

# *The mobility of professionals in practice*

A report by the Citizens Signpost Service (CSS)<sup>1</sup>  
on the recognition of professional qualifications (“RPQ”)

26 February 2010

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# 1 Introductory remarks

## 1.1 Scope of the report

This report is based on analysing the enquiries handled by the Citizens Signpost Service (“CSS”) in 2009, i.e. 673 cases concerning the recognition of professional qualifications (“RPQ”). It focuses on the implementation of Directive 2005/36<sup>2</sup> on the recognition of professional qualifications (“the Directive”).

## 1.2 Methodology of the report

The headings of section 2 (statistical observations) correspond largely to questions asked by DG MARKT’s relevant Unit (D4). The main tool was the CSS database’s search engine, using the categories through which individual records of cases can be classified. Occasionally, some free keyword search was used as well. The figures are accompanied by comments based on the author’s experience of handling cases on RPQ.

For the part of the report which is an analysis of the cases (sections 3 to 6), the 52 CSS experts were asked to deliver individual feedback reports based on their respective load of cases. In doing so, they were asked to use a standard and very open structure, identifying the possible areas of concern. It was directly inspired by the structure of the Commission’s User Guide to the Directive. This frame eventually provided the core structure of the report, after deleting the headings that were superfluous due to lack of evidence.

Section 7 (Scope for more transparency) is based on the authors of this report’s own experience in handling and monitoring large numbers of enquiries to the CSS, thus gaining a good overview of difficulties and needs.

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<sup>2</sup> European Council and Parliament Directive 2005/36/EC on the recognition of professional qualifications, OL J 363, 20.12.2006.

## 2 Statistical observations

### 2.1 The share of RPQ in the CSS

2009	Number	RPQ%
All eligible cases	10536	
RPQ	673	6.4
Interesting cases	881	
RPQ	73	8.3
Cases transferred to SOLVIT	385	
RPQ	43	11.2
Cases received from SOLVIT for advice <sup>3</sup>	53	
RPQ	8	15.1

This section presents an overview of enquiries to the CSS in the field of RPQ in calendar year 2009<sup>4</sup>.

The CSS replied to over 10,000 eligible enquiries in 2009, of which 6.4% concerned RPQ. While this may appear to be a relatively small share, it reflects the fact that the CSS covers the full range of internal market rights as they affect citizens (e.g. including social security, residence, cars and other goods, as well as work-related issues).

The CSS (the management team or the experts) identifies as “interesting cases” those cases which reveal either of the following:

- infringement, misapplication or ignorance of EU law;
- a gap or grey area within EU law;
- an objective difficulty for citizens to get the necessary information.

In 2009, 8.3% of these cases concerned RPQ. These 73 cases have been fully analysed in the report.

The CSS works closely with SOLVIT, and in 2009 11.2% of cases transferred to SOLVIT for consideration concerned RPQ. In the other direction, SOLVIT centres asked the CSS for legal advice in respect of 8 RPQ cases (15.1% of all such advice requests).

In any case, numbers do not tell the full story. The relative importance of obstacles to mobility related to RPQ should also be measured by the time taken by citizens in trying to overcome them. In this respect, as this report shows, whether due to lack of awareness or complexity of the procedures, RPQ is relatively more time-consuming than other obstacles, judging by the experiences told in the enquiries to the CSS, probably the most time-consuming together with the type-approval and registration of cars.

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<sup>3</sup> SOLVIT Centres are also offered access to the CSS, since July 2009, to get legal advice on a determined point of EU law.

<sup>4</sup> Data for RPQ in this section concerns 2009. Data for preceding years is not readily available because the classification of enquiries was changed in December 2008, making it difficult to look back on the same basis as has been possible since the change was made. Nonetheless we are examining the possibility of further work to overcome this difficulty.

## 2.2 RPQ and Nationality

	number	%
Austrian	6	0.9
Belgian	24	3.6
British	78	11.6
Bulgarian	31	4.6
Cypriot	4	0.6
Czech	5	0.7
Danish	2	0.3
Dutch	18	2.7
Finnish	6	0.9
French	29	4.3
German	56	8.3
Greek	57	8.5
Hungarian	15	2.2
Irish	5	0.7
Italian	97	14.4
Latvian	5	0.7
Lithuanian	9	1.3
Luxembourger	4	0.6
Other	49	7.2
Polish	27	4
Portuguese	16	2.4
Romanian	76	11.3
Slovakian	7	1
Slovenian	5	0.7
Spanish	34	5
Swedish	7	1
Turkish	1	0.1
<b>Total</b>	<b>673</b>	

The nationality table shows that about two-thirds of cases are accounted for by eight nationalities – Italian, British, Romanian, Greek, German, French, Polish, Belgian. Compared to the share of EU population, the Romanian, Greek and Polish shares are particularly noticeable.

It was not possible, unfortunately, to get data from the CSS database on the “nationality” of the qualifications concerned, which is often not the nationality of the professional concerned. In fact, it is rather frequent that the problem of recognition arises when someone returns to his home country, or goes to second Member State, after having gained qualifications in a first Member State.

