has given an undertaking that the extra assessment required to be registered on the local professional engineering register will be minimised for those registered under the APEC Engineer agreement. Candidates are however expected to submit a considerable amount of documentary evidence to support their applications and mere entry on the APEC register of their home country is not sufficient to gain access to another APEC professional services market.

This agreement is interesting because APEC has created the status of 'APEC engineer' which defines and recognises equivalent qualifications in different member countries. The APEC experience underlines the importance of international (or regional) standards as a useful component in professional mobility, however, the agreement in itself is purely about recognition of qualifications and does not offer any automatic right to market access. It is to some extent typical of MRA agreements which are based solely on full recognition and assimilation of a professional from one country into another and which consequently ignore issues of scope of practice and title (i.e. can the migrating professional provide any services under his or her home title or is full requalification the only option for practice in the host country?).

There are now 14 APEC member countries participating in the agreement, including the Philippines, South Korea, Indonesia, Russia and the USA and by 2011 there were 6280 APEC engineers registered. The biggest users of the agreement were the Japanese with 2,589 registered APEC engineers, followed by New Zealand with 1,472.

Industry views of the agreement are generally supportive but scope for improvement has been suggested in the following areas<sup>44</sup>:

- There is a need for better linkage between APEC engineer and international standard setting bodies.
- There is scope for improved links between different international registers, many of which are operated on a regional basis.
- The need for improvements in UN CPC classifications relating to trade in services.

The APEC engineer approach has also been adopted by the architectural sector. The numbers using this particular agreement however are significantly lower. By 2008 there were only 529 registered APEC Architects out of the 232,000 licensed architects in the 14 APEC members participating in the agreement.

Overall, the APEC MRAs remove only a very limited amount of bureaucracy from the cross border exercise of professions and entry on the APEC register does not in itself guarantee that significant additional conditions will not be required of migrant professionals using the scheme.

### **6.1.3 NAFTA**

The North American Free Trade Agreement (NAFTA) includes annex 1210 on professional services, appended as annex III of this report. This annex requires parties to the NAFTA agreement to 'encourage' the competent authorities in their countries to establish a mutual recognition system for licensing and certification and to provide a mechanism for licensing of professionals on a temporary basis, notably of engineers. It also obliges parties to work towards greater liberalization for practice by foreign legal consultants.

In practice, progress under this annex has been disappointing, although a mutual recognition agreement was negotiated for engineers, this has never been ratified and the position for lawyers remains stymied by the state based system for licensing of lawyers in the United States.

Despite this, the NAFTA agreement does make some allowance for the hiring of NAFTA professionals as intra-corporate transferees or contractual service suppliers. Professionals in 63 recognized occupations are permitted to access the market in other NAFTA member states in order to supply "pre-arranged professional services". This means that migrant professionals must have a job offer from an employer in the NAFTA jurisdiction to which they are moving. They must meet also the minimum education and/or experience requirements defined for their profession. Once accepted, they receive "TN status" which allows unlimited multiple entries for up to a maximum of three years, which is extendible indefinitely as long as the temporary purpose of the NAFTA national's employment continues. The minimum experience requirements are defined under the NAFTA treaty as:

- Accountants must hold an undergraduate degree and one of the following qualifications: CPA, CA, CGA or CMA.
- Architects and engineers may either hold undergraduate degrees or licences from their home state.

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<sup>44</sup>Ir..Dr. Gue See Saw, APEC Engineers Register, Challenges and Way Forward to Promote Mobility of Engineering Services [http://www.gnpgeo.com.my/download/publication/2012\\_01.pdf](http://www.gnpgeo.com.my/download/publication/2012_01.pdf)

- Lawyers must hold one of the following qualifications: LLB, JD, LLL, BCL or 5 years licenciatura from Mexico or membership in a US State or Canadian Provincial Bar.

This agreement however also requires the individual to fulfill any further necessary requirements at the national/state level in order to carry out the work they were being hired for. For example, it would be possible for a US attorney to hire a Mexican lawyer as a paralegal or as a foreign legal consultant in Texas, but the migrant lawyer would still need to fully qualify in Texas in order to provide legal services reserved to Texan licensed lawyers in that state.

#### **6.1.4 The East African Community**

The regional trade agreement which has perhaps drawn most heavily to date on the experience of the European Union, is the East African Community (EAC). The Treaty Establishing the East African Community sets out the ambition of the Partner States to create a common market along the lines of the European Single Market and it provides in Article 76 for the negotiation of a Common Market Protocol which is intended to set out in more detail how the integrated single market in East Africa is to be achieved. The EAC Common Market Protocol (CMP) which was subsequently concluded in 2009 and entered into force on 1 July 2010 sets out the commitment of the Partner States to free movement of service providers and, where necessary, for the harmonization and mutual recognition of academic and professional qualifications.

Since 2010, three mutual recognition agreements covering accountants, architects and engineers have been agreed and a number of others are under consideration. These agreements were negotiated by the responsible competent authorities, not always with much involvement from governments or the central EAC secretariat. The results of these agreements, in terms of how they are being used, are promising. In all three cases, even although only a year or less has passed since each of these agreements has entered into force, professionals from all EAC members have made use of one or other of them and around 1% of each regional profession has used the recognition possibilities offered by the MRAs. The approach taken by all of the East African professions so far agreeing to MRAs, is similar to the competency based system of the EU. In other words recognition is based on an acceptance that qualifications in the key professions are broadly equivalent, and professionals are not required to do more in order to gain access to other EAC markets, than provide evidence that they are qualified and in good standing in their home countries. This has meant that the Francophone members of the EAC, Rwanda and Burundi, have required longer periods of adaptation, in particular to establish independent regulatory bodies, but they have received assistance from other EAC members with longer established professions in order to do this. Overall, the process of negotiating MRAs has been assisted by the fact that the majority of EAC states have similar education and training systems and the professions are enthused by the potential opportunities of regional integration.

Whilst the EAC's commitments are a significant improvement on those made under the NAFTA Treaty because they embed mutual recognition in a market access framework, the initial experience of their first few years illustrates some potential issues for regional trade areas that can arise if the relationship or hierarchy between different commitments is not entirely clear and if the role of all the stakeholders involved has not been defined in advance.

In the EAC framework for example, it is not entirely clear how MRAs on professional services might relate to the scheduling of trade in services commitments. In other words, is the negotiation of a mutual recognition agreement dependent on the commitments which have been made under the services schedules? If a Partner State hasn't scheduled a services commitment in a particular sector, can it be party to an MRA?

Although MRAs are often used as tools to assist in the implementation of services commitments, as we have seen in the APEC context, they do not have to be dependent on them. In theory, there is no reason why an MRA could not stand alone separately from any trade in services commitments, if it is based on full admission and host licensing of a recognised professional from a country which is a party to the RTA. But it must then be noted that admission on this basis prevents temporary mobility and the requirement for multiple registrations may impose unnecessarily onerous obligations on migrant professionals. So whilst an MRA in isolation from a trade in services commitment enables the individual to move from country to country, such an approach does not promote integration, nor does it encourage the growth in depth and expertise of regional professional services companies.

Another issue which has arisen in the EAC, where there might be interesting lessons for CEFTA, relates to the fact that the EAC does not rely on regional level legislation, such as the PQD or the Lawyers' Directives, to the same extent as the EU and has therefore needed to draw up a methodology for the negotiation and content of MRAs. The first draft of these arrangements sets out detailed provisions on the mutual recognition of academic qualifications, identifies who might negotiate an MRA and what any MRA should cover. There are however some missing elements; it does not explain how MRAs relate to trade in services commitments, nor does it set out how any MRAs agreed between the relevant competent authorities could be recognised as formal EAC instruments. The EAC is currently reflecting on these issues and the results of this should provide a useful illustration of how a regional trade area can build an MRA framework that is similar to the EU's by using trade treaty annexes rather than separate legal instruments in the form of directives or sole reliance on delegation to competent authorities.

The conclusion of an annex to the Common Market Protocol on the negotiation of MRAs will help to avoid the recurrence of a problem that has arisen for the EAC MRA for accountants, where the competent authorities were so keen to move ahead with an MRA that they did so without involving the EAC officially, and it is now unclear what official status the resulting agreement has.

The examples reviewed above from the EU, Asia, North America and Africa are perhaps the most pertinent examples of mutual recognition of professional qualifications within a regional trade framework but there are nonetheless some other examples of MRAs worth examining for the lessons that they can offer.

## **6.2 Other MRAs – outside the framework of regional integration**

From time to time, professional groups have come together to negotiate MRAs outside the framework of any particular trading initiative. The following examples are worth noting:

### **6.2.1 EU-US Architects**

An important MRA of the mid-2000s was the agreement between the professional bodies representing the European and US architectural professions. This agreement was the result of purely profession-to-profession negotiations that took place between 2001 and 2005. At the time the agreement was met with great interest as it was seen as unique, and potentially the first of a series of such agreements.

This agreement had a number of familiar features:

- It set out the parties to the agreement: The National Council of Architectural Registration Boards (NCARB) and the American Institute of Architects (AIA) on the US side and the Architects' Council of Europe (ACE) on the EU side.
- It had the following objectives:
  - to develop common higher standards in architectural education and practice;
  - to ensure further quality in the provision of architectural services;
  - to ensure consumer protection and safeguard the interest of society, architecture, the environment, sustainability, culture and public health, safety, welfare.
  - to set standards in recognizing equivalence in qualifications;
  - to prevent practice by unqualified persons.
  - to facilitate recognition of architects in each other's jurisdiction by the relevant registration authority;
  - to increase business possibilities for architects;
  - to set working conditions for the future;
  - to enlarge the client's choice from various service providers;
  - to identify architects that work in each other's jurisdictions
- It identified the fundamental common standards for the architectural profession;
- It put in place pre and post recognition requirements
- It set out governance arrangements designed to work on further harmonization initiatives and resolve disagreements.
- It identified an information source in each participating jurisdiction to give architects information about opportunities, registration/licensing requirements and potential sanctions.
- It required participating jurisdictions to ensure that architects within their own jurisdictions understood their rights and obligations in relation to cross border establishment

In practice, the agreement has been disappointing as it has not solved the problem of US States' rights in the field of architecture and has not reduced the need for EU architects to obtain recognition on a state-by-state basis in the US. A further accord was signed between the Architects Council of Europe (ACE) and the American Institute of Architects in 2011 which called on both parties "to encourage their respective competent authorities to negotiate and agree on mutual recognition of standards in education, examination, registration and licensing". The EU will no doubt wish to include an MRA in architecture in its forthcoming bilateral FTA negotiations with the USA.

The ACE-NCARB experience illustrates the difficulties of an MRA which is not embedded in a trade in services framework and the particular challenges for federal countries.

### **6.2.2 Washington Accord /IPEA**

The Washington Accord was signed in 1989 by professional engineering accreditation bodies from the US, Canada, Australia, UK, Ireland and New Zealand and was an agreement on the content of tertiary education for engineering qualifications.

The International Professional Engineers Agreement (IPEA) was then signed in 2001 and drew on both the Washington Accord and the APEC Engineers Agreement in order to promote mutual recognition for practising engineers. The IPEA sets out a framework for the establishment of an international standard of competence for professional engineering, and empowers each member organization to establish a section of the International Professional Engineers Register. This agreement borrows heavily from the APEC Engineer agreement and is, in effect, a mechanism to allow countries such as the United Kingdom, Ireland and South Africa to share in the benefits of the APEC engineer agreement.

The IPEA illustrates the benefits of building MRAs on the basis of shared educational foundations and the role of the market in determining who is covered by them. By 2011 there were 4273 IPEA registered engineers.

## **7 Benefits and Lessons for CEFTA from existing MRAs**

### **7.1 The Benefits of MRAs**

The experience of existing regional and sectoral MRAs outlined above, underlines that there are some clear benefits that are sought by those negotiating them. For governments, MRAs have the obvious advantage that, as a minimum, they can provide a mechanism for negotiating and providing market access in regulated services and can also offer a means of addressing skills shortages. But if MRAs go beyond agreements which simply offer a qualification assessment mechanism and add on progressive market access benefits, then they can become much more powerful tools for economic development. They can also be used as instruments for policy reform, since they offer the opportunity to benchmark national and regional regulation against international standards and to learn from processes and procedures used elsewhere. If they are appropriately designed they can also provide a useful tool to promote economic integration, by allowing professionals from different countries to work together and develop larger, region wide practices, offering more sophisticated services. They can therefore bring real benefits in terms of competitiveness and client choice, whilst simultaneously raising standards.

For the competent authorities, participating in an MRA can offer a range of benefits. For some professions, the greater engagement with government that MRAs necessitate can bring advantages in terms of better collaboration and better quality market access commitments which integrate more coherently into the domestic regulatory regime. At a practical level, MRAs give competent authorities the opportunity to review their own domestic procedures and improve them, if necessary. Moreover, the existence of a clear process for dealing with foreign applicants can make the job of assessment of foreign qualifications quicker and more cost effective for all concerned. A competent authority can also benefit from the international recognition that the qualifications it is responsible for, may gain through mutual recognition. And last but by no means least, competent authorities may also benefit from closer collaboration with their peers and save 'reinventing the wheel' every time they are faced with a new development. It is also the case that MRAs can entail capacity building from weaker to stronger regulatory and professional bodies.

For consumers and clients, MRAs can lead to developments which increase choice in terms of the range of services and service providers in the market. They can also encourage clients to shop more actively for regional alternatives, and by increasing competition, can improve the quality and reduce the cost of services.

Individual professionals can also benefit from the increased range of work opportunities, including the potential of working for a larger firm with offices in more than one country, and of course the obvious potential to seek work in a fellow MRA signatory country.

MRAs can offer many potential benefits to many different parties, but it is important to note that these do not flow automatically and will depend on the precise contents and structure of the MRA and its implementation. This in turn will depend on the attitude and capacity of the competent authorities and the awareness amongst the population of target professionals of the market access and recognition offered by any MRA.

### **7.2 Lessons from existing MRAs**

The experience of other regions also gives some indication of how MRAs can best be made to work in practice. The lessons that CEFTA can draw on from MRAs in other regions and from sectoral negotiations are numerous. The following are perhaps the most pertinent.

- (i) Firstly, any region looking to negotiate an MRA needs to begin by identifying its wider policy objectives for professional mobility and determining how any MRA on professional qualifications can contribute to their achievement. The EU initially developed its MRAs in professional qualifications in order to give effect to EU Treaty rights for workers but has subsequently had to develop additional architecture around them. MRAs alone cannot, for example, satisfactorily deal with competition issues (i.e. does regulation of the profession simply exist as a barrier to entry or does it have a public interest purpose?). MRAs may also not adequately embrace consumer protection, as recent experience in the medical profession has shown. Moreover, MRAs cannot alone solve skills gaps in the short run, whilst they have helped to supply essential audit and accountancy expertise in Rwanda in recent years, they do not appear to have solved the issue of the uneven distribution of engineers in the European Union, where skill shortages coexist alongside unemployment for professionals. This illustrates that the MRA is only one instrument and may well need to be deployed alongside others in order to make professional services effective.
- (ii) Secondly, MRAs work best when they are couched within trade in services agreements that provide a framework for market access and clearly define the scope of services covered by any MRA and the essential accompanying horizontal commitments relating to free movement of persons and investment etc.
- (iii) Thirdly, in general, countries are best served by minimizing the number of professions that are regulated to those that are strictly necessary for public policy purposes. Where there is a mismatch between the regulation of professions in different countries participating in an RTA, it should not automatically be assumed that an MRA is the answer, rather than a review of the need for access restricting regulation in the host country,
- (iv) Fourthly, MRAs alone may not be able to deliver entirely open access but may need to be supported by a range of other policy initiatives and instruments (such as those adopted by the European Union under the Framework Services Directive and related measures).
- (v) Fifthly, partially qualified professionals are difficult to deal with but sophisticated MRAs should not exclude them. Under the EU regime, part qualified professionals must be given credit not just for qualifications but also for other training or experience they have obtained. This imposes a requirement on competent authorities to assess candidates from other Member States on a case by case basis. This is where centrally led initiatives such as the Internal Market Information System or Europass (the EU CV and experience record) can particularly assist smaller or less well-resourced competent authorities.
- (vi) Harmonizing MRAs are more difficult to negotiate outside limited and relatively well defined sectors, compared to general competency based MRAs. The latter however require competent authorities in host member states to undertake assessments and therefore impose some sort of requirement for a host infrastructure. This needs to be part of any assessment of the balance of advantages of 'home qualification + compensatory measures' compared to 'prior negotiation on 'common standards + automatic recognition in host state'.
- (vii) The strength of competent authorities is important. Smaller countries face the drawback that applications for recognition may be very rare and there is therefore

no incentive to invest in any infrastructure or training around making assessments. Outbound professionals may also be prevented from moving to other jurisdictions if their competent authorities have not made the required notifications of new diplomas relevant to automatic recognition under the Professional Qualifications Directive.

