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Freedom of Movement and Mutual Recognition of Qualifications –changes in Polish legislation preceding EU – Accession

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Contents

Summary

A necessary condition for the creation of a single European Market, was the abolition of all physical restrictions on, *inter alia,* the freedom of movement of persons and services within the borders of the European Union.

Although freedom of movement initially was reserved for persons engaged in some sort of economical activity, such as workers or self-employed persons, it has subsequently been extended to comprise other categories. At present, nearly every person, who is a national of one of the Member States, may benefit from the right of free movement and in consequence freely choose his or her place of residence, employment, studies or business within any of the Member States.

The recognition of diplomas and professional qualifications is an important condition when implementing the rights of free movement of persons and the freedom to provide services. The differences in the education systems of the EU countries and the absence of common rules in the area of mutual recognition have proved a substantial impediment to the free movement of persons and services, often giving rise to discriminatory treatment of individuals. In order to guarantee EU citizens the possibility to avail themselves of their basic rights according to the EEC Treaty, in later years there has been intensified coordination of the rules regulating the practice of certain professions and of certification of professional qualifications.

As one of the candidate states pending accession to the European Union, Poland is well underway with the harmonization of the country´s legislation so as to reach conformity with the *acquis communautaire*. To ensure the implementation of the freedom of movement of persons and the right to provide services, and to secure the mutual recognition of professional qualifications, new legislation on general recognition of qualifications has been enacted and numerous legal adjustments have been made in the legislation concerning the exercise of regulated professions.

Preface

I would like to take this opportunity to thank Dr Andrzej Rys, former Under-Secretary of State at the Ministry of Health in Poland and previous long-time member of the Negotiation Team for Poland´s Accession Negotiations with the European Union, who encouraged me to write about this particular subject, for his valuable help and kind interest in this diploma paper project.

Furthermore, I would like to extend my sincere thanks to all those at the Ministry of Health, who took their time to contribute to my work on this paper. A special thanks in this regard goes to Dr Boguslaw Suski, Deputy Director of the Department of European Integration and Foreign Cooperation, for his kind and patient assistance in providing me with information relevant to this paper.

Finally, I would like to thank Professor Michael Bogdan at the University of Lund, who was the supervisor of this diploma paper.

Karen Ziemiecka

Lund, May 27th, 2002

1 Introduction

1.1 The Subject of the Study

The anticipated enlargement of the European Union with primarily the ex-communist countries of Eastern and Central Europe is generally considered a major event-to-be in the modern history of our continent. Besides being an act of great symbolical significance, the reception of Eastern European states into the so far Western oriented Union, is likely to bring about an equalization of wealth and prosperity on both sides of Europe, thus furthering over-all stability and development.

The forthcoming accession has involved major changes in almost all areas of the legislation of the candidate states, that are working hard on reaching conformity with the *acquis communautaire* before the point of accession.

Having a special interest as well in the issue of free movement of persons and the freedom to provide services within the Community, as in the development of Poland, which is one of the candidate countries in the first wave of pre-accession to the EU, I set out to explore the legislative adjustments that are currently being made in Poland, so as to make implementation of the provisions on free movement possible on the point of accession. Recognizing, however, the immense complexity of the notion of free movement, this paper is concerned mainly with one particular aspect of that concept, namely mutual recognition of professional qualifications.

1.2 Purpose, Outline and Delimitation

The purpose of this study is to analyze the legal aspects of Poland´s accession to the European Union, as regards the area of mutual recognition of professional qualifications, which constitutes one of the conditions of the

implementation of the free movement of persons and the freedom to provide services.

The paper opens with a background, describing the process and structure of the Polish accession negotiations, after which it gives a brief description of Community law in the area of free movement of persons and the freedom to provide services, to finally examine the Community rules on mutual recognition of qualifications and to compare those to adjustments made in corresponding Polish legislation.

This paper will focus on the rights of individuals and will thus not explore the rights of legal persons in the context of the right of free movement and the freedom to provide services, although legal persons in principle are to be treated similarly to natural persons. Issues related to social security rights within the Community, though closely tied to the freedom of movement of persons and explored by the Court of Justice in numerous cases, will also be excluded from the scope of this paper.

1.3 Method and Materials

I have carried out research in Lund, Sweden and Warsaw and Cracow in Poland. Where this has been possible, I have availed myself of literature and materials in English, either in original or translated from Polish. Regrettably, part of the material could be found only in Polish.

Part of the material was found in the Lund Faculty of Law Library, the other part was gathered in Poland, through the kind assistance of numerous persons at the Ministry of Health, the Chancellery of the Prime Minister of the Republic of Poland, the Committee for European Integration and the European Information Centre. Part of the information has also been found on the Internet, which turned out to be a valuable source when searching for up-to-date material.

2 Accession Negotiations – Poland on the road towards membership

2.1 Orientation towards the West

In September 1988 Poland established diplomatic relations with the EEC.

After the fall of Communism in Eastern Europe, the first free elections in post-war Poland, held in the spring of 1989, and the decisive orientation towards market economy were welcomed with great enthusiasm by the governments in the West.