## 2.3 RPQ and Country of problem

country	number	%
Austria	25	2.9
Belgium	19	2.2
Bulgaria	9	1
Cyprus	4	0.4
Czech Republic	4	0.4
Denmark	4	0.4
Estonia	1	0.1
Finland	1	0.1

France	67	7.8
Germany	65	7.5
Greece	33	3.8
Hungary	10	1.1
Iceland	1	0.1
Ireland	18	2.1
Italy	76	8.8
Latvia	2	0.2
Liechtenstein	2	0.2
Lithuania	2	0.2
Luxembourg	9	1
Malta	3	0.3
Netherlands	25	2.9
Norway	2	0.2
Other	205	23.7
Poland	16	1.8
Portugal	11	1.3
Romania	27	3.1
Slovakia	3	0.3
Slovenia	8	0.9
Spain	74	8.6
Sweden	12	1.3
Turkey	1	0.1
United Kingdom	125	14.5

Total = 864; this is higher than the 673 enquiries because an enquiry may be associated with more than one country.

The table shows the countries to which the citizen's problem mainly relates. The concentration in terms of countries is less than for nationalities: seven countries account for just over one half of the entries – UK, Italy, Spain, France, Germany, Greece, Romania.

A particularly interesting feature of this table is the share accounted for by "other" countries – 23.7%. It is much greater than the corresponding figure for "other" in the nationality table – 7.2%.

Section 4.2 of the report covers the issue raised by this comparison of the "other" category. In brief:

- it seems that some people think they need invoke nothing more than EU citizenship as the basis of their claim for recognition, including for diplomas gained outside the European countries covered by the Directive;
- a misunderstanding of the Directive leads to claims for RPQ based exclusively on the status of family member, regardless of the content of the training or of the country where the qualifications were obtained; and
- people ask how to overcome difficulties in getting information from a third country about their qualifications or experience acquired there.

A revealing comparison is to look at those countries whose nationality share is considerably larger than their country of problem share:

Nationality	%	Country of problem	%
Italian	14.4	Italy	8.8
Romanian	11.3	Romania	3.1
Greek	8.5	Greece	3.8
Bulgarian	4.6	Bulgaria	1.0
Polish	4.0	Poland	1.8

Assuming that the nationality of the applicant and the “nationality” of the professional qualifications are the same in most cases, this suggests that there may be some aspect(s) of the qualifications granted by these five countries, which are found to be difficult to accept elsewhere in the EU. The analysis of the cases confirms the assumption as far as Bulgaria, Poland and Romania are concerned, but reveals instead a significant proportion of complaints from Italians and Greek who have obtained all or part of their qualifications in another Member State.

## 2.4 RPQ and professions concerned

There is no “profession” entry in the CSS records to enable the CSS database to deliver statistics on the professions concerned, but clearly there are some professions which are over-represented, e.g. doctors (general practitioners), nurses, engineers, teachers (in particular language teachers), medical specialists, lawyers, touristic guides, interpreters and translators.

## 2.5 RPQ and temporary or established provision of services

The CSS Database’s search engine does not give the possibility to extract records which relate *at the same time* to “recognition of professional qualifications” AND to [“cross-border self-employed provision of services” OR “establishment as self employed” OR “access to employment”]. This would have given a pretty good picture of the relative importance of these categories.

From looking at the records, the ratio of enquiries recorded in 2009 which concern temporary provision of services is very low. But this is based only on those enquiries where the user explicitly indicates his interest, which is seldom the case (see section 3.1.1).

## 2.6 RPQ and Socio-economic category

	number	%	excl n/a*
Unemployed, Jobseeker	150	22.3	26.6
Self employed	97	14.4	17.2
Employed	255	37.9	45.2
Not available	110	16.3	...
Retired	3	0.4	0.5
Homemaker, not seeking employment	8	1.2	1.4
Student, trainee etc	41	6.1	7.3
Researcher	9	1.3	1.6

673

\* percentages based on assumption that “not available” are distributed similarly across the other categories.

Unsurprisingly, nearly half of all RPQ enquiries come from employees, and nearly nine out of every ten come from those in work or seeking it.

## 2.7 RPQ and stakeholders other than the mobile professionals

There is no evidence through the CSS that consumers of services are concerned about the recognition or value of foreign qualifications (including in the area of healthcare). Instead, it transpires from the significant number of cases concerning RPQ for the exercise of a profession which is not regulated, that potential employers are interested, or perceived to be interested, in comparing foreign diplomas or training schemes with the national ones.

## 2.8 RPQ and Problem areas

2009 Problem areas	All eligible	RPQ	%
None (general advice)	4258	236	5.5
Access to information	1413	98	6.9

Quality of information	305	18	5.9
Communication between national authorities	5	0	-
Awareness of national authorities	441	30	6.8
Excessive administrative formalities	4	0	-
Conformity of national provisions	522	31	5.9
Gaps and grey areas in EU law	153	6	3.9
Enforcement	341	31	9.1
Total above	7442	450	6.0
<i>Un-encoded</i>	<i>3094</i>	<i>223</i>	<i>7.2</i>
<b>All cases</b>	<b>10536</b>	<b>673</b>	<b>6.4</b>

CSS experts classify cases according to the problems which they identify from the citizens' enquiries. Unfortunately, not all cases are encoded, and it is not clear whether the un-encoded cases simply involve general advice or are spread throughout the other categories.

RPQ cases tend to feature somewhat more than the average in categories other than general advice. They are more noticeable in "access to information", "awareness of national authorities" and particularly "enforcement". The case-based analysis elsewhere in this report underlines the importance of these three categories.