- (viii) There is a trade-off at the heart of all MRAs between equivalence and automaticity. Professions in different countries which start with a high level of commonality, or equivalence, are usually able to achieve a high level of automaticity; although this doesn't always happen. Where high equivalence has led to automaticity e.g. trans-Tasman and EU 'sectoral' professions, this is often due to the common or highly specified educational platform on which these agreements have been built. Where a lower level of equivalence has nonetheless been able to achieve higher automaticity than might have been expected (e.g. EU lawyers), this has often been down to restrictions on the scope of activities covered.
- (ix) Federal jurisdictions face particular challenges and MRAs have worked most successfully in those federations that have undertaken prior initiatives on intra-country recognition before joining an MRA.
- (x) In future, MRAs will need to reflect new issues such as: Cross-border consumption of services via the internet, increased temporary mobility and delivery of services through businesses (as opposed to individuals).
- (xi) The harmonization of educational standards plays a very important role in developing the shared bases on which professional mobility can be built. The Bologna process has played a particularly important role in underpinning European developments.
- (xii) Equally, globalization is increasingly making international rather than regional professional standards and benchmarks relevant. This is the case notably for architects, accountants and engineers. The portability of certain qualifications is high (e.g. the UK ACCA standard for accountants) and it may be sensible for countries joining the EU to benchmark against these more portable and recognized standards where possible.
- (xiii) EU-wide and international professional bodies and networks of competent authorities have an important role to play in supporting competent bodies in smaller countries and in helping new Member States of the EU meet their obligations. There are signs that competent bodies might in future not all wish to move at the pace of the slowest (e.g. the common content project adopted in the accountancy sector) and whilst this is not in itself a problem, the European-wide bodies should guard against refragmentation of the market by assisting those with less well developed administrative capacity.
- (xiv) The demographic for whom mobility is most relevant tends to comprise younger or newly qualified professionals who are seeking international experience. Experience from the EU also suggests that there has been a flow of professionals from poorer Member States towards richer ones, whilst professional companies or firms from richer or historically more open Member States will seek to open offices in those that are less well served by international firms or that are more recently liberalising. Additional measures may nonetheless need to be put in place to enhance skills amongst those who remain at home and to encourage the transfer

of skills from foreign businesses (e.g. law firms, the big 'four' accountancy firms) where they are establishing in a candidate or accession state.

Above all, the main lesson for the CEFTA countries to draw from this experience is that, no entirely satisfactory approach to professional mobility based solely on an MRA (rather than an 'MRA plus') has yet been found. As a result, even if the CEFTA countries were not seeking to converge on EU practice, they would find that in order for professional mobility to be enhanced they would need to embrace not only MRA agreements covering individual professions, but a panoply of accompanying and horizontal measures, similar to those put in place by the EU over the years.

## 8 A CEFTA Professional Services MRA Action Plan

### 8.1 Context

The Central European Free Trade Agreement (CEFTA) came into force in 2007 and replaced all previous bilateral trade agreements applying the region. The primary goal of the agreement is to help the contracting parties prepare for membership of the EU<sup>45</sup> but this has been supplemented in recent years by an additional objective of greater integration amongst the CEFTA members themselves.

Countries wishing to join CEFTA are first required to fulfil certain criteria, including: Membership of the World Trade Organization, the signing of an Association Agreement with the EU, and consent from all other CEFTA states in the form of concluded negotiations for bilateral Free Trade Agreements.

The EU Association Agreements referred to in these qualifying criteria have now been replaced by a new generation of agreements between the EU and candidate countries known as “Stabilization and Association Agreements”. This new generation of agreements puts an emphasis, as noted above, not only on the alignment of partner countries with the EU but also sets greater store than in the past on regional integration. For example, Article 15 of the EU-Albania Stabilization and Association Agreement states:

...“Albania may foster its cooperation and conclude a Convention on regional cooperation with any country candidate for accession to the European Union in any of the fields of cooperation covered by this Agreement. Such Convention should aim gradually to align bilateral relations between Albania and that country to the relevant part of the relations between the Community and its Member States and that country.”

All Stabilization and Association Agreements contain chapters on Free Movement of workers, the right of establishment and freedom to provide services. The actions required by these chapters are designed to help CEFTA countries converge on the EU *acquis communautaire*. In the area of professional qualifications, for example, Albania’s Stabilization and Association Agreement with the EU states:

“In order to make it easier for Community nationals and Albanian nationals to take up and pursue regulated professional activities in Albania and the Community respectively, the Stabilization and Association Council shall examine which steps are necessary for the mutual recognition of qualifications. It may take all necessary measures to that end.” (Article 54)

It is worth noting however that the text of the CEFTA Treaty itself makes no direct reference to professional mobility and has no architecture in place to supplement bilateral EU-CEFTA member actions on mutual recognition of qualifications with regional activity. CEFTA members are however about to embark on services negotiations focusing on the four professions covered in this report. This suggests that the recent lessons of the East African Community’s MRAs, which have been negotiated in a similar context, are highly pertinent.

The following section of this report looks at the most recent assessments by the European Commission of CEFTA members against their Stabilization and Association Agreement obligations in the field of professional services. This illustrates their degree of

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<sup>45</sup> Original text of CEFTA agreement

<http://www.stabilitypact.org/trade/ANN1CEFTA%202006%20Final%20Text.pdf>

convergence individually against the EU acquis and how much common ground might possibly be found between them in order to build MRAs. These observations then feed into the report's recommendations for next steps.

### **8.1.1 Albania**

Albania has had a Stabilization and Association Agreement with the EU in place since 2009. It applied for EU membership in 2004, and in October 2012 the European Commission recommended that it be granted EU candidate status, subject to completion of some measures in the areas of judicial and public administration reform and revision of the parliamentary rules of procedure. The pace of Albania's convergence on the EU acquis is therefore expected to pick up in the near future.

The European Commission's 2013 assessment of Albania's progress towards meeting the requirements of the *acquis communautaire* in relation to the free movement of workers, rights of establishment and provision of services was mixed. As far as freedom of movement for workers is concerned, the Commission found that some progress had been made in 2012/13. The Law on Foreigners, granting EU citizens access to the Albanian labor market without any obligation to hold a work permit, was adopted in March 2013 but nonetheless preparations in the area of free movement of workers were still held to be at an early stage. An inter-ministerial working group has been set up and a roadmap adopted to prepare Albania's alignment with the Services Directive but there is still a lack of adequate administrative capacity within relevant institutions. On the positive side, however, there has been some progress towards the mutual recognition of professional qualifications; implementing legislation has been adopted which allows exemptions from state examinations for regulated professionals who have passed state examinations in EU, EFTA, US and some other countries. In 2012 there was also progress in regulating the professional order of engineers and architects and regulations, implementing the Law on Regulated Professions that was approved in autumn 2011. This law regulates the procedures for state examinations for local professionals. As far as recognition of foreign qualifications was concerned, the time required for processing of applications for academic and professional recognition of diplomas awarded by a relevant foreign body has been shortened and the Albanian authorities have begun to prepare for the introduction of an on-line application process for such recognitions. The European Commission's overall analysis in autumn 2013 was, however, that there was more to be done.

### **8.1.2 Bosnia and Herzegovina**

Bosnia and Herzegovina was recognized as a potential candidate for EU membership in 2004. Its Stabilization and Association Agreement has been ratified but has not yet entered into force. An interim agreement has been in force since 2008 but overall progress towards integrating with the EU is at a standstill.

The European Commission's 2013 assessment of Bosnia and Herzegovina noted that a single economic space allowing registration of foreigners to do business throughout the different entities that make up the country has not been established and in general the time taken to handle requests for registration remained lengthy, in particular in the Federation. Overall little progress has been made towards aligning with the *acquis* on the recognition of EU professional qualifications. In 2012 Republika Srpska had, however, introduced differentiation in its legislation between recognition procedures for professional and academic qualifications but recognition procedures were found to be inconsistent across the country. The legislation on corporate accounting and auditing was found to be broadly aligned with the *acquis* and almost fully harmonized between the Entities. On the

free movement of persons there has been little movement. Although Bosnia and Herzegovina has concluded an agreement with Serbia on the temporary employment of citizens, the differences in labor legislation and social security systems between the Entities, and also between Cantons in the Federation, represents a major obstacle for the movement of workers within the country. No progress has also been reported in the preparations for aligning the country's legislation with the Services Directive and no distinction has yet been made between rights of establishment and right to provide cross-border services.

### **8.1.3 FYROM**

In 2005, the European Council granted candidate country status to the Former Yugoslav Republic of Macedonia (FYROM). The Stabilization and Association Agreement between FYROM and the EU was signed in April 2001 and entered into force in April 2004. In October 2009, the Commission made a recommendation to the Council for the opening of accession negotiations. This recommendation was reiterated in 2010 and 2011 but agreement on the initiation of formal accession negotiations remains blocked in the Council of Ministers.

In its 2013 assessment of FYROM's performance under the Stabilization and Association Agreement, the European Commission reported some progress in the country's alignment with the Services Directive, both in terms of establishment and cross-border services. FYROM has set up a single database for all licensing and permits and the Ministry of Economic Affairs is acting as the coordinating point for competent authorities. Despite this, some registration requirements outlawed by the Services Directive remain in force in several service sectors, including in veterinary medicine, private education, construction, tourism and the regulated professions. Awareness of the Services Directive remains low amongst the competent bodies and as a general rule the Commission recommended that their administrative capacities needed to be strengthened. In 2013, FYROM made progress on freedom to provide cross-border services by amending the Law on Lawyers to permit the supply of cross border services by foreign lawyers.

Some progress was reported on mutual recognition of professional qualifications. An inter-sectoral coordination group, bringing together representatives of different competent authorities has been formed and progress is being made towards making this group functional. A national coordinator for the recognition of professional qualifications has been nominated, as required by the Professional Qualifications Directive but administrative capacity in general remains weak. Although the Law on Recognition of Professional Qualifications was passed in 2011, this has not yet fully aligned FYROM with the EU acquis. Furthermore, there is not yet compliance with the requirements of the lawyers' directives and some other sectoral directives. Overall, the Commission considered preparations on mutual recognition of professional qualifications to be only moderately advanced. Progress on the free movement of workers is nonetheless moving forward, albeit slowly, and negotiations are now underway with Albania and Kosovo.

### **8.1.4 Montenegro**

The Stabilization and Association Agreement between Montenegro and the EU was signed in October 2007 and entered into force in May 2010. Montenegro was granted candidate country status in December 2010 and accession negotiations began on 29 June 2012.

In its 2013 report on Montenegro's performance under the Stabilization and Association Agreement, the European Commission was not able to report any progress on alignment with the Services Directive's provisions relating to cross-border services. Designation of a

central body to coordinate the implementation of the Services Directive and other related activities were still said to be at the planning stage. There was, however, some progress in the field of mutual recognition of professional qualifications. The Law on Recognition of Foreign Qualifications for Access to Regulated Professions entered into force in April 2012, partly transposing Directive 2005/36/EC on the recognition of professional qualifications by setting out the general framework for the recognition of foreign diplomas. The Commission's assessment was however that there was still a need to strengthen administrative capacity in order to give effect to this new law.

#### **8.1.5 Kosovo**

Negotiations between Kosovo and the EU for the conclusion of a Stabilization and Association Agreement opened in April 2013. Assessments by the European Commission in the past have suggested that Kosovo has some advantages in converging with the European acquis, in that it has a very open and liberal starting point; however it also points out that it has substantial gaps in terms of lack of secondary legislation and a shortage of administrative capacity.

#### **8.1.6 Moldova**

In 2013 Moldova concluded its negotiations on a new Association Agreement with the EU to succeed the Partnership and Cooperation Agreement which has been in force since 1994. This agreement is complemented by the agreement with the EU, also in 2013, of a Deep and Comprehensive Free Trade Area (DCFTA). The goal of both the Association Agreement and the Deep and Comprehensive Free Trade Area is to promote the approximation of Moldova's economic and regulatory structures with European Union norms, in order to promote trade and development. These agreements will become operational in 2014.

#### **8.1.7 Serbia**

In March 2012, Serbia was recognized as a candidate country for EU Membership. Although it signed a Stabilization and Association Agreement with the EU in 2008 which finally into force in September 2013.

The European Commission reported in October 2013 on Serbia's compliance with the acquis. It noted that Serbia still needed to adopt a general law to align its laws with the Services Directive and that legislation on the recognition of qualifications for regulated professions was also lacking.

Overall, therefore, CEFTA countries are at different stages of convergence with the EU acquis. However, there is a common goal and there are clearly some shared issues: Firstly, getting legal frameworks right; and secondly, the general lack of administrative capacity in competent bodies to make mutual recognition work effectively.

### **8.2 The CEFTA Professions**

As the European Commission's general assessments of convergence on the acquis in the field of services and professional qualifications indicate, there is a general shortage of administrative capacity in all CEFTA countries. This is well illustrated by the limited information available on the current state of regulation in many of the professions in the CEFTA countries. The following sets out what can be gleaned from published sources.

### **8.2.1 Albania**

Albania has a framework for licensing which covers the activities undertaken by a number of professions. There are six license categories which are relevant to accountancy, architecture, engineering and legal services:

- License no. 22. 4 - Services expertise and/or related professional resources for the Mineral resources, hydrocarbons and energy sector.
- License no. 23 1. - Services expertise and/or related professional development for land and/or building sector related activities.
- License no. 25. - Services expertise and/or professional services related to cultural heritage.
- License no. 26.3. - Permit for restoration and/or revitalization of monuments cultural heritage.
- License no. 42 3. - Other services or professional expertise related to civil rights and/or criminal law
- License no. 44 2 - Financial services or professional expertise or services related to public finances

The Albanian National Licensing Centre sets out the authorities responsible for licensing or registration. The following bodies are responsible for the professional services covered by this report.

#### **Accountancy**

Albania has put in place legislation governing the role of the statutory auditor through Law no. 10091, of 5 March 2009 "On Statutory Auditing and Organization of the Accounting Profession". This needs to be assessed together with the rest of Albania's accountancy framework, against the requirements of the EU acquis. Law no 10091 does not replace Government Decree No.150 of 31 March 2000, which protects the title of Chartered Auditor in law and imposes citizenship and residency requirements on acquisition of the title.