In July 1989, the Paris summit of the G7 - the seven most industrialized nations of the world - adopted a decision to grant economic assistance to Poland and Hungary, in order to support the two countries of the former Eastern block, that were the first to start systemic reforms. The assistance was to be given in the PHARE[1] programme, coordinated by the Commission of the European Communities and later extended to other Central and Eastern European countries. Another important institution established in the same period of time was the EBRD[2], whose aim was support of the transformation processes undertaken in Eastern Europe.[3]

In September 1989, Poland signed the Agreement on Trade and Economic Cooperation with the European Communities. It was the first international legal act of importance, as regarded Poland´s rapprochement towards integration with the European Communities.

A subsequent step were the negotiations started in December 1990, concerning the ”Europe Agreement on the Association between the Republic of Poland and the European Communities and their Member

[1] Poland and Hungary Assistance for Restructuring their Economies.
[2] European Bank of Reconstruction and Development.
[3] “Accession Negotiations. Poland on the road to the European Union.”, Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 9.

States"[4], which was signed on December 16th the following year and came into effect on February 1st, 1994. The specific aim of the Agreement, as stated in Art 1, p. 2, was to create an appropriate frame for political dialogue which would make development of closer political relations between the parties possible; other objectives were to support the economical development in Poland, to help create structures enabling Poland to receive financial and technological Community aid, and create suitable frames for the gradual integration of Poland with the Community. On the initiative of Poland, the preamble of the agreement contained a provision stating that Poland´s final objective was becoming a member of the European Communities, and that the concluded agreement in the opinion of both parties would help in attaining this objective.

The Association Agreement is to be valid 10 years from the day it entered into force.[5] Among others, it comprises rules on movement of labour, establishment of enterprises and provision of services, where the parties pledge to refrain from discriminatory actions towards the citizens of the counterpart, as well as to facilitate, on the basis of bilateral agreements, access to the Common Market for Polish workers and enterprises and vice versa.[6]

Article 46 concerns regulated professions, stating that the Association Council[7] (which is the supranational organ supervising the realization of the Agreement), shall examine the necessary steps to be undertaken in order to ensure mutual recognition of qualifications, so as to

[4] "Europe Agreement on the Association between the Republic of Poland and the European Communities and their Member States" (available at the website of the Office of the Committee of European Integration: http://www.ukie.gov.pl/uk.nsf/B-DP-UE).
[5] "Europe Agreement on the Association between the Republic of Poland and the European Communities and their Member States" (available at the website of the Office of the Committee of European Integration: http://www.ukie.gov.pl/uk.nsf/B-DP-UE) Art 6, p. 1.
[6] "Europe Agreement on the Association between the Republic of Poland and the European Communities and their Member States" (available at the website of the Office of the Committee of European Integration: http://www.ukie.gov.pl/uk.nsf/B-DP-UE) Part IV, Art 37 – 58.
[7] "Europe Agreement on the Association between the Republic of Poland and the European Communities and their Member States" (available at the website of the Office of the Committee of European Integration: http://www.ukie.gov.pl/uk.nsf/B-DP-UE) Part IX, Art 102 – 110.

facilitate for Polish and Community citizens respectively, the undertaking of activities within these professions. Article 68, in turn, points out the harmonization of Polish legislation with the *acquis communautaire* as a determining factor to achieve economical integration with the European Communities. Hence, in the same article, Poland binds itself to take measures to ensure that future Polish legislation will prove compatible to the *acquis*.

The Association Agreement was a landmark, leading to the establishment of closer political and economical relations between Poland and the European Communities. Over the years, the European Union has become a major direct investor in Poland and Poland has, in turn, become the European Union´s fourth largest trade partner.[8]

2.2 Poland becomes a candidate state

During the 1993 European Council summit in Copenhagen (21 - 22.07.1993), the Council adopted a very important political decision, which gave the countries of Central and Eastern Europe possibility to accede to the European Union, provided they fulfilled certain political and economic conditions, articulated at the summit and better known as the ”Copenhagen Criteria”.

The Criteria stated the following conditions[9]:

1. stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
2. existence of a functioning market economy;

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[8] „Understanding Negotiations. Poland´s Position Papers for the Accession Negotiations with the European Union.”, Government Plenipotentiary for Poland´s Accession Negotiations to the European Union, Chancellery of the Prime Minister of the Republic of Poland, 1st edition, June 2000, Warsaw, ISBN 83-913753-2-3, p. 10.

[9] “Accession Negotiations. Poland on the road to the European Union.”, Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 11, cit.

3. capacity to cope with competitive pressures and market forces within the EU;
4. ability to take on the obligations of membership, including adherence to the aims of the political, economic and monetary union.

The last condition infers upon the candidate state the obligation to accept the *acquis communautaire* in its entirety, and also to participate in all three pillars established by the Treaty on European Union.