The table demonstrates however that the CSS is mostly used to get advice on how to obtain more detailed and focussed "information" rather than to complain about obstacles (important though they are, as explained in section 6).

The need for "information" should **not** be taken to mean a simple demand for general descriptive material. On the contrary, the need is for reliable hard facts about legal requirements and administrative procedures; and the more knowledgeable the enquirer is, the more detailed are the facts which need to be provided (the apparent invisibility of national contact points is covered in section 3).

This is reflected in the way that the CSS is contacted, in a large majority of cases, at an early stage in the process of seeking RPQ. The contact is made sometimes even before moving to another Member State or returning to one's home country. In fact, there is a significant degree of anticipation of problems, namely by citizens who plan to study abroad (or are deciding about studies) and have heard about possible difficulties in getting RPQ or evidence of professional experience back home (or abroad), often directly from the relevant professional body or the competent ministry. It is in such cases that the confusion between professional and academic recognition is most likely to arise.

It is also worth noting that the provision of "information" can reflect ignorance born of over expectation (as in the belief that the status of EU citizenship is enough to enable the use of qualifications in another country). At the other end of the spectrum, however, it can arise from the poor application of EU law because this can induce a false sense that RPQ is straightforward.

## **3 A great need of legal information and signposting**

### **3.1 A Directive not sufficiently known or understood**

Most CSS users who contact the service about RPQ are aware of the existence of a set of EU rules but it is rather exceptional that they explicitly refer to Directive 2005/36/EC, let alone to specific provisions of it. In any case, it is very frequent that the way enquiries are formulated show that users are not familiar with essential aspects of the rules contained in the Directive. This is illustrated by the common misunderstandings mentioned in section 4.

More surprisingly, there is evidence that educational establishments themselves, and even professional bodies, are not sufficiently familiar with the rules. Frequently CSS users refer to misleading information received from them, including about professions where the rules contained in the Directive – i.e. automatic recognition based on harmonisation of training – are relatively easy to understand.

The most striking observation is that the difference between the different systems of recognition in the Directive is not understood:

#### **3.1.1 Temporary provision of services / establishment**

As mentioned in section 2.5, there is little evidence of temporary provision of services and, in most cases, it can be deduced from the circumstances that the intention is to establish professionally. However, it is hardly ever the case that CSS users specify what their intention is. This tends to indicate that the major impact this difference has on the rules applicable is totally ignored. The general impression from analysing the cases is that the concerned professionals believe there is only one regime and, depending on their experience, information or hopes, imagine it to be more of the informal type (as is the case for temporary services) or of the formal type (as is the case for establishment).

#### **3.1.2 Automatic recognition / general system**

Judging from the various enquiries to the CSS, the distinction between automatic recognition and the general system of recognition is not clear in the mind of mobile professionals. In fact, automatic recognition largely overshadows the general system. This transpires in that many enquiries are complaints about the requirement of professional experience, or the imposition of compensatory measures, perceived as discriminatory barrier incompatible with the general principle of recognition. It is a widespread belief that automatic recognition is the one single rule, and in any case “automatic” is understood literally as meaning that there is no procedure strictly speaking. This probably explains in part the confusion between temporary provision of services and establishment.

## **3.2 A lot of confusion regarding national requirements and procedures**

CSS users – at least those who are aware that there is an actual procedure and are confronted with an actual need – generally express difficulties in finding information about the procedure and the requirements to obtain RPQ and exercise their profession.

The main problems are:

- identifying the entry point to start the procedure in the host country;
- identifying the authority or body who will attest of the qualifications in the home country, of the professional experience gained in that country, or of the absence of disciplinary measures (this is particularly a problem when the profession is not regulated in the home country);
- getting a valid translation of evidence or certificates of language proficiency;
- getting information about registration to a professional body or about using the home or host country title.

Some more knowledgeable users enquired about the state of transposition of the Directive in the country where they wanted to establish themselves professionally. There was even a complaint



that Greek authorities were not willing to give information about this. There were also questions about whether the Directive applied to Switzerland.

### **3.3 National contact points largely ignored or non identified**

The Directive requests Member States to designate contact points with the mission to give citizens all useful information about RPQ, and help them exercise their rights, namely through directing them to the competent national authorities. The Scoreboard on the Directive indicates that these contact points are in place in all the EU Member States. However, there is clearly a visibility problem. Not only contact points for RPQ are never mentioned in the enquiries – except in one case, to ask where it was to be found – but, as indicated above, many of the enquiries received by the CSS would have become unnecessary if the users had known about a contact point, where to reach it and what for. Apparently, the national contact point is not mentioned on the websites or other information material of the authorities that people are most likely to turn to in the first place, before knowing about their existence, i.e. ministries and professional bodies.

Before contacting the CSS, mobile professionals had tried routes as odd as consular services or training institutions, if they had tried anything at all. In a few cases, persons contacted the CSS in the belief that it would be competent to process their application for RPQ. Logically, people often turn to professional bodies but unfortunately this involves the risk of getting misleading information. An illustration of this, is the Italian civil engineer who was told by the Institute of Engineers of Ireland that he would have to go through a process of professional review of his qualifications, that had little in common with the general system established by the Directive.

In two enquiries, it appeared that directly relevant national authorities (a NARIC centre and a relevant ministerial department) had not mentioned the existence of a national contact point, although declining competence. On one occasion, there was criticism that the contact point – in Latvia – was possibly not functioning well, given that the user had been referred to the UK contact point (without even providing contact details), although the problem was clearly rooted in Latvia.