The law sets out the following requirements for an individual to operate as an accountant:

- University Degree (Scientific Master) in Economic Sciences or equivalent diploma.
- Three years of related professional experience
- Attendance at the qualification training classes for IAS/IFRS and NAS
- Passing of the professional skills examination

Licensing is conducted by the Albanian Institute of Chartered Accountants (IEKA)<sup>46</sup>. IEKA belongs to SEEPAD (South East European Partnership on Accountancy Development) and collaborates with the Association of Accountants and Auditors of the Republic of Srpska, the Association of Accountants and Auditors of Serbia and the Institute of Certified Accountants of Montenegro on various projects to raise standards.

#### **Architects**

Entry to the profession of architect is governed by the Law on Regulated Professions and architects are licensed by the National Licensing Commission which grants the protected title of architect to those who have met the qualification requirements. The Albanian Architects Association (AAA) is a voluntary body which has 980 members and is a member of the International Union of Architects (UIA). Foreign architects may have their qualifications recognized but still need to sit an examination to be recognized. The

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<sup>46</sup> <http://www.ieka.org.al/si-te-behesh-anetar.aspx>

Albanian framework for architects therefore falls somewhat short of the requirements of the EU acquis.

### **Engineers**

Entry to the engineering profession is also covered by the Law on Regulated Professions and licensed by the National Licensing Commission. A professional body, the Albanian Association of Consulting Engineers, was established in 2000 by a group of Albanian designers and consulting engineers but membership numbers are unknown. The EBRD country strategy for Albania 2010-13 reported that "SMEs are particularly constrained by bureaucratic obstacles, lack of compliance with European standards and norms and inadequate managerial knowledge. Furthermore, the SME support infrastructure faces large transition challenges. The quality of available advisory services is perceived as relatively low and local consultants lack experience and international market insights and standards."

### **Lawyers**

No. 9109 dated July 17, 2003 (modified by Law No. 9795 (2007)) governs the practice of law in Albania. Entry to the profession requires an applicant:

- To have a "higher juridical education within the country or outside it, but made equivalent to it";
- To be registered in the relevant regional chamber of advocacy and with the Ministry of Justice during the one-year internship period;
- To have received a passmark in the qualifying examination for the practice of the legal profession;
- To have moral and civic integrity;
- Not to have been punished for wilfully committed criminal offences;
- Not to hold any incompatible office or conduct activities as such;
- Be a member of the chamber of advocacy in the jurisdiction where his place of work is located;
- Have a license to practice the legal profession and be registered with the tax authorities.

According to Article 36 of this law, a foreign citizen may practise the legal profession in Albania if he meets the conditions provided by the law for Albanian citizens and after taking a qualification examination in the Albanian language.

The legal profession is regulated by the National Chamber of Advocacy (NCA) of Albania and the latest available figures from NCA indicate that there are 3237 registered lawyers in the 13 court districts, however only 1128 are actually practising. The NCA has observer status with the Council of European Bars and Law Societies (CCBE).

## **8.2.2 Bosnia and Herzegovina**

Bosnia and Herzegovina faces the problem of fragmentation in its services markets and as a consequence, in their regulation.

### **Accountancy**

This fragmentation is well illustrated by the accountancy profession. The profession is not only segregated between the two Entities, the Federation (FBiH) and Republika Srpska (RS), but is further fragmented in FBiH.

There is a relatively new State Framework Law which attempts to create a unified profession under the regulatory authority of an Independent Standards Commission established by the Council of Ministers of BiH. The State Framework Law sets out that this Standards Commission will be responsible for monitoring the implementation of accounting and auditing standards by the professional bodies. It also has responsibility for translating and disseminating IASB and IFAC standards and interpretations; establishing qualification requirements; and administering professional examinations. Assessments against the 8<sup>th</sup> Company Law Directive however have suggested that there is insufficient oversight by the Independent Standards Commission over the professional bodies.

The RS and FBiH have both set out laws implementing this State Framework Law.

The FBiH Accounting Law sets out the following requirements for qualification as an accounting professional:

- To qualify as a trainee one must have a four-year university degree in economics.
- To qualify as an independent accountant one must have obtained one year of practical experience in accounting; and passed the examination that covers subjects such as accounting, business law, information technology, etc.
- To qualify as a professional auditor one must have attended courses organized by the IAA and passed the examination that covers subjects such as auditing, internal control, financial accounting, etc.

The RS Auditing Law requires the following:

- To qualify as a certified bookkeeper, one must have obtained a high school certificate in economics.
- To qualify as an independent accountant, one must have a three-year university degree in economics.
- To qualify as a certified accountant, one must have a four-year university degree in economics.
- To qualify as an auditor, one must have a four-year university degree in economics.

The RS Association of Accountants and Auditors (AAA) does not verify practical experience.

### **Architects and Engineers**

Both professions are directly regulated by the relevant Ministries in Bosnia and Herzegovina. Licenses are obtained on the basis of state conducted examinations under the auspices of the Law on Spatial Planning. Certain regulated activities (e.g. municipal approvals) are reserved to professionals who are duly licensed and can demonstrate the required number of years of experience.

There are relatively recently formed voluntary bodies for both professions: The Association of Architects of Bosnia and Herzegovina and the Association of Consulting Engineers of Bosnia and Herzegovina. The former has a reported 3000 members, although it is unclear how many of these are fully qualified architects. The Association of Architects of Bosnia and Herzegovina is an observer member of the Architects Council of Europe.

### **Lawyers**

Bosnia and Herzegovina (BiH) has two separate legal systems and judiciaries for each of its constituent entities, the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS).

The Law on the Legal Profession of the FBiH was passed in 2002 and requires lawyers to be enrolled in the list of attorneys of the Bar Association of the FBiH in order to practice.

There are 670 registered members of the Bar Association of the Federation of BiH. Registration takes place locally in the 5 regional bar associations but the Bar Association of the Federation of BiH is responsible for verifying an applicant's qualifications. The Bar Association of FBiH is a member of the Union International des Avocats.

Practice in the Republik Srpska is governed by the Law of Advocacy 2007 (Official Gazette of the Republic of Serbia no 30/07 and 59/08). This law requires all practicing lawyers to be enrolled with the Bar Association of the Republic of Srpska<sup>47</sup> and makes it responsible for overseeing admission, laying down ethical norms for the profession and conducting disciplinary procedures.

Both the Advokatska Komora Republike Srpske (Bar Association of the Republic of Srpska) and the Advokatska/Odvjetnička komora Federacije BiH (Bar Association of Federation of Bosnia and Herzegovina) are observer members of the Council of European Bars and Law Societies (CCBE).

### **8.2.3 FYROM**

#### **Accountancy**

The Ministry of Finance regulates the auditing profession in FYROM. The Audit Law requires the following:

- To qualify as a trainee one must have graduated from college.
- To qualify as an auditor one must have completed three years of additional practical experience in auditing or five years in accounting; and passed the examination that covers areas such as economy and financial management, accounting, and auditing standards.

There is evidence that audit trainees prefer to qualify with the United Kingdom's Association of Chartered Certified Accountants (ACCA). This program is taught locally, and confers international recognition.

There are two accounting and auditing associations which represent the profession: The Association of Accountants, Financial Workers, and Auditors (Sojuz) and the Macedonian Association of Certified Auditors. Membership of both organizations is voluntary.

#### **Architects**

The profession is governed by the Law on Urban and Territorial Planning. Admission is based on 5 years of study at university leading to a diploma in architectural engineering

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<sup>47</sup> <http://advokatskakomora.ba/>

(Dip Ing. Arch.). Under this law foreigners are not eligible for individual recognition but may operate in joint ventures with local architects.

The Association of Architects (AMM) has 3000 members and is itself a member of the International Union of Architects and an observer member of the Architects Council of Europe.

### **Engineers**

Engineering qualifications are regulated by the Construction Law (Official Gazette of Republic of Macedonia (Official Gazette no. 39/2012, 144/2012 and 25/2013). Under Article 109 of this law, the Macedonian Chamber of Architects and Engineers<sup>48</sup> has recently taken responsibility for issuing licences and regulating the conduct of the engineering professions in FYROM. The Chamber is actively cooperating with its counterparts in other parts of the Western Balkans and internationally. The Chamber is a member of the European Council of Engineers Chambers.

Many foreign engineering companies are active in Macedonia (e.g. the Spanish engineering group EPTISA which recently opened an office in Skopje). The EBRD's 2010-13 strategy for FYROM notes that there were weaknesses in all the key infrastructure regulators e.g. for energy, rail, road transport etc. which could be helped by skills development.

The Engineering Institution of Macedonia<sup>49</sup> has 3597 members and is a member of the European Federation of National Engineering Associations (FEANI).

### **Lawyers**

The Law on Advocacy 2008 sets out, inter alia, the organization of the legal profession and the criteria for admission to the Bar. The Law prescribes the independence of the Bar of Macedonia and empowers it to admit lawyers on the basis of the following criteria:

- Macedonian citizenship or citizenship of a Member State of the European Union
- Full civil capacity;
- A university law degree from Macedonia having completed four years of high school legal studies or acquired 300 credits under the European Credit - Transfer System (ECTS) or having obtained a validated degree in law from abroad;
- Ability to speak the Macedonian language;
- Have passed the bar examination;
- Not to have a criminal or disciplinary record
- Not to be employed
- Not to undertake activities incompatible with the conduct of the legal profession.

Article 11 of the Law on Advocacy provides that lawyers from another jurisdiction may provide legal assistance and undertake activity on the territory of the Republic of Macedonia under conditions of reciprocity.

The Macedonian Lawyers Association<sup>50</sup> has 600 members and has observer status with the European Council of Bars and Law Societies (CCBE).

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<sup>48</sup> <http://www.komoraoui.mk/mk>

<sup>49</sup> <http://www.engineer.org.mk/>

<sup>50</sup> <http://www.mla.org.mk/>

#### **8.2.4 Kosovo**

Kosovo has faced added obstacles in converging on the European acquis compared to other CEFTA members because of its status. It has therefore not been able to be part of the Bologna process.

##### ***Accountants***

Licenses are granted by the Financial Reporting Board which is an agency of the Ministry of Finance and Economy. There are 51 registered auditors and 2 firms registered for audit. Registration does not require a university degree but a period of professional training and examination. Qualification as an auditor requires an individual to attend 100 hours of lectures followed by two examinations. Separate examinations are held for accounting technicians and certified accountants. The Society of Certified Accountants and Auditors of Kosovo (SCAAK) is the professional body for accountancy profession.

##### ***Architects***

Architects in Kosovo complete periods of university study similar to other Western Balkan states but these are not in conformity with the standards set out in the Architects Directive. The professional body for Architects is the Architects Association of Kosovo<sup>51</sup> which is a member of the International Union of Architects (UIA).

##### ***Engineers***

Engineers are licensed by the Ministry of Trade and Industry on the basis of engineering diplomas. The Ministry and the voluntary Construction Association of Kosovo are working on an enhanced licensing process to improve the registration and skill base of engineers in the country.

##### ***Lawyers***

Legal practice in Kosovo is governed by the Law on the Bar no. 03/L117 of 12 Feb 2009. This law establishes that the Kosovo Chamber of Advocates is the sole licensing and regulatory authority for lawyers in Kosovo. The requirements for registration are that a lawyer must be:

- A citizen of the Republic of Kosovo;
- In possession of a law degree or diploma from Kosovo or of a degree in the law of another country, which has been accepted in accordance with the laws that govern higher education in the Republic of Kosovo;
- Have full civil capacity;
- Not be employed;
- Not have a criminal record;
- Not undertake any other incompatible activity;
- Be worthy of solicitation in accordance with the Code;
- Have a contract of employment with a lawyer, a joint office of lawyers or attorneys' society.

The KCA has 603 lawyers on its roll.

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<sup>51</sup> <http://www.asocak.org/?cid=2,1>

## 8.2.5 Montenegro

### **Accountants**

The Law on Accounting and Auditing (2002) merged two existing bodies, the Union of Accountants and Auditors of Montenegro and the Montenegro Association of Workers for Accounting and Financial Profession, into one new body, the Institute of Accountants and Auditors of Montenegro (IAAM)<sup>52</sup>. The 2002 law also equipped this new Institute with regulatory powers in addition to allowing it to continue with its ongoing role of representing the interest of the accountants and auditors in Montenegro. In 2005, a further law was passed, the Law on Accounting and Auditing, this granted the institute responsibilities in the area of training and increased the level of qualifications required to become an accountant. There are three levels of qualification in Montenegro:

- Certified accountant: Requires a university degree and passing examinations based on the international education standards of the International Federation of Accountants.
- Authorized professional accountant: University level education, evidence of 3 years' experience and passing of nine exams (IFRS/IAS standards)
- Accountant: Requires secondary level education and passing 5 examinations.

At present Montenegro has a very small number of licensed auditors (32) but the government has declared its intention to open up the right for foreign qualified auditors to become licensed auditors in Montenegro.

### **Architects**

The right to practice as an architect is covered by the Law on the Regulated Professions (2011). This is intended to begin the process of bringing the practice of architecture in Montenegro into line with the EC Directives on the regulated professions. To date the content and duration of architectural studies in Montenegro has been similar to that undertaken in Serbia, Bosnia and Herzegovina, Kosovo and Albania and has not met the requirements of the Architects Directive. In general, the market appears to be open and many foreign practices are active.

### **Engineers**

Engineering activities are licensed by the Ministry of Law on Spatial Development and Construction and this law lays down the requirements for different engineering licenses. Statutory Instrument No. 68/08 dated of 12.11.2008 sets out a requirement for license applicants to first be registered with the Chamber of Engineers, which acts as the professional body for the profession. The Chamber is a member of the European Council of Engineers Chambers.

In November 2012 the Montenegrin Chamber of Engineers, the Serbian Chamber of Engineers, the Macedonian Chamber of Architects and Engineers and the Slovenian Chamber of Engineers launched an initiative for regional cooperation.

In addition to the Chamber there is a voluntary professional body called the Association of Consulting Engineers of Montenegro (ACEM)<sup>53</sup>

### **Lawyers**

Legal practice in Montenegro is regulated by the Law on Advocacy 2008. This law requires registration with the Bar of Montenegro<sup>54</sup> as a prior condition for the practice of law. The requirements for registration are as follows:

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<sup>52</sup> <http://www.irrcg.co.me/>

<sup>53</sup> <http://www.ingkomora.me/>

- Citizenship of the Republic of Montenegro
- A law degree from Montenegro, or a foreign law degree which has been recognized in accordance with the regulations governing higher education;
- Successful completion of the bar exam;
- Not to be employed;
- Not to carry out any other incompatible activity
- To be worthy of the practice of law in accordance with the Code of Ethics
- Not to have a criminal record.

Article 8 of this law recognizes that a foreign lawyer may practice before the judicial and other state authorities in Montenegro, on condition that reciprocal arrangements exist in their home country. The Ministry of Justice will be responsible for confirming the existence of reciprocity, based on a prior opinion from the Bar Association.

The Bar Association of Montenegro is an associate member of the Council of European Bars and Law Societies (CCBE).

### **8.2.6 Moldova**

As a general rule, licensing in Moldova is based on Law Nr.451-XV of 30 July 2007. This law lays down licensing requirements for a range of activities, including some engineering activities and auditing. The licensing process is conducted by the Moldovan Licensing Chamber<sup>55</sup>. Licenses are generally issued for periods of 5 years.

#### **Accountants**

Standard setting and supervision of the profession are conducted by government. The Law on Audit deals with auditing standards, qualification and licensing. It also sets down the requirements for licensing. Eligibility to sit the audit examination conducted by the Ministry of Finance is met by fulfilling the following requirements:

- Citizenship of Moldova or a foreign country, or no citizenship;
- No criminal record;
- The applicant should have:
  - (a) higher education in the area of economics or law confirmed by a diploma issued by a higher educational institution of the Republic of Moldova or other country provided that this diploma meets equivalent standards.
  - (b) operational experience in a specialty for not less than 3 years, including in the area of audit under the direction of an auditor for not less than 2 years
- The validity of certificates shall not be limited if continuous professional education requirements are met.
- Procedures for the certification of auditors are laid down by the Regulation on Auditors' Certification.