On April 8th, 1994, during the Greek Presidency, the Polish Minister of Foreign Affairs Andrzej Olechowski submitted the official ”Application Concerning Poland’s Accession to the European Union” in Athens. Poland was, after Hungary, the second state to formally file for membership.

The European Council adopted in turn at the Summit in Essen (9 - 10.12.1994) a pre-accession strategy, aiming at intensification and development of new forms of cooperation, so that the processes of adjustment to EU standards in the candidate countries could be better supported. The Commission was obligated to produce annual reports concerning the implementation of the pre-accession strategy. The first document produced was the ”White Paper Concerning Integration of the Associated Central and Eastern European Countries with the Internal Market of the European Union”. It was subsequently adopted by the European Council summit in Cannes (26 - 27.06.1995), determining priorities and giving recommendations in the work on harmonization of the Polish legal system to the *acquis communautaire.*[10]

In 1997 the European Union started preparing for enlargement. The ”Agenda 2000” was published - an outline of a thorough reform of Union institutions, procedures and certain policies, which had to be conducted in order to enable the Union to meet future challenges. The first major challenge was to make enlargement possible by ensuring the proper functioning of the structures and mechanisms of the Union after the enlargement.

[10] “Accession Negotiations. Poland on the road to the European Union.”, Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 12.

At the Luxembourg summit (12 - 13.12.1997), the European Council decided to start the enlargement process with all the applicants from the countries of Central and Eastern Europe[11] (ten states at the time) and also with Cyprus. Accession negotiations were to be launched with five CEE countries, namely: the Czech Republic, Estonia, Hungary, Poland, Slovenia and also with Cyprus. This group of countries is therefore called ”The Luxembourg Group” or the ”5 + 1 - Group”.[12]

Accession negotiations with the Luxembourg Group were opened on March 31st, 1998.[13] Negotiations were to be aimed at strengthening the acceding state, in order to enable it to benefit most by the rights and fulfil the duties which arise from membership.

A fundamental first demand on a candidate state implies a declaration of willingness to embrace the entire *acquis communautaire*. This is done consecutively, as gradual implementation is the only financial possibility. The first step in the harmonization process is the review of the legislation of the applicant country (the so called ”screening”), which was conducted in order to determine the level of compatibility of Polish legislation to the *acquis*. The Polish screening began on April 27th, 1998, to be concluded on July 1st the following year.[14]

The screening took place in Brussels and consisted of two phases: a multilateral and a bilateral one. During the multilateral phase the Commission provided the candidate states with lists on legal acts, which separately constituted particular areas of the *acquis*. Next, a multilateral meeting was held, during which the Commission provided the candidates with briefings on the most important legislation within the areas chosen. During bilateral meetings the national delegations presented to the

[11] Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.
[12] “Accession Negotiations. Poland on the road to the European Union.”, Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 15.
[13] Negotiations with the second group of candidates (Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia) were opened in February 2000.
[14] “Accession Negotiations. Poland on the road to the European Union.”, Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 34 f.

Commission (each country separately), their country´s position as to all the Community legal acts in the particular areas of the *acquis*. The candidate countries had to state whether given legal norms already existed in their national legislation or agree they would be introduced by the time of accession; they had to consider whether introduction of certain legal norms would make technical legislation adaptations necessary; or they could declare that adoption of given norms would be under further negotiations.[15]

The results of the screening provided a basis for the candidate state to prepare so called position papers in each negotiation area[16] and to present them to the European Union. A position paper is the Polish government's proposal how to resolve the legislative incompatibilities detected in the screening process within a certain negotiation area, and also a suggestion as to a suitable timetable for incorporation of EU law in this given area. In response to the position papers, the EU elaborated Common Positions. At this point, real negotiations were opened. In June 2000, negotiations with Poland had been opened in all 29 chapters.

The screening of Polish legislation as to its compatibility with EU legislation in the area of free movement for persons was held from April 6th to April 9th, 1999, whereas the position paper in that same area was presented to the EU July 30th , the same year. Negotiations were opened on May 26th , 2000.[17]

When consensus regarding the position paper in a given area will be reached, the negotiators will formulate final positions and declare the negotiations in that area provisionally closed. This means that the positions are settled; they can, however, be subject to further changes until negotiations in all areas have been closed. Complete closure is to take place

[15] Source: website of the Chancellery of the Prime Minister, www.kprm.gov.pl/ue.

[16] Negotiations are conducted in 29 negotiation chapters, except for the two remaining chapters of "institutions" and "other", which were not submitted to screening and are postponed until later with all candidate states. The chapter "institutions" can only be considered after the EU´s internal reforms have taken place. There are 31 negotiation chapters all together.

[17] „Informacja do Raportu Komisji Europejskiej z postepow Polski na drodze do czlonkostwa w UE 2000 – 2001. Projekt z 20.06.2001 r.", p. 94.

simultaneously in all areas. The final positions then will become conditions of entering the EU.