## 4 Common misunderstandings

### 4.1 About the scope of the Directive

#### Ratione materiae

#### 4.1.1 Professional recognition

Even though the Directive concerns *professional* recognition, many people refer to EU rules on the recognition of qualifications for purposes other than professional. There have also been a few cases of confusion of professional qualifications with licenses serving other purposes (e.g. skipper licence for private leisure purposes). The most frequent confusion is with academic recognition, i.e. for the purpose of continuing studies in another Member State. Apparently there is expectation that also academic recognition is governed by EU legislation.

The confusion is understandable, if considering that the question of academic recognition can arise, not only when one intends to continue studies in another Member State, but also when one needs, for the purpose of obtaining professional recognition, to obtain recognition of one's academic training or of a part of the training which took place in another Member State.

The confusion is also explained by the fact that many of the national contact points for the Directive are explicitly NARIC centres, and almost all of them are rather education and training-focused. It is not surprising therefore that one CSS user complained that the NARIC centre in the country of his qualifications, only delivered a certificate of compatibility of his qualifications, whereas what he needed was evidence of qualifications.

However, the authorities appear in some case as responsible for the confusion. For instance, in Spain, applicants for academic recognition (i.e. to exercise non regulated professions) are advised to go for the professional recognition as an alternative and quicker route. In Bulgaria, the authorities request "academic recognition" of diplomas for access to employment in the public sector. And in Spain, again, some mobile professionals are told to obtain the "homologation" of their diploma before being able to apply for professional recognition.

#### 4.1.2 Regulated professions

The Directive concerns regulated professions. However, the difference between regulated and non-regulated professions is not clear to the citizens who contact CSS. Or, at least, they do not perceive the relevance of this distinction with regard to EU law, as is apparent from the fact that hardly ever a CSS user specifies in the enquiry that the profession is regulated. The whole issue of RPQ is widely seen as one of access to work and equal treatment in work conditions. In this respect, informing employers about the *de facto* value of one's qualifications and how they compare with the local ones is perceived as equally important.

Interestingly, among the CSS users aware of the difference, some who came from countries where their professions were not regulated perceived the existence of regulated access in the host country as a form of protectionism. Reversely, others expressed disappointment that their profession was not regulated in the host country, as this diminished the value of their qualifications; or concern about whether it was legal at all to exercise the profession if it was not regulated, and whether it was possible to use the home country title.

Some users also complain that they have gone through lengthy and costly process of applying for RPQ, to eventually find out that the profession "does not exist", i.e. is not regulated in the host country.

#### 4.1.3 Professions not governed by a specific directive

The Directive is not applicable to professional qualifications governed by special, separate systems of recognition. We have received rather isolated enquiries from professionals who explicitly invoked the Directive whilst they were covered by another specific directive (e.g. a road transport driver). More surprising is that we received many enquiries from lawyers or lawyers in training who, apparently, fail

to distinguish two different aspects: (a) RPQ – which is covered by Directive 2005/36, and (b) specific rules on the conditions of exercise of the profession in another Member State – governed by Directive 77/249 and Directive 98/5 respectively for services and establishment. There was also a claim by a lawyer qualified in a third country to benefit of the lawyers establishment directive on the basis of being married to a migrant EU citizen.

### Ratione personae

#### **4.1.4 Fully qualified professionals**

The benefit of recognition in the Directive is for professionals who are already fully qualified in a Member State. The misunderstandings observed in this respect are partly an illustration of the confusion between academic and professional recognition. They may also be a sign of the temptation of forum-shopping.

Many CSS users enquire about the possibility – or otherwise complain about the obstacles in so doing – of studying or finishing studies in a Member State where the degree is not sufficient itself to exercise a determined profession, and seek RPQ in another Member State where there is e.g. no post-degree training requirement. In other words, there is some wishful thinking that the EU rules will offer convenient short cuts in the qualification process.

More complex is the reverse situation, where one gets a diploma in a country where this is sufficient to qualify to register exercise the profession and then immediately returns to one's home country, where the access to the profession is subject to a vocational training requirement, and invokes the Directive. A trend is observed in particular of Italians doing the last part of their law or engineering studies in Spain, to find that Italy will not grant recognition unless there has been at least three years of professional experience in Spain. The Italian authorities invoke the European Court of Justice's case-law (C-311/06).

#### **4.1.5 Professionals qualified in a Member State**

The Directive is not applicable to qualifications outside EU Member States unless there was a first recognition by a Member State. CSS users concerned by this provision sense that there ought to be a "recognition of the recognition", but ignore that it cannot be under the automatic regime even for professions which have been the object of harmonisation of training. Also, they ignore that the first recognition has to be accompanied by professional experience in the first MS.

There were many enquiries from professionals qualified before their country's accession to the EU in 2004 or 2007, usually with extensive professional experience, who were seeking automatic recognition under the rules of automatic recognition for sectoral professions, although admittedly their training was not up to the standards of training under the Directive. One doctor said it was paradoxical that, in order to get RPQ (which is for qualified professionals), you had to go through academic recognition (i.e. comparison) of diplomas, in this overlooking that his Romanian qualifications were not up to harmonised standards as applied in Romania after accession.

There are also claims from third country nationals who believe that they can invoke the EU rules just based on the fact that they hold qualifications gained in a Member State and would like to exercise in another Member State, even if they are not family members of a migrant EU citizen.