There are two professional accountancy bodies in Moldova, the Association of Professional Accountants and Auditors (ACAP) which has a membership of approximately 500 individuals and the Association of Auditing Firms of Moldova (AFAM), which has a membership of around 30 local firms. AFAM offers ACCA (a general internationally recognized qualification) or CAP-CIPA (a Russian language qualification which offers recognition in Central Asia).

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<sup>54</sup> <http://www.advokatskakomora.me/>

<sup>55</sup> <http://www.licentiere.gov.md/pageview.php?l=ro&idc=22&nod=1&>

### **Architects**

Architecture in Moldova is governed by Law 721 of 2 February 1996 on Quality in Building Process and Law 1350 of 2 November 2000 on Architectural Activity. Entry to the profession is on the basis of a five year architecture degree and a 2 month internship overseen by the Ministry of Education and Science. Architects must then join the register of the Union of Architects which is also regulated by laws 721 and 1350.

Foreign architects may practice independently in Moldova but first must register with the Union of Architects and then get their license recognized by the Ministry.

### **Engineers**

Licensing for engineering activities is governed by the Law on Licensing 2001. There is no other readily available information on this profession.

### **Lawyers**

Legal practice in Moldova is regulated by the Law on Advocates 2002. The areas of work reserved to registered advocates is very narrow and limited to a monopoly over representation in criminal and civil cases granted by Article 67 of the Criminal Procedural Code and Article 75 of the Civil Procedure Code. Lawyers who undertake these activities must be licensed by the Advocates Licensing Committee of the Union of Moldovan Bars<sup>56</sup>.

The qualifications to become an advocate are set out in Article 10 of the Law, these require:

- Citizenship of the Republic of Moldova
- Full civil capacity
- A diploma in law or equivalent degree
- An impeccable reputation
- Passing the qualification exam

Article 20 of the Law also requires that a qualifying period of working an advocate-intern prior to sitting the exam.

The Advocates Licensing Committee which administers the licensing procedure is regulated by Article 43 of the Law.

Foreign advocates are permitted to become advocates provided they can meet all of the requirements in the Law, with exception of the citizenship requirement. They must also have their status as a registered advocate in their home country confirmed. They will then be registered on a special register. Foreign advocates may not appear before courts but can conduct arbitration and are permitted, at the request of their client, to assist a Moldovan advocate.

The Union of Moldovan Bars is an observer member of the Council of European Bars and Law Societies (CCBE).

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<sup>56</sup> <http://www.avocatul.md/>

## 8.2.7 Serbia

### **Accountants**

Serbia has in place legislation for statutory auditors which protects the title of auditor in law. Admission of statutory auditors is overseen by the Serbian Association of Accountants and Auditors (SAAA). There are 140 registered auditors in Serbia.

The SAAA licences various types of accounting professions and the following are the basic requirements:

Accounting Technician: The applicant has finished (at least) High School and has at least three years of practical experience in accountancy; - Candidate has completed the professional examination for acquiring this professional qualification:

Chartered Accountant: The applicant has either a master's level university degree and at least three years of practical experience in keeping business records and preparing financial statements; or a three-year undergraduate university degree and at least four years of practical experience in bookkeeping and preparing financial statements; or a higher education two-year degree and at least five years of practical experience bookkeeping and preparing financial statements.

Accountant: The applicant has at least five-year practical experience in this field.

Independent accountant: The applicant has at least three-years of practical experience in this field and has completed the professional examination for acquiring this professional qualification.

Certified Public Accountant: The applicant has the professional qualification of a "Chartered Accountant" and at least three-year practical experience in the field under the supervision of already qualified CPA. He/she has completed the professional examination necessary for acquiring this qualification.

### **Architects**

There are 6000 Serbian architects who are members of the Union of Architects of Serbia. They are regulated by the Serbian chamber of engineers and governed by the Law on Planning and Construction. Foreign architects are not permitted to practice independently but may do so in a joint venture on the basis of presenting their qualifications and demonstrating equivalence, providing proof of professional experience and the completion of an examination after studies together with practice in country of origin.

### **Engineers**

Engineering activities which require licenses are overseen by the Ministry of Environment and Spatial Planning. It has delegated the task of licensing to the Chamber of Engineers<sup>57</sup> which issues licenses for urban planners, designers and contractors.

A license can be obtained by a person with a university or a college degree in the appropriate discipline, who has successfully completed a professional exam and has at least 3 years of work experience for designers and contractors, or at least 5 years for urban planners.

The Serbian Chamber of Engineers is a member of the European Council of Engineers Chambers. There is also a voluntary professional body for engineers in Serbia ACES (the

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<sup>57</sup> <http://www.ingkomora.rs/>

Association of Consulting Engineers of Serbia) which is a member of FIDIC. This association was founded in 2009 by the major recognized engineering companies in Serbia. It plays no formal role in licensing.

### **Lawyers**

The practice of law in Serbia is regulated by the Legal Profession Act of 9 May 2011. This act lays down the following conditions for registration as a lawyer:

- A law degree earned in the Republic of Serbia or a law degree earned in a foreign country and recognized in accordance with the regulations governing the University education sector;
- Successful completion of the bar exam;
- Citizenship of the Republic of Serbia;
- General health and full working capacity;
- Not to hold employed status;
- Not to possess a criminal record
- Not to undertake any incompatible activities
- To be worthy of the practice of law;
- To have a practicing address and be able to fulfill the technical requirements laid down by the Bar Association of Serbia;
- At least three years to have elapsed since any previous decision refusing the applicant's registration.

Registration and regulation of practice are conducted by the Bar Association of Serbia<sup>58</sup>

A foreign national may be registered either in directory A or directory B of foreign attorneys provided he can demonstrate that he is registered to practice law in his home state of origin and he meets the applicable requirements of the law. Registration in directory A limits the foreign lawyers to providing legal advice and opinions regarding the application of law of his home country and international law. A foreign lawyer registered in register B, may additionally provide legal advice in Serbian law provided that for three years from the date of registration, he acts only in conjunction with a local counsel.

This law is not yet in conformity with The Lawyers Establishment Directive 98/5/EC but goes some way towards it.

The Bar Association of Serbia is composed of a number of regional bars which are responsible for registering lawyers in their districts. The Bar of Belgrade which is the largest in Serbia has 3600 members. The Bar Association of Serbia is an observer member of the Council of European Bars and Law Societies.

### **8.3 Summary tables comparing market access and professional qualifications in CEFTA countries**

The tables below summarize the above information combined with other material available from the WTO and World Bank on the state of market access and regulation in the CEFTA countries for each of the professions considered in this report. The following broad conclusions can be reached from this, albeit partial information.

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<sup>58</sup> <http://www.advokatska-komora.co.rs/index.html>

- Accountants (table 6): Although the market access position for foreign accountants offered by most CEFTA members appears to be relatively liberal, the real barriers exist in the form of free movement of natural persons, where the picture varies widely across CEFTA states. Most countries make a distinction between audit and general accountancy and are not surprisingly, more restrictive on the former. There is some commonality on the face of it for the basic requirements underlying accountancy qualifications across CEFTA countries but as many CEFTA countries are working with different international bodies on standards raising, there is scope for greater differences to arise over time. It is also important to note that not all CEFTA members have independent professional competent authorities.
- Architects (table 7): Most CEFTA members appear to have taken a relatively open approach to architecture to date and to allow foreign ownership of firms and employment of local architects (where this information is available). There is some diversity in professional qualification requirements with variations in the length of degree courses and whether internships are required or not. The existence of professional bodies and their international links are again, variable.
- Engineers (table 8): This is perhaps the least obviously regulated of the professions considered in this report, it is also still a state regulated profession in some CEFTA countries and licensing is more often handled by government
- Lawyers (table 9): Lawyers are perhaps the most restricted of the professions as far as the practice under host title is concerned. However, most CEFTA members also take a relatively open approach to foreign legal consultants, practicing their home country and international law. This profession is perhaps the most independently regulated, with all CEFTA members having an independent competent authority. Importantly, all are also members to some degree, of the Council of European Bars and Law Societies (CCBE).

These tables help to provide a basis for identifying useful next steps in promoting freer movement in professional services between CEFTA members.

**Table 6: Accountancy**

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
<b>Market Access</b>	<p><u>Accountancy</u> – no restrictions in modes 1-3 but foreign qualified professionals must hold recognised accountancy qualifications.</p> <p><u>Audit</u> – National qualification required for provision of audit services. Requalification for recognised foreign auditors possible through company law and tax exams.</p> <p><u>Horizontal commitments</u> – contractual service suppliers and independent professionals permitted for up to 1</p>	<p>Article 23 of Law On Foreign Trade Policy “Official Gazette” of Bosnia and Herzegovina, 7/98 provides for freedom for individual foreign suppliers to provide services unless otherwise prohibited by public policy</p> <p>Accounting firms may provide services if reciprocal conditions exist in service supplier’s home country.</p>	<p>Foreign accountants and auditors may be recognised by the KCFR provided they meet the same standards as locals (ie. Degree + exams+ practical experience and membership of professional body) KCFR licenses local and foreign audit firms if they:</p> <p>have an office in Kosovo;</p> <p>establish a business organization registered in Kosovo, with at least two (2) licensed Auditors, under this law;</p> <p>it is managed</p>	<p><u>Accounting and bookkeeping services</u> (CPC 86212, 86213, 86219 and 8622)</p> <p>No market access or national treatment limitations other than in mode 4 as set out in horizontal commitments.</p> <p>b) <u>Auditing services</u> (CPC 86211)</p> <p>Foreign audit companies must conclude a contract with a domestic audit company to provide cross border audit services and the foreign company</p>	<p><u>Accountancy and audit</u>: No restrictions in modes 1-3</p> <p><u>Horizontal commitments</u>: Contractual service suppliers permitted for up to 1 year (must have university degree, 3 year’s professional experience and contract), Intra corporate transferees permitted for up to 3 years.</p>	<p><u>Accountancy and audit</u>: – no restrictions in modes 1-3.</p> <p><u>Horizontal commitments</u>: Contractual service suppliers and independent suppliers limited to 90 day period. Intra corporate transferees permitted stays of up to 5 years.</p>	<p>Awaiting publication of Serbia’s WTO accession commitments</p>

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
	year initial stay; intra corporate transferees permitted up to 5 year work permit.		<p>by Auditors, members of a licensed professional accounting and auditing association in Kosovo.</p> <p>KCFR approves a foreign or local auditing firm only if it complies with the Law on Business Organizations and the business is registered as:</p> <p>an individual business with an Auditor as manager;</p> <p>a general or limited liability partnership with all managing partners;</p> <p>a limited liability company with the majority of voting rights</p>	<p>must be registered as an audit company in its own country.</p> <p>A foreign auditing company can establish only one auditing company in FYROM.</p> <p>If the foreign company is not registered in its own country for providing auditing services, its participation in the total capital of the newly established auditing company in FYROM cannot exceed 25%.</p> <p>A foreign audit company establishing in FYROM must employ at</p>			

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
			retained by the manager in such a way that, under the firm charter, the key partners are enabled to administer their general policies or to amend its charter.	least two auditors licensed in FYROM.			
<b>Other barriers to entry or regulatory restrictions</b>	<p>No limits on foreign ownership of accounting firms</p> <p>No licensing required for foreign accounting firms</p> <p>Association with local firms and employment of local accountants by foreign firms permitted.</p> <p>No limits on foreign ownership of accounting firms</p> <p>No licensing</p>			<p>A foreign audit company not registered in FYROM, but registered to conduct audit in the country where its main office is located, may perform audit in FYROM only on a contract basis in cooperation with a domestic audit company.</p> <p>Audit reports must be produced</p>			<p>Audit must be performed by certified auditors, who are members of the Chamber of Certified Auditors and employed by an audit company.</p> <p>Audit companies must have at least three licensed auditors to be allowed to perform an audit of a</p>

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
	<p>required for foreign accounting firms</p> <p>Association with local firms and employment of local accountants by foreign firms permitted</p>			<p>by an audit company, not by an employee or a contracted auditor as a natural person</p>			<p>Large entity or at least one licensed auditor for audit of a Medium size entity.</p> <p>Audit may be performed by the same audit company for a maximum of five years.</p>
<b>Professional qualification requirements</b>	<p>4-5 year economic degree (or similar) + 3 year's experience + professional examinations</p>	<p>Accountancy: 4 year degree + 1 year training (FBiH) 4 year degree (RS) Audit: + additional courses and examination (FBiH); 4 year degree (RS)</p>	<p>Audit: Prescribed lecture course + examinations + experience</p> <p>Accounting technician: As above but separate study and examination</p>	<p>Audit: University degree + 3 years experience + examination</p>	<p>Accountancy: University degree + 3 years experience + examinations</p>	<p>Audit: University degree + 3 years' experience + examination</p>	<p>Accountancy: 4 year degree + 3 years experience (or 3+4) + professional examination</p>

**Table 7: Architects**

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
<b>Market Access</b>	<p>No GATS commitments scheduled</p> <p><u>Horizontal commitments</u> – contractual service suppliers and independent professionals permitted for up to 1 year initial stay; intra corporate transferees permitted up to 5 year work permit.</p>	<p>Article 23 of Law On Foreign Trade Policy “Official Gazette” of Bosnia and Herzegovina, 7/98 provides for freedom for foreign suppliers to provide services unless otherwise prohibited by public policy.</p>	<p>Legal Acts that regulates planning and architectural practicing in Kosovo are: The Law on Spatial Planning, (articles 8 and 35 regulate planning practice) and the Law on Construction, (articles 20, 30,31 and 32 regulate architectural practice).</p>	<p><u>Architectural services</u> (CPC 8671) : No restrictions Under GATS, however local legislation suggests that foreign qualified architects may not practise or gain recognition but may work in joint ventures with locally qualified architects</p>	<p><u>Architectural services</u>: No restrictions in mode 1-3</p> <p><u>Horizontal commitments</u>: Contractual service suppliers permitted for up to 1 year (must have university degree, 3 year’s professional experience and contract), Intra corporate transferees permitted for up to 3 years.</p>	<p>No GATS commitments scheduled</p> <p><u>Horizontal commitments</u>: Contractual service suppliers and independent suppliers limited to 90 day period. Intra corporate transferees permitted stays of up to 5 years.</p>	<p>Awaiting publication of Serbia’s WTO accession commitments</p>
<b>Other barriers to entry or regulatory restrictions</b>	<p>No limits on foreign ownership of architecture firms</p> <p>No licensing required for foreign architects’ firms</p> <p>Association with</p>		<p>There is no limitation on foreign ownership of local companies, and foreign investors face no restrictions on moving capital and profits</p>				

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
	local firms and employment of local architects by foreign firms permitted		outside of Kosovo. Non-citizens are permitted to own property in Kosovo without restriction.				
<b>Professional qualification requirements</b>	University degree + internship	University degree + state examination + experience	University degree	5 year University degree – no internship or examinations.	University degree	5 year university degree + 2 month internship + membership of professional association.	5 years of university study + 1 year internship .