Finalization of the process will encompass elaborating and signing the Accession Treaty, where the conditions of Poland´s accession to the European Union will be articulated, first by each Member State of the European Union, and then by the applicant. Once the national Parliaments of the Member States ratify the Accession Treaty, it becomes effective - and the candidate state becomes a full-worthy Member of the European Union.[18]

The Polish government has declared as its aim to achieve full readiness for EU membership by the end of 2002.[19]

2.3 Administrative negotiation structure in Poland

Poland - just as each candidate country - built up a national administrative structure responsible for the process of European integration.

The political leadership of the negotiation process is the responsibility of the Prime Minister. He adopts decisions guiding the negotiations in a desirable direction, co-ordinates and supervises the integration process in Poland. Supporting him in this task is the Minister of Foreign Affairs, the Secretary of the Committee for European Integration and the Government Plenipotentiary for Poland's Accession Negotiations (Chief Negotiator).

The institution of the Committee for European Integration, established 1996, is the supreme organ of government administration responsible for the programming and coordinating of Poland's integration policy. The tasks of the Committee are especially addressed at resolving issues concerning adjustment to EU standards, such as elaboration of

[18] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 17.

adjustment programme proposals, subsequently presented to the Council of Ministers, as well as the drafting of legal acts proposals and approvement of proposals regarding the distribution of funds from EU grants.[20]

Chairman of the Committee is the Prime Minister. A very important position in the Committee is the post of the Secretary, currently held by Danuta Huebner, simultaneously holding a ministerial post at the Ministry of Foreign Affairs. Besides participating in the drawing up of political guidelines for the integration process, the Secretary is also Head of the Office of the Committee for European Integration, which is the Committee's administrative supporting unit, established the same year. The remaining permanent members of the Committee are holding ministerial posts in different ministries.[21] Three experts may also be appointed permanent members of the Committee by the Chairman. The meetings of the Committee may be attended by the President of the National Bank of Poland and the President of the Government Centre for Strategic Studies. Invitations may also be extended to other Ministers, MP's, experts and others.[22]

In March 1998, the Polish Council of Ministers appointed a Negotiation Team for Poland's Accession Negotiations to the European Union, chaired first by Jan Kulakowski and, as of October 2001, by Jan Truszczyński, who is simultaneously holding the positions of Chief Negotiator and Government Plenipotentiary for Poland's Accession Negotiations with the European Union. Besides the government, represented by the Prime Minister, and the Committee for European Integration, represented by its Secretary, the Negotiation Team, represented by the Chief Negotiator is the third main actor in the integration process.

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[19] The exact date when Poland is expected to have completed the process of harmonization and implementation of Community law, is December 31st, 2002.

[20] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 20.

[21] The ministries concerned are: The Ministry of Foreign Affairs, The Ministry of Internal Affairs and Administration, the Ministries of Economy, Labour and Social Policy, Finance, Agriculture and Rural Development and also the Ministry of Justice.

[22] "Accession Negotiations. Poland on the road to the European Union", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 20.

As Plenipotentiary, the Chief Negotiator's role is mainly one of conceptual preparation and coordination. His most important task is to prepare a project of the Accession Treaty between the Member States of the European Union and Poland and to conduct all negotiations concerning the Treaty on behalf of the government. He is also obliged to present opinions on drafts on legal acts and other adequate documents, in order to ensure compliance with the *acquis communautaire*, and also to elaborate regular reports concerning his own activity.[23]

As Head of the Negotiation Team, his role is to lead the work of the Team on elaborating and implementing the negotiation strategy, for example preparing draft position papers of the Polish government, formulating Polish opinions responding to European Commission reports assessing the degree of Polish legislation harmonization, preparing responses to EU queries, preparing "package deals" according to instructions received and in general coordinating the entire negotiation process. The Negotiation Team consists of 19 negotiators, appointed personally by the Prime Minister and holding the positions of Secretaries and Under-Secretaries of State in key ministries. They meet regularly, at least once a week, and reach their decisions by consensus, except for situations when this proves impossible. Then the Team moves to vote, with the Chairman being in possession of the casting vote.[24]

Summing up, the Chief Negotiator is not directly responsible for Polish law harmonization. He is supposed to monitor and further the process in cooperation with the other actors mentioned above and also by cooperation with different Parliamentary Commissions, especially the recently established Parliament Commission for EU Law.[25]

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[23] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 21.
[24] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 23.
[25] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 27.

2.4 Administrative negotiation structure of the European Union

The conduct of the negotiations on the side of the European Union has a definite intergovernmental character.

The most important role in the negotiation procedure is played by the governments of the Member States, who act as collective negotiator. Due to demands of effectiveness and coordination, the positions of the Member States are represented by the current Presidency of the European Union. At present, i.e. January - June 2002, the European Union is represented by the Spanish Presidency.[26] As one of the main institutional instruments, there is also the Inter-Governmental Conference on Accession, set up for the duration of the negotiations, as an official forum where they could be conducted.[27]

EU actors taking part in the enlargement process, are the Member States, the Council of the European Union, the European Commission, the European Parliament and eventually, the citizens of the European Union.