## **4.2 About the relevance of EU citizenship, family rights and equal treatment**

The Directive applies in principle to EU citizens but the recognition it organises is not based on EU citizenship. Some, especially in the UK, believe that EU citizenship is sufficient but that the related rights, including for RPQ, must be "activated" through residing in another Member State. The UK authorities apparently also make the same confusion with Directive 2004/38<sup>5</sup>, judging by a case where

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<sup>5</sup> European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158 of 30.04.2004.

a UK professional was denied recognition of his Irish qualifications on the basis that “Directive 2005/36 does not apply to UK nationals in the UK” (incidentally, that logic would not hold under Directive 2004/38 because he was returning to the UK after having exercised EU free movement rights).

Of course, EU citizenship does not in itself give one a right to have one’s qualifications recognised. Some CSS users would like to think so, who invoke nothing else than EU citizenship as the basis of their claim for recognition, including for diplomas gained outside the European countries covered by the Directive – which of course is not the case, even if the European Court of Justice in *Hocsman* obliges Member States to compare professional training as a right of EU citizens.

The Directive applies by extension to third country nationals who are family members of a migrant EU citizen under Directive 2004/38. A frequent misunderstanding in relation to this is that there are claims for RPQ based exclusively on the status of family member, regardless of the content of the training or of the country where the qualifications were obtained. Incidentally, one may wonder if the *Hocsman* case-law should not extend to family members.

On the other hand, the fact that the long term resident status under Directive 2003/109<sup>6</sup> is never invoked in the enquiries, even when the length of residence is apparent in the enquiry, is an indication of ignorance that this status entitles third country national to a degree of assimilation with EU citizens, namely to give access to the EU rules on RPQ.

In one case, a CSS user confused equal treatment with the right to be subject to same professional rules as in the country of origin (a German therapist masseur considered it discriminatory that RPQ in France did not allow her to work in the medical field and therefore her clients could not claim health care reimbursements for his services, whereas the French therapist masseurs are subject to the same conditions).

### **4.3 About other possible obstacles to exercising a professional activity in another Member State**

#### **4.3.1 The Services Directive**

The Services Directive<sup>7</sup> is compatible with Directive 2005/36 and does not affect it. It deals with questions other than those related to professional qualifications, but which are closely connected. It allows for derogations to the conditions of exercise of a profession, derogations which could easily be confused with derogations to RPQ. The situation is further complicated by the fact that the Services Directive applies to some, but not all, of the professions covered by the Professional Qualifications Directive.

For this report, we were therefore asked to look for signs of a possible negative effect over RPQ. We did not find any, maybe because it is too early. Although the Services Directive came into force two years ago, the deadline for its transposition was 28 December 2009 and many Member States are late.

Only one enquiry deserves to be mentioned, which is rather a sign of confusion on the part of the mobile professional (an interpreter and translator), who asked confirmation that the Services Directive applied to her, and that therefore she did not need to seek RPQ to become professionally established in a Member State, other than the one where she had acquired them.

Incidentally, it is worth noting that the RPQ Directive itself contains a derogation of the same sort as those found in the Services Directive, and which raised a complaint by a CSS user. Article 21 (4) states: “member states need not give effect to [the recognition of] diplomas with respect to the

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<sup>6</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004.

<sup>7</sup> European Parliament and Council Directive 2006/123/EC of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006.

establishment of new pharmacies open to the public. For the purposes of applying this Directive, pharmacies which have been in operation for less than three years shall also be regarded as new."

In fact, in one enquiry, there was sign of an abusive use of this derogation: an Italian pharmacist, manager of a pharmacy for twenty years in the UK, was made redundant because the owners of the pharmacy had decided to relocate the pharmacy in the same city, and the UK rules provided that, as a pharmacist qualified in another EU country, he could not be the manager of a pharmacy opened for less than three years.

#### **4.3.2 Transitional measures restricting access to employment**

Some users asked whether obtaining RPQ would mean not being subject to transitional measures for workers from the most recent EU enlargement countries. Inversely, other users (Bulgarians and Romanians) hopefully asked whether the lifting of transitional measures would open the way of RPQ for them.

The misunderstandings above should probably be seen in light of reports received by the CSS of Greek 'prefectures' (we are unable to say if it is the same) that refuse to renew "residence permits" (sic) for workers who have already obtained RPQ and have subsequently become employed, under the argument that the "qualifications should not have been recognised in the first place, because they are not EU citizens". This concerned Romanians working in professions covered by automatic recognition for sectoral directives and who were working in public hospitals.

#### **4.3.3 Restricted access to employment in the public sector and the realities of the job market**

Worth noting, though marginal, are two cases:

- One where the CSS user thought that recognition under the Directive meant not being subject to the possible restrictions in access to employment in the public sector, namely to work as a policeman;
- Another where the CSS user complained that, although he had obtained RPQ in Germany as a teacher of the Polish language, he had not been offered a position in the German public sector (he did not accept the explanation that there were currently no vacancies for a teacher of Polish).