**Table 8: Engineers**

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
<b>Market Access</b>	<p><u>Horizontal commitments</u> – contractual service suppliers and independent professionals permitted for up to 1 year initial stay; intra corporate transferees permitted up to 5 year work permit.</p>	<p>Article 23 of Law On Foreign Trade Policy “Official Gazette” of Bosnia and Herzegovina, 7/98 provides for freedom for foreign suppliers to provide services unless otherwise prohibited by public policy</p>		<p><u>Engineering services (CPC 8672) and Integrated engineering services (CPC 8673)</u> : No restrictions in modes 1-3</p>	<p><u>Engineering services and integrated engineering services:</u> No restrictions scheduled in modes 1-3.</p> <p><u>Horizontal commitments:</u> Contractual service suppliers permitted for up to 1 year (must have university degree, 3 year’s professional experience and contract), Intra corporate transferees permitted for up to 3 years.</p>	<p>No GATS commitments scheduled.</p> <p><u>Horizontal commitments:</u> Contractual service suppliers and independent suppliers limited to 90 day period. Intra corporate transferees permitted stays of up to 5 years.</p>	
<b>Other barriers to entry or regulatory restrictions</b>	<p>No limits on foreign ownership of engineering firms</p> <p>No licensing required</p>						

	<b>Albania</b>	<b>Bosnia and Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
	for foreign engineering firms  Association with local firms and employment of local engineers by foreign firms permitted						
<b>Professional qualification requirements</b>		University degree + state examination + experience	University degree				University or post-secondary higher degree + professional examination + minimum 3 years of work experience (design and contracting engineers) or 5 years (urban planning engineers)

**Table 9: Lawyers**

	<b>Albania</b>	<b>Bosnia &amp; Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
<b>Market Access</b>	<p>No restrictions on supply of consultancy in service supplier's home country law and International law (modes 1-3)</p> <p>Legal Services (CPC 861 – i.e. Albanian legal services) – national qualification and residence are required.</p> <p><u>Horizontal commitments</u> – contractual service suppliers and independent professionals permitted for up to 1 year initial stay; intra corporate transferees permitted up to 5 year work permit.</p>	<p>Article 23 of Law On Foreign Trade Policy “Official Gazette” of Bosnia and Herzegovina, 7/98 provides for freedom for foreign suppliers to provide services unless otherwise prohibited by public policy</p>		<p>Foreign, international and domestic law (part of CPC 861) – no limitations.</p>	<p>No restrictions on the supply of consultancy in foreign, international and home country law (modes 1-3)</p> <p>Legal Services in Montenegrin law, including representation before judicial and administrative tribunals subject to a reciprocity test.</p> <p><u>Horizontal commitments</u>: Contractual service suppliers permitted for up to 1 year (must have university degree, 3 year's professional experience and contract), Intra corporate transferees</p>	<p>Consultancy in service supplier's home country law and International law – unlimited but in modes 3 and 4, services can only be supplied through legal persons incorporated in Moldova.</p> <p>Licensed lawyer can provide all legal services, except representation in criminal proceedings.</p> <p>Representation in criminal proceedings permitted only to Moldovan lawyers.</p> <p><u>Horizontal commitments</u>: Contractual service suppliers and independent suppliers</p>	

	<b>Albania</b>	<b>Bosnia &amp; Herzegovina</b>	<b>Kosovo</b>	<b>FYROM</b>	<b>Montenegro</b>	<b>Moldova</b>	<b>Serbia</b>
					permitted for up to 3 years.	limited to 90 day period. Intra corporate transferees permitted stays of up to 5 years.	
<b>Other barriers to entry or regulatory restrictions</b>	<p>No limits on foreign ownership of law firms</p> <p>No licensing required for foreign law firms</p> <p>Association with local firms and employment of local lawyers by foreign firms permitted</p>						Citizenship requirement for practice of Serbian law
<b>Professional qualification requirements</b>	Law degree + one year internship + examination + membership of Chamber of Advocacy	Law degree + bar examination + 2 year's work experience	Law degree + employment contract with qualified lawyer	Law degree + bar examination	Law degree + bar examination + registration with the Bar of Montenegro	Law degree + internship + examination	Law degree + bar examination + registration with Bar of Serbia

#### **8.4 Possible CEFTA MRAs for Professional Services**

It is evident from the previous section of this report that there is not only significant work for all CEFTA members to do in order to converge on EU standards for professional services mobility but that in some member countries the level of domestic regulation of the professions in itself still requires significant work. Any MRA regime requires a definition and assessment of regulated professions, the creation of appropriate points of contact for each profession and capacity building of all competent authorities in how to deal with applications for registration from foreign professionals.

In addition to the mechanics of complying with the European acquis or any transitional version, CEFTA members also need to consider how they could regulate professions domestically to greater effect. There are clearly shortages of key professionals in many areas in many countries (e.g. engineering), and even if these gaps can to some extent be filled by engaging professionals from elsewhere for temporary projects, all CEFTA members will ultimately need to improve their indigenous talent base in order to supply the professional expertise that will be required in local regulatory bodies and local authorities. In other areas like auditing, the numbers of individuals qualified is very low but as financial markets develop and the number of listed companies grows, the demand for local auditing skills will also increase. Similarly in the legal sector, although there may be an adequate number of qualified lawyers in most jurisdictions for current local requirements, very few of these are likely to have experience of engagement on international transactions and will not be prepared to assist their citizens and businesses exercise their rights within the EU. All CEFTA countries therefore face the need to increase their home grown pool of talent whilst also increasing mobility and could therefore usefully increase their access to a skilled pool of professionals by raising national educational standards through deeper engagement in the Bologna process and by specific actions at home to encourage young professionals to improve their skills base.

## 9 Recommended actions

The recommended actions arising from this report break down into three categories: The first is a checklist of recommended regional level actions which flow from this analysis; the second is a checklist of recommended actions for each CEFTA member to consider individually and the third is a proposal for a pilot action in one specific sector.

### 9.1 Regional level recommendations

There are a number of potential common obstacles to the evolution of effective professional services markets in CEFTA members which we can identify from our previous analysis. These include the following:

- The lack of horizontal mechanisms for discussion/building of trust and joint activity programs between CEFTA Members at different levels.
- The lack of capacity in government ministries, universities and professional competent authorities.
- Competition/rivalries between different bodies that might become competent authorities where none is yet obvious. Gap between view/approach of designated competent authority and voluntary professional bodies.
- Asymmetry between regulators (e.g. if one CEFTA member's competent authority is a government ministry and another's is independent from government, this could create a barrier to cooperation).
- Lack of trust between competent authorities
- Lack of interest from competent authorities given likelihood initially of small numbers of migrant professionals.
- Resistance from certain professions to foreign service providers

The following recommendations are designed to address these obstacles.

**Table 10: Regional Level Recommendations**

	<b>Objective</b>	<b>Action</b>	<b>Target audience</b>
I.	Support successful CEFTA negotiations on market access in key professional services sectors	Mapping out of a staged path to freer movement in key professional services sectors between CEFTA members that also assists with convergence on the European acquis.  To include e.g. agreement on MRAs in law, architecture, engineering and accountancy covering scope, eligibility, equivalence, automaticity and post approval guarantees, which embody and move in stages towards compliance with EU acquis. MRAs should cover temporary and permanent practice and cover home and host title as appropriate for the profession concerned.	CEFTA members

II.	Improve competition and liberalization in professional labor markets	Regional level seminars and supporting activity to promote thinking about appropriate levels of public interest regulation in key professional sectors.	CEFTA members: government ministries, competition authorities (or equivalent), professional bodies.
III.	Improve competition and liberalization in professional labor markets-2	Provide technical support for screening of existing legislation and professional regulation against Services Directive requirements (e.g. removal of fee scales, prohibitions on advertising etc)	CEFTA Government ministries, responsible regulatory bodies in CEFTA members
IV.	Increase engagement in Bologna process	Map actions to be taken in order to promote convergence of University level education underpinning key professional sectors on standards that support greater mobility.	Education ministries in CEFTA members, universities, professional/regulatory bodies
V.	Promote regional networking amongst competent bodies	Ensure CEFTA Members identify competent bodies in key professional sectors and provide support for networking	CEFTA members, CEFTA competent authorities
VI.	Increase awareness of potential competent bodies of the role of trade in services and mutual recognition agreements	Training/information seminars and other supporting activities to explain the EU framework for regulated professions (PQD, Lawyers directives etc).	CEFTA competent authorities
VII.	Consider creation of wider 'shadow' EU professional qualifications regime in key sectors, to support market access.	Map out a wider MRA on professional recognition for CEFTA countries which can be implemented in stages to approximate to EU professional qualifications regime.	CEFTA competent authorities
VIII.	Improve access to information for potential migrant professionals	Development of CEFTA trade portal to include information on licensing in key professions/ contacts and processes for applications	CEFTA members, CEFTA competent authorities
IX.	Develop CEFTA 'common platforms' for key professions	Set out acceptable menu of compensatory measures that could be applied in order to overcome potential capacity constraints.	CEFTA competent authorities

X.	Support capacity development of competent authorities	Create 'buddy' program of support from existing EU member state competent authorities or from EU-wide professional bodies.	EU wide professional associations, network of competent authorities, CEFTA competent authorities
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## 9.2 An Action Plan for Individual CEFTA members

Although there is a great deal that can usefully be done at a regional level, ultimately much of the responsibility for making regional mobility in professional services work, will fall on the individual CEFTA members and their competent authorities. The following is a breakdown of some of the most immediate actions that could be taken by each CEFTA member.

<b>9.2.1 Albania</b>			
	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XI.	Develop single point of contact concept for Albania	Expand/improve national licensing center	Government/Albanian Architects Association
XII.	Promote convergence on statutory audit directive	Undertake detailed mapping of existing legislation against statutory audit directive; build links with FEE (nb. Need to address nationality requirements in audit law)	Government/IEKA
XIII.	Promote convergence with PQD requirements for architects	Map out program to converge on standards of UIA/architects directive – review of law and authorization practice; build links with UIA/ACE	Government/Albanian Architects Association
XIV.	Promote convergence on PQD system for engineers	Review law on regulated professions; identify competent authority for engineers; build links with FEANI	Government
XV.	Promote convergence with lawyers' directives	Introduce foreign legal consultant concept in Albania (i.e.access for CEFTA lawyers to undertake international/home country law; enhance links with CCBE.	Albanian Bar/government

### 9.2.2 Bosnia and Herzegovina

	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XVI.	Enable Bosnia and Herzegovina to engage in discussions on regional MRAs	Improve dialogue/cooperation between different entities in order to avoid problems characteristic of federal states adopting MRAs	Government/entities of BiH
XVII.	Improve transparency of licensing arrangements across BiH	Create national portal for licensing arrangements from both entities and sub-entity levels.	Government/entities of BiH
XVIII.	Promote convergence on statutory audit directive	Screen audit legislation from both FBiH and RS for professional requirements and processes for recognition. Encourage links with FEE.	Government/entities of BiH
XIX.	Promote convergence with PQD requirements for architects	Screen legislation; improve capacity of RS AAA to verify practical experience; build links with UIA/ACE	Government/RS AAA
XX.	Promote convergence on PQD system for engineers	Create competent authorities for engineering outside government; build links with FEANI	Government/entities of BiH
XXI.	Promote convergence with lawyers' directives	Create system for free movement of lawyers between RS and BiH; Introduce limited license concept for foreign/CEFTA/EU lawyers ; strengthen links with CCBE	Government/Bar associations.

**9.2.3 FYROM**

	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XXII.	Improve transparency of licensing arrangements	Develop single point of information on professional licensing	Government
XXIII.	Promote convergence on statutory audit directive	Develop professional association for accountants/strengthen links with FEE	Profession
XXIV.	Promote convergence with PQD requirements for architects	Screen legislation for conformity with architects directive; promote concept of automaticity; strengthen links with UIA/ACE	Government/profession
XXV.	Promote convergence on PQD system for engineers	Build links with FEANI	Profession
XXVI.	Promote convergence with lawyers' directives	Introduce limited scope license for foreign/CEFTA/EU lawyers as first stage in convergence on Lawyers' Directives; strengthen links with CCBE	Bar Association

<b>9.2.4 Kosovo</b>			
	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XXVII.	Improve education standards for professional qualifications	Join Bologna process as soon as possible or shadow it as closely as possible in the meantime.	Government
XXVIII.	Increase transparency of professional licensing	Develop single point of contact/information for professional licensing	Government
XXIX.	Promote convergence on statutory audit directive	Screen legislation and qualification framework for conformity; Strengthen links with FEE	Government/Profession
XXX.	Promote convergence with PQD requirements for architects	Move towards framework in which qualified architects from CEFTA/EU meeting required standards can practice automatically; Strengthen links with UIA/ACE	Government/Profession
XXXI.	Promote convergence on PQD system for engineers	Create professional licensing body; create links with FEANI	Government
XXXII.	Promote convergence with lawyers' directives	Remove citizenship requirement for practice of law (or add CEFTA/EU); create concept of limited scope license for foreign lawyers; strengthen links with CCBE.	Advocates Chamber

<b>9.2.5 Montenegro</b>			
	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XXXIII.	Increase transparency of national licensing arrangements for professions	Create point of single contact/information database	Government
XXXIV.	Promote convergence on statutory audit directive	Benchmark existing law against statutory audit directive; strengthen links with FEE	Government/ accountants' association
XXXV.	Promote convergence with PQD requirements for architects	Support government moves to permit practice by foreign architects – embed automaticity for EU architects if possible or steps towards it; strengthen links with UIA/ACE	Government/ Architects Association
XXXVI.	Promote convergence on PQD system for engineers	Improve approximation of standards on EU norms; encourage cooperation between regional engineering associations; build links with FEANI	Government/Chamber of Engineers
XXXVII.	Promote convergence with lawyers' directives	Remove citizenship requirement in law; create concept of limited scope license for foreign/CEFTA/EU lawyers; build links with CCBE	Bar Association

<b>9.2.6 Moldova</b>			
	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XXXVIII.	Increase transparency of requirements for professional qualifications	Develop national licensing portal to hold more information on professions and how to access them.	Government/ competent authorities
XXXIX.	Promote convergence on statutory audit directive	Screen legislation against Statutory Audit Directive; promote links with FEE	Government; accountants association
XXXX	Promote convergence with PQD requirements for architects	Review foreign license requirements for architects; Create convergence process on automatic EU rights under PQD; promote links with UIA/ACE	Government/ architects association
XXXXI	Promote convergence on PQD system for engineers	Identify appropriate competent authority and build links with FEANI	Government
XXXXII.	Promote convergence with lawyers' directives	Map liberal regime onto EU directive/limited licence concept; build links with CCBE	Bar Association

<b>9.2.7 Serbia</b>			
	<b>Objective</b>	<b>Action</b>	<b>Target institution/group</b>
XXXXIII.	Increase transparency of national licensing arrangements for professionals	Create single point of contact portal	Government
XXXXIV.	Promote convergence on statutory audit directive	Screen legislation against Statutory Audit Directive; Build links with FEE	Government; professional associations
XXXXV.	Promote convergence with PQD requirements for architects	Introduce greater degree of automaticity for EU architects as process of convergence on EU acquis; build links with UIA/ACE	Architects association
XXXXVI.	Promote convergence on PQD system for engineers	Create possibility for foreign licensing through Chamber/build links with FEANI	Chamber of Engineers
XXXXVII.	Promote convergence with lawyers' directives	Suggest modifications to Serbian regime for foreign lawyers to address non-compliance with EU directives; encourage other CEFTA members to follow Serbian model (as modified); build links with CCBE	Serbian Bar Association

### 9.2.8 Prioritising Actions – Creating the Framework and designing a Pilot Project

The above is a daunting list of actions that need to be taken if CEFTA members are to move towards regional professional services MRAs amongst themselves as an intermediate step on the way to full convergence with the EU acquis. It therefore may be helpful to select the most important of the above inventory of tasks and suggest how these could be combined into a single integrated project.