Member States are a party in the negotiations, and as such they participate in the preparation of EU common positions, which they approve. Their role will also in time entail adoption of the Accession Treaty. The Council of the European Union presents agreed EU common positions, which are subject to discussion in the Council's Enlargement Group. The Council is also responsible for conducting negotiations at Foreign Affairs Ministers level, within the framework of the IGC on Accession.

The European Commission, the most supranational EU institution, deals with law review procedures, presents proposals of EU common positions, tries, while being in close contact with the Member States, to resolve current negotiation problems and also organizes consultative expert

[26] The Presidency is a rotational chairmanship of the meetings of the European Council, performed for six months successively by all Member States, according to a pre-established order.

[27] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 29

meetings in order to clarify different negotiation issues.[28] It plays the role of an intermediary between the Member States and the candidates for accession. The European Commission's special administrative unit responsible for accession negotiations is the DG - ELARG.

The European Parliament is entitled to receive information on the course on the negotiation process, as it is one of the institutions required to extend its approval to the Accession Treaty. Also the citizens of the European Union must express their willingness to enlarge. They may choose to do it either directly in a national referendum, or indirectly through their representatives in the national Parliaments and in the European Parliament.[29]

2.4.1 DG-ELARG[30]

The Directorate - General Enlargement of the European Commission was established by Commission President Romano Prodi in order to deal with issues concerning the enlargement of the European Union. It consists of twelve teams responsible for accession negotiations with the twelve applicant states[31] and one team for Turkey, which is a candidate for EU membership negotiations. Each team is chaired by a senior official, acting as negotiator toward a particular candidate state. The European Commission´s negotiator for Poland is Director Françoise Gaudenzi; Director-General of DG-ELARG is currently the Spaniard Eneko Landaburu, who besides handling overall management and supervision of its work, also acts as Chief Negotiator of the European Commission.

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[28] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 30

[29] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 31.

[30] *Fr*. Direction Générale „Élargissement".

[31] Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Cyprus and Malta.

DG-ELARG is also under the supervision of Commissioner Günther Verheugen, responsible for enlargement matters.[32]

The general tasks of DG-ELARG are to solve problems arising during negotiations and to mediate on two levels: firstly, among EU institutions and Member States, and secondly, between the EU as a whole and the candidate states. DG-ELARG must especially ensure cohesion between the common positions in various areas that are individually prepared by each Member State in an early stage of the negotiation process.

In particular, DG-ELARG is responsible for the conduct of the law review process, preparation of EU draft common positions and draft legal acts concerning negotiations and finally, representation of the Commission at enlargement meetings and discussions of the Council of the EU (especially in the Council´s Enlargement Group).[33]

2.5 Financial assistance

Currently, there exist three major pre-accession instruments, financed by the EU, whose distinct aim is to support the candidate states from Central and Eastern Europe in their preparations for membership. These are the programmes of PHARE, SAPARD and ISPA.

The PHARE programme has been supporting central European states since 1989, providing assistance in a period characterized by fundamental political changes and economical reconstruction. Its current focus on pre-accession strategies was entered into the programme in 1997, in response to the initiation of the enlargement process by the European Council in Luxembourg.[34] About 30 % of the allocations in the PHARE programme

[32] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 31.

[33] "Accession Negotiations. Poland on the road to the European Union.", Chancellery of the Prime Minister, Republic of Poland, 1st edition, October 2000, p. 32.

[34] "Polska 2000. Okresowy Raport Komisji Europejskiej z postepow Polski na drodze do czlonkostwa w UE." 8 listopada 2000, tlumaczenie robocze UKIE, p. 8.

are directed into ”institution building” and administration strengthening: the remaining 70 % are used for financing different investments.[35]

The SAPARD programme is providing support in the area of agriculture and countryside development, while the ISPA programme is financing infrastructural projects in the area of transport and environment protection. All programmes are aiming to help the candidate states in fulfilling EU membership criteria. Between the years 2000 - 2002 financial assistance for Poland from these programmes will amount to about 398 million euro a year from PHARE, 168,6 million euro a year from SAPARD and between 312 and 385 million euro a year from ISPA.[36]

2.6 Effects of enlargement

The European Community has seen four rounds of enlargement since in was brought to life in 1957 by six Western European states.[37] In 1973 Denmark, United Kingdom and Ireland became members, in 1981 Greece, in 1986 Portugal and Spain, and last, but not least in 1995 it was the turn of Sweden, Finland and Austria. Based on this, it is not wrong to say that the process of enlargement is a feature that lies in the very nature of the European Union.

At the same time the EU has not experienced anything resembling the coming enlargement when it comes to size and impact. The EU will gain 33% additional territory and over 100 millions of new citizens, and will by that time comprise close to 500 millions inhabitants. Unfortunately, the acceding states will furnish the Community with GNP levels decisively below EU average. The average GNP of Union citizens after enlargement was some time ago supposed to amount to merely 74 % of the present level. It is a fact that the average GNP has been slightly decreasing in effect of

[35] “Polska 2000. Okresowy Raport Komisji Europejskiej z postepow Polski na drodze do czlonkostwa w UE.” 8 listopada 2000, tlumaczenie robocze UKIE, p. 9.