## 5 No signs of infringements for temporary provision of services

In analysing the enquiries handled by the CSS, we were looking in particular for signs of the following types of problems:

- Excessive requirements in relation to the prior declaration to be made before exercising in the host country;
- Impossibility to exercise the profession right after the prior declaration, even though it is not a profession with public health or public security implications which is not covered by automatic recognition;
- Requirements to provide evidence of professional experience even in cases where the profession is also regulated in the country of establishment;
- Verification of professional qualifications even for professions which are without public health or public security implications or which are covered by automatic recognition for sectoral professions;
- Excessive delay in authorising the exercise of a profession with public health or public security implications, which is not covered by automatic recognition for sectoral professions;
- Failure to provide automatic pro forma registration with the relevant professional body (where such registration is necessary);
- Abusive decision not to authorise the provision of services or to impose additional measures;
- Excessive requirements of information to clients in the host country.

We found only one complaint explicitly, or even implicitly, related to the cross-border provision of services. It concerned at the same time the first two categories of the list, and possibly also the fourth:

A British architect qualified and registered in the UK, with a number of small renovation projects in France, complained that, despite reciprocal professional institute recognition, the regional office of the planning authority (DDE) in France requires him to attach an '*autorisation de prestation de service en France*' to each planning application he wishes to submit (whereas the Directive contemplates maximum yearly renewal of the prior declaration). This entails the duplication and translation of all of his exams and professional membership certificates and their submission to the *Ordre des Architectes de France*. They then take between four and six months to give him a permission to apply for planning permission.

## 6 Member States apparently not playing by the rules for establishment

### 6.1 Some professions more concerned than others

#### 6.1.1 Qualifications recognised on the basis of harmonised training

The three main types of infringements of the Directive of which signs are found through CSS enquiries are:

**Denied automatic recognition of qualifications that are not in conformity with the Directive, because the training started before the reference date, although they are accompanied by the necessary professional experience**

Countries concerned: Spain (7); Ireland (2); Italy (2); Sweden (2); Czech Republic; Germany; Netherlands; Portugal; UK (2).

Nationalities concerned: Polish (6); Romanian (9); Slovak (2); Greek; Estonian.

Professions concerned: nurse (9); midwife (2); dentist (3); doctor (5).

**Denied automatic recognition of qualifications (i.e. control of the training and of its content) although they are in conformity with the Directive**

Countries concerned: Spain (4); UK (2).

Nationalities concerned: British; Estonian; Hungarian; Romanian; Spanish.

Professions concerned: doctor (2); nurse (2); architect; pharmacist.

**Denied automatic recognition of qualifications acquired in a third country, although they have been recognised in a first Member State, with the necessary professional experience in that State**

Countries concerned: UK (2); Italy; Netherlands

Nationalities concerned: British; Greek; Italian; Romanian.

Professions concerned: dentist (2); doctor; architect.

#### 6.1.2 Qualifications recognised on the basis of professional experience

There are fewer cases of infringement for these qualifications and they concern:

- **Denied recognition of qualifications even though there is evidence of the necessary professional experience (5)**
- **Excessive request of documents to attest of professional experience (1)**

Countries concerned: France (2); Greece (2); Hungary.

Nationalities concerned: Greek (2); British; Luxemburger; Romanian.

Professions concerned: beautician; car mechanic; hairdresser; mountaineering instructor; real-estate agent.

#### 6.1.3 Qualifications recognised under the general system

Not surprisingly, because the general system is the one which leaves more room for interpretation, it is the one where more signs of infringement are observed. The cases split as follows:

**Compensatory measures imposed despite the absence of substantial gaps in the training<sup>8</sup> or without due consideration for professional experience or additional training**

Countries concerned: Italy (5); France (3); Greece (2); Ireland (2); Slovakia; Spain; UK.

Nationalities concerned: Romanian (3); British (2); German (2); Italian (2); Belgian; Greek; Hungarian; Polish; Slovakian.

Professions concerned: medical specialist (6); teacher (4); civil engineer (2); accountant; geometer; other

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<sup>8</sup> On this we rely on the unilateral point of view of the CSS user, not on facts.

**Failure to apply the rules of the general system (i.e. substantial comparison of qualifications and/or consideration of professional experience or additional training) when the conditions of automatic recognition are not met, when the qualifications have been recognised in a first Member State or when the profession is not regulated in the home country**

Countries concerned: Italy (2); Belgium; France; Slovakia; UK.

Nationalities concerned: third countries (3); Italian; German.

Professions concerned: doctor (3); dentist; medical specialist; other.

**Failure to offer a possibility of partial recognition, where the corresponding qualifications in the host country are wider in scope**

Countries concerned: France (2); Italy (2); Sweden (2); Austria; Netherlands; Spain.

Nationalities concerned: Romanian (2); Belgian; British; German; Irish; Italian; Polish; Spanish.

Professions concerned: medical specialist (2); nurse (2); engineer (3); teacher.

**Failure to offer guidance on compensatory measures or a reasonable chance to undergo such measures in a reasonable delay**

Countries concerned: Spain (3); Italy (2); France; Germany; Luxemburg; UK.

Nationalities concerned: Romanian (6); Belgian; Finnish; Italian.

Professions concerned: nurse (4); medical specialist (3); engineer; teacher.

**Abusive imposition of either training or an aptitude test, instead of leaving the choice to the applicant**

Countries concerned: Italy; UK.

Nationalities concerned: Greek; Romanian.

Professions concerned: medical specialist; engineer.