The following are the most important steps which would help to move CEFTA towards its MRA goals:

- i). Agreement amongst the CEFTA members on the (possibly multiple) objectives of regional MRAs (e.g. integration of professional services markets? Deepening of skills base? Improved regulatory environment and greater competitiveness of professional sectors?). Negotiation of regional level market access and horizontal commitments in areas to be covered by MRAs.
- ii). Design and agreement of a framework within which individual MRAs can be negotiated. Drawing on the experience from other regional agreements (especially the EAC), this should set out the linkage of MRAs to market access and horizontal commitments (which may be made in advance of the negotiation of an MRA or contemporaneously – provided that it is clear that the MRA is an instrument for implementing the market access commitment and not a substitute for one); who the designated competent authorities would be for regulated professions identified as appropriate for individual MRAs; the ‘model’ content for any individual MRA (which should aim for progressive convergence on the EU acquis even if this is difficult to achieve immediately); and overarching negotiation and governance arrangements. The latter would involve, for example, some form of accountability and reporting mechanism at a central CEFTA level, which would nonetheless respect professional independence where this is required by sectoral norms.
- iii). Selection of a candidate sector to pilot the above approach: Once the framework is in place, it would be helpful to begin negotiations on an MRA with one sector first in order to identify any potential obstacles or issues to be resolved before generalizing the approach. Four professions were considered earlier in this paper in some detail: accountancy, architecture, engineering and law and it is worth considering which of these might be a good candidate for such a pilot.

Of the four professions, accountancy and engineering are both part of the EU general system. They suffer to some extent from the fact that there are many different qualifications underlying the practice of these professions and the creation of a CEFTA system to mirror the EU system would therefore not necessarily achieve significant integration because competent authorities would still be required to undertake qualification assessments on a case by case basis. Evidence from the EU also suggests that accountants are most likely to seek requalification for audit purposes and this would then require compliance with the Statutory Audit Directive. An engineering MRA on the other hand, would involve the obvious complexities of defining the scope of services covered.

Architecture has the advantage that it is one of the sectors covered by a vertical approach (i.e. treated separately from the general system), however it also has the disadvantages that any CEFTA MRA would require a high level of prior convergence in architectural educational programmes and therefore also requires the cooperation of universities offering architecture degrees in the CEFTA member states. Whilst this is not an insurmountable obstacle, it does both add an extra layer of complexity to possible negotiations and delays the potential impact of any pilot and thus the lessons that can be learnt from it. It is also worth noting that evidence from the East African experience suggests that MRAs for architects are likely to be most effective where they operate in parallel with MRAs, or equivalent market access arrangements, for other professionals who work closely with architects on large projects, such as construction professionals and surveyors.

This leaves law. There are a number of reasons why an MRA for lawyers might be an appropriate starting point for CEFTA. First and foremost, lawyers have special treatment within the EU system which has produced a series of special directives covering this sector. These neither require the case by case involvement of a competent authority (merely more or less automatic registration under home title) nor do they require prior harmonization of academic or professional qualifications. Together, the Establishment and Services Directives for Lawyers represent a flexible standalone system which also dovetails well with market access commitments. Secondly, lawyers can and should play an important part in wider integration and convergence on the EU acquis since legal issues play a crucial part in the development of a wider regional marketplace. Last but by no means least, because the approach of the EU lawyers' directives is primarily to permit relatively unrestricted practice by a lawyer from another EU member state under home title, regional mobility can be increased without the need to recast national education and training systems fundamentally. Nonetheless, some screening of national laws and regulations would need to be done and there may need to be some modifications made at a national level (e.g. see previous section on individual country recommended actions).

- iv). Creation of civil society support mechanisms with an initial focus on the pilot sector. Institutional capacity is a major hurdle to be overcome in the operation of MRAs. Many of the professions in the CEFTA countries, especially engineering and architecture, are still directly regulated by government, which limits the effort and commitment that can be put into the development and dissemination of the benefits of any individual MRA. However, it is only worth having an MRA in any sector if it is going to be used and this requires active engagement with the practicing profession, which is more likely to occur where the competent authority has regulatory and ideally also professional representative responsibilities. It is worth noting that all of the CEFTA members (with the exception of Kosovo which is in the process of joining) are observer or associate members of the Council of European Bars and Law Societies (CCBE) which suggests a reasonable baseline approximation to EU norms (NB. Membership of the CCBE requires that the country concerned has been admitted to the Council of Europe and that there is an organization that is representative of the profession of 'lawyer'). This organization and its individual national members are a resource which could be drawn on to support the

development of professional lawyers' organizations in the CEFTA countries and to provide peer advice on promoting integration. This would not only assist with the implementation of MRAs but will also help to raise standards and the competitiveness of the profession domestically.

The sort of support that would be useful would include:

- Seminars/workshops for the legal professions explaining CEFTA's role in the EU integration process and the role of MRAs and their benefits;
- The creation of a CEFTA legal sector working group involving the competent authorities (and, where these are different, also the professional bodies) which can act as the coordinating body both for the development of an MRA and for the development of other cooperation initiatives. This working group could, for example, undertake the following tasks:
  - Take a lead in approving the results of the process of screening national laws on lawyers against a common CEFTA benchmark that approximates to the EU lawyers' regime.
  - Make recommendations on actions to be taken by individual CEFTA members in order to reach the level required for admission to the lawyers' MRA.
  - Drafting of the text of an MRA based on the market access commitments made by the CEFTA members and the desired level of approximation to the EU lawyers' regime.
  - Identify projects to promote cooperation.

It is highly likely that the CEFTA secretariat would need dedicated technical support in order to run such a working group at least for a pilot project, but this could be at least in part supplied potentially through the involvement of the CCBE.

- A twinning mechanism between the CCBE, its members and CEFTA lawyers' organizations to assist both in the development of domestic institutional capacity (e.g. to ensure standards through appropriate admission and disciplinary mechanisms, to provide information to fellow bars about migrating individuals and to provide services (e.g. such as continuous professional development) to members).

This suggests the following three stage action plan:

Stage 1: The CEFTA working group on services should agree to negotiate MRAs for key regulated professions on the basis of prior market access and horizontal commitments on free movement of natural persons. This agreement could usefully set out the framework as outlined above and a model MRA that could be adapted for the specific needs of each profession.

Step 2: The creation of a working group on legal services, established under the auspices of the Working Group on Services with a remit to negotiate an MRA following appropriate screening of legislation and regulation on a country by country level. This could usefully have two levels - a working level which involves the professional bodies and competent

authorities and a stakeholder group which should include wider representation from Ministries of Justice or Judiciary, for example.

Step 3: The design and implementation of a series of ongoing supporting actions, mostly to be taken at a national level.

Based on prior experience of the EAC, a project of this type could take 2 to 3 years to implement in full, if sufficient political level commitment is present and adequate technical assistance is available. This timescale does not take into account delays that could occur as a result of the procedures involved in changing national legislation. However, if a clear framework for MRAs is put in place as a result, subsequent MRAs could be negotiated using the precedents established by a pilot project for the legal profession in around 18 months. Work on subsequent MRAs would not necessarily need to await the full outcome of any pilot but could commence as soon as a legal sector MRA had been negotiated, even if it had not yet been implemented.

### **9.2.9 Possible obstacles at member state level**

The biggest obstacles that exist to the achievement of either the general actions identified or to the specific pilot project are:

- Lack of capacity in CEFTA member state responsible ministries
- Gaps in competent authorities – either in their existence or their powers
- Lack of interest from competent authorities in mobility issues
- Lack of administrative capacity in competent authorities
- Possible conflict between competent authorities' interests and the interests of other groups in the profession.

The selection of the legal profession as a starting point for any MRA pilot is intended to overcome as many of these possible obstacles as possible. However, Ministries of Justice (the usual government department responsible for the legal sector) are not traditionally interested or engaged in issues relating to trade or integration, so the success of any pilot will also involve securing support from this quarter. This is one reason for the suggestion contained in stage 2 of the proposed pilot project above, for the creation of a stakeholder group to be involved in key stages of the negotiation of an MRA.

### **9.2.10 Role of further technical assistance**

In addition to support for a pilot project, there are three longer term strands of technical assistance which could support the creation of regional MRAs:

- i) Assistance to individual governments in the review of professional services regulation, both with conformity to EU standards and best practice in mind, and assistance with the creation of new competent authorities, both in legislation and in practice, where this is required.
- ii) A regional level program for the rollout of the results of the pilot project to other sectors. This could include: A 'handbook' for the relevant competent authorities on how to create an MRA, the inclusion in the CEFTA online portal of information on professional services, such as of national contact points and even access to preliminary application procedures.

- iii) The provision of a development program for designated competent authorities, including training and resources.
- iv) The provision of financial support for competent authorities to participate in EU-wide industry associations and professional bodies. Many CEFTA competent bodies are members on paper of EU associations but their level of actual engagement in these bodies is limited.

## 10 Conclusions

This report has reviewed the use and impact of mutual recognition agreements both in the EU and more widely. It has looked at the state of play of the professions in the CEFTA countries and made a wide number of recommendations for actions that could be taken either at a regional level or by individual CEFTA members, with the ultimate goal of converging on the EU acquis for professional services mobility and the intermediate goal of increasing mobility between the CEFTA members themselves.

The report has also recommended that a pilot project be undertaken to demonstrate the potential of MRAs and to establish mechanisms that can be used by different sectors.

The results of this process depend to a very large extent on the creation of trust between parties to the agreement and ultimately between CEFTA member states and Member States of the European Union. As this report has indicated, this is inevitably an iterative process and no region of the World has yet found the perfect answer to the challenge of professional mobility.

This is encapsulated by the following observation made at an OECD workshop on professional services more than fifteen years ago:

“Can professionals educated, trained and experienced in one national and institutional environment be trusted to perform to the professional requirements and public expectations of another national and institutional environment? From this fundamental question flow others related to our topic of liberalization and regulatory reform:

- What are the essential safeguards that must be in place?
- Should they be directed at the individual professional, the professional firm or the specific service?
- How can we encourage a convergence of standards and regulation that would give us more confidence?

.... we should look at this entire exercise as a dynamic process, that learning effects through increased cooperation and mutual knowledge between and among professional bodies and regulators will allow us to extend the degree to trust and liberalization over time. Regulatory change, in other words, depends upon a learning process that builds confidence and thereby allows innovation<sup>59</sup>”.

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<sup>59</sup> Charles P. Heeter Jr., representing the American Institute of Certified Public Accountants, Paper given at 3<sup>rd</sup> OECD Workshop on Professional Services, 20-21 February 1997

## **11 Annexes**

### **11.1 Annex I: UN CPC classifications relating to professional services**

#### **Division 82 Legal and accounting services**

##### **821 Legal services**

- 8211 82110 Legal advisory and representation services concerning criminal law
- 8212 82120 Legal advisory and representation services concerning other fields of law
- 8213 82130 Legal documentation and certification services
- 8219 Other legal services
- 82191 Arbitration and conciliation services
- 82199 Other legal services

##### **822 Accounting, auditing and bookkeeping services**

- 8221 82210 Financial auditing services
- 8222 Accounting and bookkeeping services
- 82221 Accounting services
- 82222 Bookkeeping services
- 82223 Payroll services
- 823 Tax consultancy and preparation services
- 8231 82310 Corporate tax consulting and preparation services
- 8232 82320 Individual tax preparation and planning services
- 824 Insolvency and receivership services
- 8240 82400 Insolvency and receivership services

##### **832 Architectural services, urban and land planning and landscape architectural services**

- 8321 Architectural services and advisory services
- 83211 Architectural advisory services
- 83212 Architectural services for residential building projects
- 83213 Architectural services for non-residential building projects
- 83214 Historical restoration architectural services
- 8322 Urban and land planning services
- 83221 Urban planning services
- 83222 Rural land planning services
- 83223 Project site master planning services
- 8323 Landscape architectural services and advisory services
- 83231 Landscape architectural advisory services
- 83232 Landscape architectural services

##### **833 Engineering services**

- 8331 83310 Engineering advisory services
- 8332 Engineering services for specific projects
- 83321 Engineering services for building projects
- 83322 Engineering services for industrial and manufacturing projects
- 83323 Engineering services for transportation projects
- 83324 Engineering services for power projects
- 83325 Engineering services for telecommunications and broadcasting projects
- 83326 Engineering services for waste management projects (hazardous and non-hazardous)
- 83327 Engineering services for water, sewerage and drainage projects
- 83329 Engineering services for other projects
- 8333 83330 Project management services for construction projects

## 11.2 Annex II: List of Titles of Key Regulated Professions in the EU

### A. ACCOUNTANCY PROFESSIONS

Name of regulated profession	Country
Beeideter Wirtschaftsprüfer und Steuerberater	Austria
Buchhalter	Austria
Bilanzbuchhalter	Austria
Personalverrechner	Austria
Reviseur d'entreprise/ bedrijfsrevisor	Belgium
Comptable agréé/Erkend boekhouder	Belgium
Comptable-fiscaliste agréé/ Erkend boekhouder-fiscalist	Belgium
Conseil fiscal / belastingconsulent	Belgium
Expert-comptable/accountant	Belgium
Дипломиран експерт-счетоводител (одитор)	Bulgaria
Вътрешен одитор в публичния сектор	Bulgaria
Одитор на специфични одитни дейности по фондове и програми на Европейския съюз	Bulgaria
Служител в Централно хармонизиращо звено за вътрешен одит	Bulgaria
Одитор по смисъла на Закона за Сметната палата	Bulgaria
Λογιστής	Cyprus
Auditorské služby	Czech Republic
Činnost účetních poradců, vedení účetnictví, vedení daňové evidence	Czech Republic
Daňový poradce	Czech Republic
Statsautoriseret revisor/registreret revisor	Denmark
Expert comptable	France
Julkishallinnon ja talouden tilintarkastaja/ revisor inom den offentliga förvaltningen och ekonomin	Finland
Wirtschaftsprüfer	Germany
Steuerberater	Germany
Orkotós logistís	Greece
Ihdikos forotechnikou grafiou	Greece
Logistís (AEI-TEI)	Greece
Mérlegképes könyvelő	Hungary
Okleveles könyvvizsgáló	Hungary
Adótanácsadó	Hungary
Löggiltur endurskoðandi	Iceland
Chartered and certified accountants and other professional accountants registered as auditors	Ireland
Certified Accountant	Ireland
Certified Public Accountant	Ireland
Chartered Accountant	Ireland
Incorporated Public Accountant	Ireland
Tax Advisor	Ireland
Technician Accountant	Ireland

Commercialista ed esperto contabile	Italy
Revisore contabile	Italy
Dottore commercialista	Italy
Ragioniere, perito commercial	Italy
Zvērināts revidents	Latvia
Wirtschaftsprüfer	Liechtenstein
Conseil economique	Luxembourg
Expert-comptable	Luxembourg
Reviseur d'entreprise	Luxembourg
Accountant	Malta
Auditor	Malta
Accountant – administratieconsulent	Netherlands
Registeraccountant	Netherlands
Gerechtsauditeur	Netherlands
Registrert revisor	Norway
Statsautorisert revisor	Norway
Autorisert regnskapsfører	Norway
Doradca podatkowy	Poland
Técnico oficial de contas	Portugal
Revisor oficial de contas	Portugal
Contabil autorizat	Romania
Consultant fiscal	Romania
Expert contabil	Romania
Asistent daňového poradcu	Slovakia
Daňový poradca	Slovakia
Državni notranji revizor	Slovenia
Preizkušeni državni notranji revizor	Slovenia
Auditor de cuentas	Spain
Diplomado en ciencias empresariales y profesor mercantile	Spain
Consultant fiscal	Switzerland
Chartered Certified Accountant	United Kingdom
Chartered accountant	United Kingdom
Chartered Tax Adviser	United Kingdom
Chartered Public finance accountant	United Kingdom
Chartered management accountant	United Kingdom