[36] “Polska 2000. Okresowy Raport Komisji Europejskiej z postepow Polski na drodze do czlonkostwa w UE.” 8 listopada 2000, tlumaczenie robocze UKIE, p. 8.

[37] Belgium, France, Germany, Italy, Luxemburg, Netherlands.

every EEC/EU enlargement so far, the decrease, though, never being as significant as is expected after the forthcoming enlargement. The average GNP of the ten candidate countries of Central and Eastern Europe was in 1998 estimated to be 32 % of EU average at the time.[38]

According to expert calculations, it might take up to twenty-two years for the Central and Eastern European countries to reach the ”objective” EU level, i.e. the level of regions receiving very fundamental support and whose GNP amounts to at least 75 % of EU GNP average.[39]

[38] “Agenda 2000. Rozszerzenie Unii Europejskiej – nowe wyzwania.” Wyd. Monitor Integracji Europejskiej, Komitet Integracji Europejskiej, Warszawa, 1998, p. 37.

[39] „Changes related to the expansion of the European Union: as seen by the European Parliament”, Ursula Stenzel In: Polish European Meetings 1998. Conference Documents 8 – 10 of May 1998. Publisher: Polish Robert Schuman Foundation, Warsaw 1998, p. 33.

3 Freedom of Movement in general

3.1 Free movement of persons - a fundamental freedom

Free movement of persons is, besides the free movement of services, goods and capital, one of the four fundamental freedoms on which European integration is based. This specific aim of Community law is expressed in a general wording in Article 3, par. 1 c of the EEC Treaty, which speaks of the abolition of obstacles for the free movement of, *inter alia,* persons and services within the Community, and also in Article 14 (former Article 7 a), laying down in par. 2 that the internal market shall comprise an area without internal frontiers in which the free movement of persons and services is to be ensured in accordance with the Treaty. More detailed provisions can be found in Section III of the Treaty, Articles 39 - 55 (former 48 - 66), concerning *inter alia* the free movement of persons and services.

The freedom of movement and the right to provide services were initially introduced on account of pure economic reasoning and were reserved for persons somehow engaged in economic activities. This is why the EEC Treaty in Articles 39, 43 and 49 (former Articles 48, 52 and 59) speaks solely of workers and self-employed persons. The categories of persons able to benefit from the rules of free movement have, however, through secondary legislation subsequently been extended to currently comprise for instance the families of economically active persons, students, pensioners and other persons of independent means. The extension of the scope of the right of free movement has, in fact, at present reached the point where nearly every person, who is a national of one of the Member States, is

in his full right to avail himself of the freedom of movement within the Community.[40]

Free movement for persons implies freedom to undertake employment or some other economical activity by nationals of one Member State in the territory of another, without any special permits. This has entailed a prohibition against discrimination based on nationality when it comes to giving access to employment; when negotiating the terms of employment or offers on further professional training; and also as concerns the belonging to trade unions and holding higher positions therein; and, finally, when it comes to social benefits and tax matters. Not only migrating workers, but also their families benefit from the non-discrimination rules. All EU citizens are free to circulate within the EU in the search of employment, which, when found and undertaken in one of the Member States, implies a right to take residence in that given country.[41]

Poland accepts all of the EU legislation in the field of free movement of persons and has declared that all legislation in that field will be adopted in full at latest on December 31st, 2002, so that the relevant laws may operate, with reciprocity, between Poland and the other Member States from the moment of accession.[42]

3.2 Free movement of labour - a sensitive question

[40] Brinch Jörgensen, Ellen, „Union Citizens – Free movement and non-discrimination", Jurist- og Ekonomforbundets Forlag, Danmark, 1996, p. 21.
[41] „Stanowiska negocjacyjne: swoboda przeplywu osob, sprawy wewnetrzne i wymiar sprawiedliwosci, kontrola finansowa" in „Wspolnoty Europejskie – Biuletyn Informacyjny", copyright: Instytut Koniunktur i Cen Handlu Zagranicznego, Nr 1 (101) styczen 2000, p. 23.
[42] „Stanowiska negocjacyjne: swoboda przeplywu osob, sprawy wewnetrzne i wymiar sprawiedliwosci, kontrola finansowa" in „Wspolnoty Europejskie – Biuletyn Informacyjny", copyright: Instytut Koniunktur i Cen Handlu Zagranicznego, Nr 1 (101) styczen 2000, p. 21.

Lowering the high unemployment level in Poland is a very important challenge for the new Polish government.[43] Due to the economical restructuring process, demographic pressure and unsatisfactory mechanisms on the labour market, unemployment rates have been steadily growing since the second half of 1998. In 1999 unemployment amounted to 15 % and according to a survey published in January 2002, it was then 17,4 % and rising quickly. The official government prognosis expects the level of unemployment to amount to 18,6 % by the end of this year. There are clear regional differences, as unemployment in the regions fluctuates between 9 - 22 % (Wielkopolska voivodship - 22,7 %).[44] In the most mobile group of workers - persons below 25 years of age - unemployment has reached 30 %. Serious difficulties are also meeting workers with the lowest qualifications.[45] Great expectations are therefore tied to the enlarged internal market, which, in general, should ensure new and promising possibilities of production and employment.