## 6.2 Horizontal observations

### 6.2.1 Procedural rights

The cost of the procedure to get one's qualifications recognised is mentioned in many enquiries, but it is the object of the enquiry in only one case. There are never sufficient elements of information from the CSS users to consider that the Member States did not comply with the Directive in this respect, but clearly it is a concern of mobile workers, especially the cost of getting documents translated. There are signs that some authorities tend to request translations a bit too systematically, even when it is not strictly necessary for RPQ.

The three main clear problem areas are the following:

**Excessive delays and failure to acknowledge receipt of applications**

Countries concerned: mainly Spain (where huge delays have frequently been reported, particularly in the sectoral medical professions), and to a lesser extent, Italy. Czech Republic, France, Greece, Netherlands, Romania and UK also mentioned occasionally. The failure to acknowledge receipt of the application and to indicate that it was incomplete, particularly concerned Spain.

Nationalities concerned: mainly of Eastern European countries, primarily Romania, Bulgaria and Poland (primarily for professionals with qualifications gained before their country's accession), but also British, French, German, Italians inter alia.

Professions concerned: mainly the medical professions – in particular medical specialist, doctor, nurse and dentist – and teacher and engineer.

**Lack of reason for the decision to deny recognition or to impose compensatory measures**

Countries concerned: Spain (3); Germany (2); Italy; Sweden.

Nationalities concerned: Italian (2); Romanian (2); British; Hungarian; Spanish.

Professions concerned: nurse (2); doctor; educational worker; engineer; medical specialist; musician.

Unnecessary red tape is also visible in three marginal, but interesting, cases:

- The CSS expert for Bulgaria indicates that an application for RPQ can be rejected because of technical mistakes in the complex forms that have to be filled in (e.g. an incorrect translation), as a result of which it is not possible to re-submit the application; one must appeal the decision in a Court of law. Also mentioned were cases where the applicant felt that a lot of



forms were completed and a lengthy procedure gone through when, at the end of the process, it was apparent that he never stood a chance of getting his qualifications recognised.

- In Ireland, an applicant had to re-do the long procedure from scratch due to having been given the wrong application form.
- In Italy, a Polish doctor qualified in Poland before Polish accession to the EU has been sent back and forth between Italy and Poland for over two years with contradictory and partial information on how to compensate for differences in training.

### 6.2.2 Conditions of exercise

Obtaining RPQ is not the end of the problems. The Directive also addresses other matters related to the conditions of exercise of the profession.

A number of CSS users have complained about denied use of the host country's title, but they did not have a valid case because they had not sought and obtained RPQ. Instead, two problem areas should be mentioned:

#### **Denied registration with the professional body of the host country**

- An engineer who obtains RPQ in Spain is not allowed to register with the Professional Association of Spanish Engineers on grounds that his diploma was not acquired in Spain. Eventually, this led the body to contest the RPQ and claim (apparently in vain) its annulment to the Spanish ministry of infrastructures.
- The Irish Medical Council granted only "limited registration" to a Hungarian doctor, although he has obtained RPQ, due to the fact that he is participating in a training programme in Ireland.
- A peculiar situation is that of British chartered accountants seeking recognition of their professional qualification in Ireland (three enquiries). The Institute of Chartered Accountants of Ireland takes the view that the Directive does not apply to British accountants registered with the Association of Chartered Certified Accountants of England and Wales, because "*The Directive is designed for those who are not represented in the country in question*" and ACCA is recognized under Irish law. A consequence of this position is that ACCA members are not allowed to join the ICAI, even if they prefer to do so because the ICAI title is more widely known in Ireland), whereas an ICAI become ACCA member.

Note: some mobile professionals are reluctant to de-register from the professional body of the previous country, to keep their options open and avoid having to go through the procedure again in the country they have left. Persons in such situations will raise the problem of having to pay a membership fee in two countries at the same time. That in itself is not a problem because it is their choice to remain established in two countries at the same time, but it raises an interesting question: is there scope for an initiative to reassure highly mobile professionals that professional qualifications, that have been recognised once in a country, can be easily re-activated in the future?

#### **Abusive linguistic requirements**

- On three occasions, CSS users have complained about evidence of knowledge of the German language in Germany, claiming that it was unnecessary (for a teacher in one case and a doctor in two cases). The CSS did not have sufficient information to confirm that the request was abusive, but observed that it was doubtful that the German authorities could impose that the linguistic skills be attested by a diploma delivered by the Goethe Institute.
- The CSS expert for Ireland indicates cases where Irish language qualifications are requested, even when there is no clear need for the position or profession, and that in one case this was clearly used as a pretext to avoid converting a temporary position into a permanent one.
- A British teacher of English in Greece is required to pass tests on Greek history and ancient Greek – a general requirement which the Commission has already considered disproportionate and about which it has started infringement procedures against Greece.
- A Romanian teacher, to teach Romanian and French in Italy, is required to take an examination that proves "excellent knowledge of Italian".

Although it is not covered by the Directive, some directly related cases of unequal treatment in access to employment or working conditions deserve to be mentioned, in so far as they are connected with the failure to take into account the professional experience gained in another Member State:

- In three cases, there were complaints about failure to take into account the experience gained in another Member State for access to employment in the public sector or, more precisely, in a system of points based on professional experience for determining priority in access to determined positions. This concerned teachers from Eastern European countries.
- A qualified nurse from Germany, working in Belgium, complained that, despite having obtained RPQ in Belgium, she was not paid like her Belgian colleagues for the same job, and she does not have equal access to continued training.