## B. ARCHITECTURE PROFESSIONS

Name of regulated profession	Country
Architekt	Austria
Architekt (Erworbene Rechte)	Austria
Architecte (droits acquis)/	
Architecten (verworven rechten gelden)	Belgium
Architecte / Architect	Belgium
Архитект	Bulgaria
архитект (Придобити права)	Bulgaria
Architect	Cyprus
αρχιτέκτονα (Κεκτημένα δικαιώματα)	Cyprus
Architect	Czech Republic
Architekt (Nabytá práva)	Czech Republic
Arhitekti (omandatud õigused)	Estonia
Architecte	France

Architecte (droits acquis)	France
Architekt	Germany
Architekt (Erworbene Rechte)	Germany
Architect	Greece
αρχιτέκτονα (Κεκτημένα δικαιώματα)	Greece
Építészmérnök (szerzett jogok)	Hungary
Húsameistari	Iceland
Architect	Ireland
Architect (acquired rights)	Ireland
Architetto	Italy
Architetto (diritti acquisiti)	Italy
Arhitektiem (legūtās tiesības)	Latvia
Architect	Liechtenstein
Architektas (Igytos teisės)	Lithuania
Architecte	Luxembourg
Architecte (droits acquis)	Luxembourg
Periti	Malta
Periti (Drittijiet miksuba)	Malta
Architect	Netherlands
Architect (verworven rechten)	Netherlands
Architektów (prawa nabyte)	Poland
Magister inżynier architekt	Poland
Arquitecto	Portugal
Arquitecto (direitos adquiridos)	Portugal
Arhitect	Romania
Arhitect (Drepturi dobândite)	Romania
Architektov (Nadobudnuté práva)	Slovakia
Architect	Slovenia
Arhitekta (Pridobljene pravice)	Slovenia
Arquitecto	Spain
Arquitecto (derechos adquiridos)	Spain
Architect	United Kingdom
Architect (acquired rights)	United Kingdom

### C. ENGINEERING PROFESSIONS

Name of regulated profession	Country
Elektrotechnik	Austria
Ingenieurkonsulent	Austria
Инженер в инвестиционното проектиране	Bulgaria
монтьор по монтиране, поддържане и	
ремонтиране на асансьори	Bulgaria
Γεωπόνος	Cyprus
Ηλεκτρονικός Μηχανικός	Cyprus
Μηχανολόγος Μηχανικός	Cyprus
Πολιτικός Μηχανικός	Cyprus
Χημικός Μηχανικός	Cyprus
Autorizovaný inženýr	Czech Republic
Energetický specialista	Czech Republic
Montáž, opravy, revize a zkoušky	
zdvihacích zařízení	Czech Republic

Projektová činnost ve výstavbě	Czech Republic
Provádění staveb, jejich změn a odstraňování	Czech Republic
Závodní	Czech Republic
Anerkendt statiker	Denmark
Elevatormontør	Denmark
Energikonsulent	Denmark
Maskinmester (på fiskeskibe)	Denmark
Stilladsopstiller	Denmark
Elektromaschinenbauer	Germany
Elektrotechniker (electrical engineering)	Germany
Informationstechniker (electrical)	Germany
Ingenieur (Berufsbezeichnung allein oder in Verbindung mit einer Fachbezeichnung)	Germany
Straßenbauer	Germany
Αγρονόμος - τοπογράφος μηχανικός (ΤΕΙ)	Greece
Χημικός μηχανικός (ΑΕΙ)	Greece
Γεωπόνος (ΑΕΙ)	Greece
Ηλεκτρολόγος μηχανικός	Greece
Ηλεκτρολόγος μηχανικός κε μηχανικός ιπολογιστών (ΑΕΙ)	Greece
Μηχανικός διαχίρσις ενεργιακόν πόρον (ΑΕΙ)	Greece
Μηχανικός δομοκόν έργον (ΤΕΙ)	Greece
Μηχανικός έργον ιποδομής (ΤΕΙ)	Greece
Μηχανικός ηλεκτρονικόν ιπολογιστών κε πλιροφορικίς (ΑΕΙ)	Greece
Μηχανικός ηλεκτρονικόν ιπολογιστών, τηλεπικινονιόν κε δiktión (ΑΕΙ)	Greece
Μηχανικός metalión - metalurgós (ΑΕΙ)	Greece
Μηχανικός οριktόν πόρον (ΑΕΙ)	Greece
Μηχανικός περιβάλodos (ΑΕΙ)	Greece
Μηχανολόγος κε aeronafpigós μηχανικός (ΑΕΙ)	Greece
Μηχανολόγος μηχανικός (ΑΕΙ)	Greece
Μηχανολόγος μηχανικός viοmichanías (ΑΕΙ)	Greece
Νafpigós μηχανολόγος μηχανικός (ΑΕΙ)	Greece
Politikós μηχανικός (aei)	Greece
Technikos aneηlkistiron	Greece
Építómérnök	Hungary
Épületgépész mérnök	Hungary
Felvonószerelő	Hungary
Gépészmérnök	Hungary
Villamosmérnök	Hungary
Byggingafræðingur	Iceland
Flugvélavirkjun	Iceland
Hattasaumur	Iceland
Iðnfræðingur	Iceland
Rafvélavirkjun	Iceland
Verkfræðingur	Iceland
Aircraft maintenance engineer	Ireland
Chartered engineer	Ireland
Engineer officer class I Fishing Fleet	Ireland
Dottori in agronomia	Italy
Ingegnere civile e ambientale iunior	Italy
Ingegnere civile ed ambientale	Italy
Ingegnere industriale iunior	Italy

Ingeniere industrial	Italy
Perito industrial	Italy
Būvinženieris	Latvia
Bauingenieur	Liechtenstein
Ingenieur-conseil	Luxembourg
Aircraft engineer	Malta
Aircraft maintenance engineer	Malta
Chief engineer officer	Malta
Engineer	Malta
Scheepswerktuigkundige a	Netherlands
Bergteknisk ansvarlig	Norway
Elektrofagarbeider – Heismontør	Norway
Heisinstallatør	Norway
Inżynier budownictwa (różny zakres uprawnień budowlanych do wykonywania samodzielnych funkcji technicznych w budownictwie)	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń cieplnych, wentylacyjnych, gazowych, wodociągowych i kanalizacyjnych	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności konstrukcyjno-budowlanej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności architektonicznej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności konstrukcyjno-budowlanej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności drogowej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności kolejowej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności mostowej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności drogowej	Poland
Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności kolejowej	Poland

Inżynier budownictwa uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności mostowej	Poland
Inżynier elektrotechnik uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń elektrycznych i elektroenergetycznych	Poland
Inżynier elektrotechnik uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń elektrycznych i elektroenergetycznych	Poland
Inżynier elektrotechnik uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności telekomunikacyjnej	Poland
Inżynier elektrotechnik uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności telekomunikacyjnej	Poland
Inżynier energetyk uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń cieplnych, wentylacyjnych, gazowych, wodociągowych i kanalizacyjnych	Poland
Inżynier górnik uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń gazowych	Poland
Inżynier inżynierii środowiska uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń cieplnych, wentylacyjnych, gazowych, wodociągowych i kanalizacyjnych	Poland
Inżynier inżynierii środowiska uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności instalacyjnej w zakresie sieci, instalacji i urządzeń cieplnych, wentylacyjnych, gazowych, wodociągowych i kanalizacyjnych	Poland
Inżynier inżynierii środowiska uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności konstrukcyjno-budowlanej	Poland
Inżynier leśnictwa	Poland
Inżynier telekomunikacji uprawniony do projektowania lub kierowania robotami budowlanymi bez ograniczeń w specjalności telekomunikacyjnej	Poland
Inżynier telekomunikacji uprawniony do	

projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności telekomunikacyjnej	Poland
Inżynier transportu w specjalności sterowanie ruchem w transporcie lub sterowanie ruchem lub zabezpieczenie ruchu pociągów lub automatyka i robotyka uprawniony do projektowania lub kierowania robotami budowlanymi w ograniczonym zakresie w specjalności inst	Poland
Konserwator dźwignic	Poland
Mechanik obsługi technicznej statku Powietrznego	Poland
Technik awionik	Poland
Technik mechanik lotniczy	Poland
Engenheiro agrónomo	Portugal
Engenheiro civil	Portugal
Engenheiro do ambiente	Portugal
Engenheiro electrotécnico	Portugal
Engenheiro geólogo e de minas	Portugal
Engenheiro mecânico	Portugal
Engenheiro naval	Portugal
Engenheiro químico	Portugal
Engenheiro técnico civil	Portugal
Engenheiro técnico de energia e sistemas de potência	Portugal
Engenheiro técnico mecanico	Portugal
Engenheiro técnico químico	Portugal
Projectista de redes de gás	Portugal
Stavebný inžinier vrátane činnosti stavbyvedúci a stavebný dozor	Slovakia
Strojní asistent	Slovakia
Samostojni projektant rudarskih projektov	Slovenia
Ingeniero aeronáutico	Spain
Ingeniero agrónomo	Spain
Ingeniero de caminos, canales y puertos	Spain
Ingeniero de construcción y electricidad	Spain
Ingeniero de minas	Spain
Ingeniero de montes	Spain
Ingeniero de telecomunicación	Spain
Ingeniero industrial	Spain
Ingeniero naval y Oceánico	Spain
Ingeniero técnico aeronáutico en la correspondiente especialidad	Spain
Ingeniero técnico de obras públicas en la correspondiente especialidad	Spain
Ingeniero técnico industrial en la correspondiente especialidad	Spain
Instalador-montador electricista	Spain
Jefe de máquinas de la marina mercante	Spain
Mecánico mayor naval del sector de la pesca maritime	Spain
Mecánico naval del sector de la pesca Maritime	Spain
Mecanico naval mayor del sector de	Spain

la marina mercante	Spain
Mecánico naval mayor del sector de la pesca	Spain
Mecánico naval mayor del sector de la pesca maritime	Spain
Técnico de mantenimiento de aeronaves, sector de transporte aéreo	Spain
Ingénieur civil	Switzerland
Ingénieur forestier	Switzerland
Personnel préposé à l'entretien des aéronefs	Switzerland
Associate of the Chartered Institute of Building	United Kingdom
Chartered builder	United Kingdom
Chartered building services engineer	United Kingdom
Chartered chemical engineer	United Kingdom
Chartered civil engineer	United Kingdom
Chartered energy engineer	United Kingdom
Chartered engineer	United Kingdom
Chartered gas engineer	United Kingdom
Chartered IT professional	United Kingdom
Chartered marine engineer	United Kingdom
Chartered Wastes Manager	United Kingdom
Chief engineer class 1 fishing vessel	United Kingdom
Chief Engineer Class 2 - Fishing Vessels	United Kingdom
Engineering technician (EngTech)	United Kingdom
ICT Technician (ICTTech)	United Kingdom
Incorporated engineer	United Kingdom
Member of royal aeronautical society (mra es)	United Kingdom
Member of the Chartered Institute of Mechanical Engineers – MIMeche	United Kingdom
Member of the Institution of Engineering And Technology	United Kingdom

#### D. LEGAL PROFESSIONS

Name of regulated profession	Country
Rechtsanwältin/Rechtsanwalt	Austria
Avocat/ Advocaat/ Rechtsanwalt	Belgium
Адвокат	Bulgaria
Odjvetnik/Odjvetnica	Croatia
Δικηγόρος	Cyprus
Advokat	Czech Republic
Advokat	Denmark
Vandeadvokaat	Estonia
Asianajaja – Advokat	Finland
Avocat	France
Rechtsanwalt	Germany
Dikigoros	Greece
Ugyved	Hungary
Lögmaður#	Iceland
Barrister	Ireland

Solicitor	Ireland
Avvocato	Italy
Zverinats/Advokaats	Latvia
Rechtsanwalt#	Liechtenstein
Advokatas	Lithuania
Avocat/Avoue	Luxembourg
Avukat/Prokuratur Legali	Malta
Advocaat	Netherlands
Advokat#	Norway
Radca prawny	Poland
Adwokat	Poland
Advogado	Portugal
Avocat	Romania
Advokát	Slovakia
Komerčný právnik	Slovakia
Advokátsky koncipient*	Slovakia
Odvetnik/Odvetnica	Slovenia
Abogado	Spain
Procurador*	Spain
Advokat	Sweden
Avocat#	Switzerland
Conseil en brevets*#	Switzerland
Advocate	United Kingdom
Barrister	United Kingdom
Costs Lawyer*	United Kingdom
Legal Executive*	United Kingdom
Solicitor	United Kingdom

# - indicates a title accepted due to EEA/Swiss agreements with the EU on free movement

‘\*’ - indicates a title not included in the Lawyers Services or Establishment Directive but included in the European Commission’s Regulated Professions Database (ie. Member States have indicated these are regulated professions).

### **11.3 Annex III: NAFTA Guidelines on Negotiating MRAs**

#### ANNEX 1210: Professional Services

##### Section A - General Provisions

###### Scope and Coverage

1. This Annex applies to measures adopted or maintained by a Party relating to the licensing and certification of professional service providers.

###### Processing of Applications for Licenses and Certification

2. Each Party shall ensure that its competent authorities, within a reasonable period after the submission of an application for licensing or certifications by a national of another Party:

(a) where the application is complete, make a determination on the application, and inform the applicant of that determination; or

(b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under its domestic law.

###### Development of Mutually Acceptable Professional Standards and Criteria

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable professional standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

4. Such standards and criteria may be developed with regard to the following matters:

(a) education - accreditation of schools or academic programs where professional service providers obtain formal education;

(b) examinations - qualifying examinations for the purpose of licensing professional service providers, including alternative methods of assessment such as oral examinations and interviews;

(c) experience - length and nature of experience required for a professional service provider to be licensed;

(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards by professional service providers;

(e) professional development and re-certification - continuing education for professional service providers, and ongoing requirements to maintain professional certification;

(f) scope of practice - extent of, or limitations on, field of permissible activities of professional services providers;

(g) territory-specific knowledge - requirements for knowledge by professional service providers of such matters as local laws, regulations, language, geography or climate; and

(h) consumer protection - alternatives to residency, including bonding, professional liability insurance and client restitution funds to provide for the protection of consumers of professional services.

5. Upon receipt of the recommendations of the relevant bodies, the Commission shall review the recommendations within a reasonable period to determine whether they are consistent with this Agreement.

6. Based upon the Commission's review, the Parties shall encourage their respective competent authorities, where appropriate, to adopt those recommendations within a mutually agreed period.

#### Temporary Licensing

7. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for temporary licensing of professional service providers of another Party.

#### Review

8. The Commission shall periodically, and at least once every three years, review progress in the implementation of this Annex.

### Section B - Foreign Legal Consultants

1. In implementing its commitments regarding foreign legal consultants, set out in its Schedules to Annexes I and VI in accordance with Article 1206 and 1208, each Party shall ensure, subject to its reservations set out in its Schedules to Annexes I and II in accordance with Article 1206, that a foreign legal consultant is permitted to practice or advise on the law of the country in which such consultant is authorized to practice as a lawyer.

#### Consultations With Relevant Professional Bodies

2. Each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the forms of association and partnership between lawyers authorized to practice in its territory and foreign legal consultants;

(b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210; and

(c) any other issues related to the provision of foreign legal consultancy services.

3. Each Party shall encourage its relevant professional bodies to meet with the relevant professional bodies designated by each of the other Parties to exchange views regarding the development of joint recommendations on the issues described in paragraph 2 prior

to initiation of consultations under that paragraph.