Free movement for persons is very much an issue of mobility of workers (and self-employed persons), and that is a very sensitive question in times of growing unemployment. The postulate of ensuring the Poles full freedom of movement and employment in the EU Member States on the moment of Poland´s accession aroused fears within the EU concerning an uncontrollable flow of workers, ready to take up employment for ”dumping wages”. These fears were voiced especially in the German areas bordering Poland and certain Eastern regions of Austria. An initiative taken by the German Chancellor Gerhard Schröder, to attract foreign computer specialists to Germany, however, made also the Poles realize, that free movement of labour force could lead to Poland´s disadvantage. A mass emigration of experts could have a very negative impact on the reform

[43] Parliament elections, held in September 2001, resulted in a government coalition between the left-wing post-communist parties SLD-UP and the peasant party PSL. Despite an increasing anti-union propaganda from populistic and ultra-religious parties in Parliament (Samoobrona, LPR), the government is declaring a strong support for EU membership.

[44] „3,1 mln bez pracy. W grudniu 2001 r. bezrobocie dotknelo 17,4 proc. mieszkancow Polski.”, Dziennik Polski z dn. 23.01.2002, p. 6.

[45] „213 tys. bez pracy. Wieksze bezrobocie w Malopolsce”, Dziennik Polski 18.01.2002, p. 6.

process in Poland and delay the obtaining of EU standards. Instead of unemployed workers with low qualifications, the ones leaving the country could very well turn out to be highly skilled specialists, of whom Poland is in urgent need.[46]

It is highly probable, that the large differences in salaries offered between the Western and Eastern European countries, will constitute a strong migration impulse for persons from the East, despite relatively high unemployment also in Western Europe. It is hard to estimate on how large a scale this phenomenon will occur. The expected mass migrations from Greece, Portugal and Spain after those states becoming members of the EEC (Greece acceded in 1981, Portugal and Spain in 1986), did in fact never take place. One can assume that, when it comes to the present candidate states, the difference in salaries will enhance the migration possibility, but on the other hand migration might also be limited, taken into account that the situation in the candidate countries is expected to improve and that there is in fact no guarantee of finding employment in the West, especially if lacking necessary language skills, that many presumptive migrating workers from the CEE countries currently do.[47]

3.3 Transitional measures in the common labour market

The common position of the European Union as regards free movement of persons is, in general, in favour of flexible solutions, leaving the current Member States room for individual decisions within a common time frame. The idea is, while aiming to reach a level of as much free movement as possible in the enlarged Union, to simultaneously recognize that certain measures in order to prevent disturbances in the common labour market

[46] „Eksperci zamiast wyrobnikow" Korespondencja G. Lesser z Warszawy dla „Tages-Anzeiger" in „Unia Europejska. Serwis Informacyjny." Nr. 3 (03) Kwiecien 2000, Agencja Unia-Press, ISSN 1509-3069, p. 69.

[47] "Agenda 2000. Rozszerzenie Unii Europejskiej – nowe wyzwania." Wyd. Monitor Integracji Europejskiej, Komitet Integracji Europejskiej, Warszawa, 1998, p. 34.

should be allowed for a certain time period in those Member States, that so decide.[48]

Transitional measures have thus been proposed by the European Union, consisting in a minimum two-year-period, during which current Member States will be allowed to apply national measures, concerning access to their labour market, towards nationals of the new Member States. After the first two-year-period, a review is to be held, on the basis of which a decision whether it is necessary to uphold the national measures for a further period of three years, or not, will be made. Member States, not wishing to uphold the restrictions, will be free to abolish them at this point.[49]

Generally, the transition period should end after five years, with an exception for countries where the labour market is suffering from serious disturbances, or where such a threat is pending. Those states will have a possibility to prolong the transition period for another two years. No safeguards may be applied after a period of seven years.[50]

It is notable that the transition period - settled individually by each Member State for a period of maximum seven years - infers reciprocal obligations between the Member States concerned. For those Member States, wishing immediate liberalization in the area of free movement, it is possible to implement national provisions permitting unrestricted free movement from the point of accession of the new Member States, i.e. from the point when the first two-year transition period will come into effect.

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[48] „Information note to the European Council on a mid-term review of the implementation of the enlargement strategy", (accepted by the European Commission on Oct 2nd, 2001), p. 3.

[49] Communication from Mr. Verheugen in agreement with Mrs. Diamantopoulou – Essential Elements for the Draft Common Positions concerning "Freedom of Movement of Persons", accepted by the Commission on April 11th, 2001, p. 2.

[50] „Information note to the European Council on a mid-term review of the implementation of the enlargement strategy", (accepted by the European Commission on Oct 2nd, 2001), p. 7.