## 7 Scope for more transparency

Based on its experience of advising mobile professionals, the CSS would like to make the following four observations about how the system of the Directive could be improved:

- Whilst it is easy to see why a few professions are governed by a system of automatic recognition based on harmonisation of training in the early days (the Commission's initial approach), it is more difficult to understand, and to explain, the logic that separates the professions falling under the general system, and those which are the object of automatic recognition based on professional experience. For instance, where does the famous Polish plumber wanting to work in France fall? The overall system would gain acceptance by becoming more "readable" in this respect.

- The system of the Directive is incomplete without more widely accessible tools to compare professions, in particular where they are regulated in at least one Member State. In particular, such tools should aim to identify the following cases: (a) distinct professions behind a same name and, on the contrary, same professions behind distinct names; (b) a profession, apparently inexistent as a regulated profession in a Member State, is in fact included in a larger profession, so as to facilitate the possibility of partial recognition; (c) a profession is regulated in some Member States but not in others; (d) substantial differences in training for at least those professions which are easily identified in all Member States (e.g. engineer), focusing on those which are strategic for the internal market if necessary. These tools should raise the awareness of mobile professionals as much as the services that advise them or handle their applications for RPQ. A good step in that direction would be to make the Commission's existing database of regulated professions better known and ensure that the information it contains is complete (e.g. there is no indication of specific contact points for some major professions in some large countries) and kept well up to date.

- National contact points set up by the Directive need to become a lot more visible as the first place to turn to for mobile professionals seeking RPQ, as is clear from section 3.3. The need to identify the competent authority in the country where the qualifications were obtained, and/or the professional experience acquired, who would be competent to release certificates requested in the host country, is a problem which is particularly important when the profession is not regulated or has no visible equivalent in the first country. Here there needs to be more direct communication between national authorities, or at least more networking to guide the mobile professional.

- The Directive, as reportedly stated by Greek authorities in one case, is not clear regarding third country nationals. It does not presently specify that it also applies to third country nationals who are family members of EU citizens exercising their right to free movement in accordance with Article 24 of Directive 2004/38. Some national administrations do not seem to be aware of this. Likewise, the Directive does not address the rights of third country nationals who have acquired the status of long term residents under Directive 2003/109. Considering the potentially large number of professionals concerned, and the difficulties provoked by this grey area, the text of the Directive would deserve to be consolidated in this respect.

## 8 Main findings

The **object** of most enquiries to the CSS is request for information rather than complaint, or at least, if it is complaint, it is most of the time not well informed. Even if there is widespread awareness of the existence of an EU system of RPQ, there is a great need of legal information about it and of practical information about the national procedures. There is substantially more interest of CSS users for professional establishment than for temporary provision of services.

The **main general problems of awareness** on the part of mobile professionals transpiring from the enquiries are:

- Ignorance of the different rules that characterise temporary provision of services and establishment in another Member State, and automatic recognition and recognition under the general system;
- Difficulties to find the entry points for the RPQ procedure in the host country, but also identifying authorities competent to attest of qualifications or experience in the home country (in the latter case, especially when the profession is not regulated there);
- Lack of awareness that national contact points have been established by the Directive and of where to find them.

**Common misunderstandings** revealed by the questions and complaints to the CSS concern:

- The scope of the Directive, which is largely over-estimated, both *ratione materiae* (namely with confusions with academic recognition and professions which are not regulated) and *ratione personae* (with many people overlooking that the Directive concerns professionals who are already fully qualified, and this in a Member State);
- The relevance of EU citizenship and of being a family member of a migrant EU citizen, the impact of which on RPQ is also over-estimated, essentially due to a confusion with the logic of Directive 2004/38/EC;
- A confusion between RPQ and possible other subsequent obstacles to exercising a professional activity in another Member State – namely the transitional measures restricting access to employment. It was too early after the deadline for implementation of the “Services” Directive to observe possible confusions with the derogations foreseen in that instrument.

The CSS received only one valid complaint in relation to RPQ for temporary provision of services. By contrast, there were many valid complaints concerning professional establishment, mostly for professions falling under the general system and, to a lesser extent, for professions benefitting from automatic recognition based on harmonised training; however, professions benefitting from automatic recognition on the basis of professional experience are also concerned by some complaints. The **main types of infringements**, of which there are signs through CSS enquiries, respectively for these three categories, are:

- Denied automatic recognition of qualifications that are not in conformity with the Directive, because the training started before the reference date, although they are accompanied by the necessary professional experience;
- Compensatory measures imposed despite the absence of substantial gaps in the training or without due consideration for professional experience or additional training;
- Denied recognition of qualifications, even though there is evidence of the necessary professional experience.

Regarding the procedural rights under the Directive, valid complaints concern mainly excessive delays and failure to acknowledge receipt of applications – or otherwise to flag missing documents. Regarding the conditions of exercise of the profession, there are signs of unjustified denials of registration with the host country’s professional body and of abusive linguistic requirements.

**Possible improvements** to the system of the Directive are:

- To clarify the determining factor for a profession to benefit of recognition based on professional experience or, instead, fall under the general system;
- To make the Commission’s database of regulated professions better known, complete and up-to-date, and to provide more widely accessible tools to compare professions when they are regulated in at least one Member State;

- To make national contact points more visible and to make them operate as a network in order to ensure direct liaison between host country and country of qualifications;
- To clarify when and under what conditions the Directive applies to third country nationals.