#### Future Liberalization

4. Each Party shall establish a work program aimed at developing common procedures throughout its territory for the licensing and certification of lawyers licensed in the territory of another Party as foreign legal consultants.

5. With a view to meeting this objective, each Party shall, upon receipt of the recommendations of the relevant professional bodies, encourage its competent authorities to bring applicable measures into conformity with such recommendations.

6. Each Party shall report to the Commission within one year after the date of entry into force of this Agreement, and each year thereafter, on progress achieved in implementing the work program.

7. The Parties shall meet within one year from the date of entry into force of the this Agreement with a view to:

(a) assessing the work that has been done under paragraphs 2 through 6;

(b) as appropriate, amending or removing the remaining reservations on foreign legal consultancy services; and

(c) determining any future work that might be appropriate relating to foreign legal consultancy services.

#### Section C - Temporary Licensing of Engineers

1. The Parties shall meet within one year after the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with relevant professional bodies specified by that Party, to provide for the temporary licensing in its territory of engineers licensed in the territory of another Party.

2. With a view to meeting this objective, each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:

(a) the development of procedures for the temporary licensing of engineers licensed in the territory of another Party to permit them to practice their engineering specialties in each jurisdiction in its territory that regulates engineers;

(b) the development of model procedures, in conformity with Article 1210 and Section A of this Annex, for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and

(d) any other issues relating to the temporary licensing of engineers identified by the Party through its consultations with the relevant professional bodies.

3. The relevant professional bodies shall be requested to make recommendations on the matters specified in paragraph 2 to their respective Parties within two years after the date of date of entry into force of this Agreement.

4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Parties with a view to cooperating in the expeditious development of joint recommendations on matters specified in paragraph 2. The relevant professional bodies shall be encouraged to develop such recommendations within two years after the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing such recommendations.
5. Upon receipt of the recommendations described in paragraphs 3 and 4, the Parties shall review them to ensure their consistency with the provisions of the Agreement and, if consistent, encourage their respective competent authorities to implement such recommendations within one year.
6. Pursuant to paragraph 5 of Section A, within two years after the date of entry into force of this Agreement, the Commission shall review progress made in implementing the objectives set out in this Section.
7. Appendix 1210-C shall apply to engineering specialties.

## 11.4 Annex IV: East African Community MRA Regulations and MRA Template

### The East African Community Common Market (Mutual Recognition Of Academic And Professional Qualifications) Regulations 2011

#### Part I: General Provisions

##### Regulation 1

###### Citation

These regulations may be cited as the East African Community Common Market (Mutual Recognition of Academic and Professional Qualifications) Regulations 2011.

##### Regulation 2

###### Purpose

The purpose of these Regulations is to implement the provisions of Article 11.1(a) of the Protocol on the Establishment of the EAC Common Market and to ensure that there is uniformity among the Partner States in the implementation of the Article and that, to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

##### Regulation 3

###### Interpretation

In these Regulations, unless the context otherwise requires:

**“Academic Qualification”** means a formal award from an assessment and validation process which is obtained when a recognized awarding body in a Partner State determines that an individual has achieved intended learning outcomes mentioned in the descriptors of academic qualifications.

**“Award”** means degree, diploma or certificate conferred to a citizen of a Partner State which:

- a) has been issued by a recognized awarding body in a Partner State, designated in accordance with its own laws or administrative provisions; and
- b) shows that the holder in a Partner State has successfully completed a prescribed course of study specified for the level shown in the Schedule to these Regulations;

**“Code of conduct”** means a set of regulations on professional standards governing the conduct of the professionals practising in a particular profession.

**“Competent Authority”** means a Ministry, a department, office, institution or agency designated by a Partner State to carry out the functions required by these regulations;

**“Mutual recognition”** means the formal acknowledgment and acceptance of an award or professional qualifications from a Partner State by a competent authority of another Partner State

**“Mutual recognition agreement” (MRA)** means any agreement entered into by competent authorities to recognize professional qualifications within the Partner States.

**“Practising certificate”** means a certificate issued to a professional by a competent

*authority in accordance with national laws of a Partner State to allow the holder to practice the profession.*

**“Professional Qualification”** means any recognized qualification issued by a competent authority granting the holder the right to be registered as a professional.

**“Registration”** means the registration of a professional with a competent authority in accordance with the national laws of a Partner State.

#### **Regulation 4**

##### **Scope**

These Regulations shall apply to any citizen with qualifications obtained from a Partner State who wishes to move to another partner state for the purpose of providing labour.

#### **Part II: Academic Qualifications**

##### **Regulation 5**

##### **Mutual recognition of academic qualifications**

Partner States do hereby agree to recognize all academic qualifications that meet the descriptors stated in the schedule to this annex and obtained from recognized institutions in Partner States

##### **Regulation 6**

##### **Verification of academic qualifications**

1. An employer in a host Partner State who receives an application for employment from a citizen of another Partner State shall submit the academic qualifications of the applicant to the competent authority for verification.
2. Nothing under this regulation shall preclude an employer from proceeding with the employment process.

#### **Part III: Professional Qualifications**

##### **Regulation 7**

##### **Mutual Recognition Framework of professional qualifications**

1. For purposes of this Annex Partner States shall designate competent authorities to enter into Mutual Recognition Agreements to facilitate Free Movement of Professionals in accordance with commitments made under the Protocol. The Mutual Recognition Agreements shall, among others, provide for the following:
  - a. Academic and professional qualifications;
  - b. Registration procedures;
  - c. Competencies; and
  - d. Code of conduct and disciplinary processes.
2. In negotiating the Mutual Recognition Agreements, competent authorities shall, among others, take into account the following:
  - a. Curriculum content;
  - b. Qualifications of the instructors;
  - c. Facilities that exist in the institutions;
  - d. Accrediting institutions;
  - e. Examining bodies; and
  - f. Awarding bodies.

## **Regulation 8**

### **Application for Registration**

1. Any citizen of a Partner State who wishes to be registered by a competent authority in another Partner State shall submit a formal application to the competent authority in accordance with the provisions of the applicable MRA.
2. The competent authority upon receipt of a complete application shall within 45 working days register the applicant and issue a registration and/or practicing certificate.
3. Where the competent authority rejects an application for registration, it shall, in writing notify the applicant the reasons for rejection within a period not exceeding 45 working days from the date of receiving the application and inform the competent authority in the Partner State of origin.
4. If the applicant is not satisfied with the reasons for rejection of his or her application, he/she may appeal to the competent authority for review of the decision.

## **Regulation 9**

### **Disciplinary Measures**

1. A professional in breach of a professional code of conduct in a Partner State shall be disciplined in accordance with the laid down disciplinary procedures of the host competent authority.
2. A professional who has been disciplined for breach of professional code of conduct in a Partner State, shall be deemed to have been disciplined in all the Partner States.
3. The Partner State in which a disciplinary measure has been meted shall, within seven days, notify counterpart competent authorities in writing, on the measure taken.

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## **Part IV: Miscellaneous**

### **Regulation 10**

#### **The Role of the Secretariat**

The EAC Secretariat shall;

1. establish and maintain a publicly accessible and annually updated database of competent authorities in the Partner States;
2. communicate to the Partner States the information received from each of the Partner States on the implementation of these regulations; and
3. shall coordinate and facilitate national competent authorities to develop regional mutual recognition criteria and professional standards.

### **Regulation 11**

#### **Coordination, Monitoring and Evaluation**

1. Competent authorities, on annual basis, shall provide the EAC Secretariat with a report on the recognition of awards and qualifications within the framework of these Regulations.
2. The EAC Secretariat in collaboration with the competent authorities in the Partner States shall monitor the implementation of these regulations through bi-annual

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- reviews.
3. The EAC Secretariat shall undertake baseline and regular surveys as may be directed by the
  4. Council and disseminate the findings to Partner States.
  5. The EAC Secretariat shall submit annual reports to the Council on the implementation of these regulations or such other reports as may be required by the Council.
  6. The reports submitted to the Council under paragraph 4 of regulation 11 of these regulations shall among other things, contain the analysis and recommendations on the recognition of academic and professional qualifications within the Community.
  7. Each Partner State shall, within a year of the coming into force of this Annex, and on an annual basis henceforth provide to the Council a report on the measures taken to implement these regulations.
  8. Each Partner State shall, on annual basis provide information on competent authorities in the Partner States using guidelines from the EAC Secretariat.

### **EAC MRA Template**

The East African Community through the Council of Ministers adopted a model template of a mutual recognition agreement. The template is meant to guide professions which intend to negotiate and enter into mutual recognitions agreements.

It was felt that as the Partner States are now in a Community, and because there exist various forms of mutual recognition agreements with varying structures, contents and ambitions, it would be prudent to develop a template that provides the minimum requirements that must be included in an agreement. Parties are free to make additions to the minimum requirements to suit their peculiar situations provided they adhere to the minimum requirements.

**11.5 Annex V: Sample Mutual Recognition Agreement -  
DRAFT**

**Between**

.....

**And**

.....

**Contents**

- 1.0 Purpose**
- 2.0 Definitions**
- 3.0 Guiding Principles**
- 4.0 Terms of Recognition**
- 5.0 Administration of the Agreement**
- Annexes**

**1.0 Purpose**

We, the undersigned, enter into this Mutual Recognition Agreement (MRA) in compliance with our obligations under Article 11 of the EAC Common Market Protocol. The purpose of this MRA is to establish the conditions under which a professional who is licensed/registered to practice in one EAC Partner State jurisdiction will have his/her qualifications recognized in another jurisdiction that is a Party to this Agreement.

**2.0 Definitions**

Respective professionals (authority) are expected to provide explanations on terminologies that are specific to their operations as used in this document.

2.1 The respective (profession)

2.2 Associate Professional means a person who is fully licensed for independent practice within any EAC partner state and granted a title of associate.

2.3 FULLY LICENSED means the applicant has no current restrictions or limitations to a license, has no outstanding fees or dues, and has met competency requirements in the jurisdiction of licensure.

2.4 LICENSED/REGISTERED refers to licensed, certified, registered, chartered, or any other term describing statutory regulation of ..... practice.

2.5 THE PARTIES means the regulatory bodies authorized in legislation to regulate the profession of

.....

2.6 DISCIPLINARY SANCTION means revocation, fines, suspension or restriction of a

license in any jurisdiction.

2.7 RECOGNIZED INSTITUTION means an institution of higher education that is regionally accredited by an accrediting body authorized by an EAC Partner State or territorial legislation to grant graduate degrees.

2.8 GRADUATE DEGREE means a degree obtained in a recognized institution following a bachelor degree.

### **3.0 Guiding Principles**

3.1 Each Partner State shall designate the competent authority to sign the MRA.

### **TERMS AND CONDITIONS**

3.2 Parties agree that it is in the interest of their memberships and members of the general public to enable properly qualified ..... to practice ..... in a Partner State;

3.3 Reference should be made to the EAC Common Market Protocol Schedule on trade in services that the respective profession has been opened up;

3.4 The threshold levels of competence and public safety in the practice of ..... must be established, maintained and upheld by regulators to ensure public protection;

3.5 This agreement shall not modify the authority of each regulatory body to set standards and requirements and methods of assessing competencies;

3.6 A benchmark minimum standard of commonality has to be achieved, but simultaneously maintaining the varieties of standards in the different Partner States.

3.7 The Parties agree that this agreement applies only to ..... professionals who have no current disciplinary sanctions and have no history of disciplinary sanctions in the immediate five years preceding an application for licensure in a new jurisdiction;

3.8 Noting that, subject to this agreement, an applicant who is licensed/registered in a jurisdiction shall not be required to undergo additional training or examination as a condition of licensure/ registration in another jurisdiction, except when identified scope of practice differences exist;

3.9 Members of a profession that qualify outside the region should be vetted by the competent authority to equate their qualifications before they are considered for membership.

3.10 Parties to this agreement may maintain differing continuing education requirements of practitioners in their jurisdiction; applicants for licensure/registration will be required to demonstrate compliance with continuing education requirements in the host jurisdiction once licensed/registered there;

#### **4.0 Terms of Recognition**

Based on the principles mentioned above, we the Parties hereby agree to:

- 4.1 Establish the equivalence of means to assess the competencies (as may be appended)
  - 4.1.1 Evaluate applicants seeking entry to the..... (state profession) profession on foundational knowledge and core competencies as identified and agreed upon by the Parties (as may be appended/ detailed),
  - 4.1.2 License a professional registered in another Partner State according to the terms and conditions as may be appended/ detailed
- 4.2 Registration in a new jurisdiction may involve:
  - 4.2.1 Proof of required qualifications obtained from recognized institutions
  - 4.2.2 Proof of licensure or registration by the Competent Authority in the country of origin
  - 4.2.3 Proof of good conduct issued by the Competent Authority in the country of origin
- 4.3 When a competent authority (insert) is required to make accommodations in order for the professional to meet conditions in the new jurisdiction, the Competent Authority may issue a temporary or provisional license/registration subject to practice for a period sufficient to complete all requirements

#### **5.0 Administration of the Agreement**

To ensure a smooth implementation of this agreement, the Parties hereby agree that:

- 5.1 Each Party will give advance notice of [time to be specified by relevant professions – minimum six (6) months] to other jurisdictions when introducing new requirements or making changes to existing requirements that might impact on the mobility of .....(state the profession) in the EAC.
- 5.2 In the event that a Party wishes to withdraw from this agreement, it shall consult with the Competent Authority/line Ministry/Ministry of EAC, and advise the other Parties, in writing, at least 12 months before the Party withdraws from the agreement. The notice period is waived where withdrawal is not within the Party's control.
- 5.3 Upon signing this agreement, the Parties shall abide by its provisions and extend recognition to..... (state the profession) of other signatory jurisdictions under the terms of this agreement.
- 5.4 Each Party shall seek the necessary legislative changes from their respective governments if there is a need for such changes. Each Party shall also make the necessary changes to their own by- laws, policies or procedures in order to implement this agreement.
- 5.5 No provision in this agreement shall be considered as having the effect of repealing, overriding or having power over any provision of any statute of a Partner State intended for the registration of professional .....[state the

profession] if these provisions are not in conflict with the agreements.

5.6 The Parties may agree on periodic reviews of this agreement and its operation. Ad hoc reviews of the agreement and its operation may be undertaken upon request by one of the signatories.

5.7 This agreement shall be amended with the consent of all signatories in case of the following:

- i) Request by one of the signatories;
- ii) As a result of the periodic or ad hoc reviews;
- iii) In the event that standards or criteria for mobility described in Article 4 change.

#### 5.8 Settlement of Disputes

5.8.1 In the event of a disagreement between two or more Parties with respect to the interpretation or application of any clause of this agreement, the following procedures should be followed:

- i) Consultation should be initiated among all Parties with a view to resolving the matter;
- ii) If the Parties fail to find an agreement within [timeframe to be determined – forty-five (45) working days] the dispute may be taken to the [umbrella organization /EAC Secretariat/East African Court of Justice] or as outlined in the EAC Common Market Protocol.

5.8.2 A Party may request a consultation either on its own behalf or on behalf of a professional who is covered by this agreement. This request for consultation will not affect an individual or Party's capacity to access dispute settlement procedures established under the EAC Common Market Protocol.

Signed:

.....  
(Competent Authority) Republic of Burundi

.....  
(Competent Authority) Republic of Kenya

.....  
(Competent Authority) Republic of Rwanda

.....  
(Competent Authority) Republic of Uganda

.....  
(Competent Authority) United Republic of Tanzania

## **Annexes**

- a) Qualifications - *To be provided by competent authority*
- b) Knowledge/Competences - *To be provided by competent authority*
- c) Courses offered - *To be provided by competent authority*
- d) Assessment Method - *To be provided by competent authority*