4 Free Movement of Professionals within the Community

4.1 Rules of the Treaty

The free movement of professionals within the EU relies upon provisions in the Treaty of Rome (the EEC Treaty, as amended in Maastricht and Amsterdam). Those are the Articles 39 to 42 (former 48 - 51) on the free movement of workers, Articles 43 to 48 (former 52 - 58) on the right of establishment and Articles 49 to 55 (former 59 - 66) on the right to provide services.[51]

4.2 The concept of ”worker” under Article 39[52]

Article 39 (former 48) of the EEC Treaty endows ”workers” with the right to free movement within the Community. As workers were the ones originally envisaged to avail themselves of the right of free movement, it may not come as a surprise that they, in secondary legislation, have been ensured the most extensive rights of all the categories of persons, taking benefit from the right of free movement.

Although Community law does not comprise any definition of the term ”worker ”, it is a special Community concept. This gap has been filled by the Court of Justice of the European Communities, who has determined

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[51] Both former articles 53 and 62 have been annulled.
[52] Brinch Jörgensen, Ellen, „Union Citizens – Free movement and non-discrimination”, Jurist- og Ekonomforbundets Forlag, Danmark, 1996, p. 28 ff.

the criteria to be fulfilled, in order to be regarded as a ”worker” under Article 39.

First and foremost, the Treaty notion of ”worker” is to be seen in the contrast to the notion of self-employed persons in Articles 43 and 49 (former 52 and 59). It comprises not only manual workers, but also persons involved in employed activities, the ones holding higher positions included. In the case of *Lawrie-Blum*[53], which concerned restrictions on access for foreign nationals to a preparatory service necessary for qualification as a teacher, the Court, addressing the question whether a participant of that service would qualify as a ”worker” in the meaning of Article 39, provided a definition of the term. According to the statement of the Court, an employment relationship is characterized by three main features, namely that a person for a certain period of time and in return for remuneration, performs a service for an employer under his direction.

Even though persons engaged in full-time employment constitute the fundamental category of workers, also part-time workers are covered, as long as the employment is ”effective and genuine”. This was settled in the *Levin* case, where a part-time worker receiving payment below subsistence level was still considered as worker under Article 39.[54] Consequently, also temporary workers, frontier workers and seasonal workers can rely on Article 39, as long as they fulfil the criterion of genuineness.

4.3 Self-employed persons under Article 43 - right of establishment

The rules professionals, not regarded as ”workers” in the meaning of Article 39, will be subject to exercising a professional activity in another Member State, will depend on whether the activity is permanent (right of establishment) or temporary (right to provide services).

[53] Case 66/85 *Lawrie-Blum v. Land Baden-Wurttemberg*, [1986] ECR 2121.
[54] Case 53/81 *Levin v. Staatssecretaris van Justitie*, [1982] ECR 1035.

Article 43 (former 52) applies to self-employed persons who are nationals of one Member State and who establish themselves in the territory of another, whereas Article 49 (former 59) aims to ensure the freedom of providing services. The distinguishing between these two articles is made possible by an analysis of the criterion of establishment.

To fall within the scope of Article 43, the establishment must involve the exercise of a self-employed activity for an undetermined period of time, i.e. on a permanent basis in the territory of another Member State. Article 43 does also enable secondary establishment, in that it prohibits restrictions on the setting up of agencies, branches or affiliated companies. From this, it follows that a person establishing himself in another Member State may still maintain a place of business in the Member State from which he originates.

This was the case in *Klopp*[55], where the refusal of admission of a German lawyer to the Paris Bar, given on the sole ground that he already maintained a law office in another Member State, was deemed contrary to Article 43. This Article has been given a wide interpretation by the Court, resulting in the considering of any permanent presence of self-employed persons in a host Member State as establishment in the meaning of the Treaty.[56]

4.4 Self-employed persons under Article 49 - right to provide services

As mentioned above, Article 49 (former 59) endeavours to ensure the freedom to provide services within the Community. It applies only to self-employed persons,. If a person has been categorized as a ”worker”, in accordance with Article 39, he or she will not be covered by Article 49, notwithstanding that the person might be working in the host state only

[55] Case 107/83 *Ordre des Avocats v. Klopp*, [1984] ECR 2971.
[56] Brinch Jörgensen, Ellen, „Union Citizens – Free movement and non-discrimination”, Jurist- og Ekonomforbundets Forlag, Danmark, 1996, p. 38.

temporarily. Consequently, self-employed persons are the only ones capable of providing services in the meaning of Article 49.

As regards the services to be provided, article 50 (former 60) gives us a definition where services are described as being ”normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons”. Especially mentioned activities, that are to be regarded as services in the meaning of article 50, are those of an industrial and commercial character, as well as activities of craftsmen and of the professions.

The determining factor as regards the scope of Article 49, is, as mentioned above, the period of time during which the service is provided in the host state. The article applies as long as the activity pursued is temporary. Other circumstances, such as for instance the extent of the physical presence of the provider in the host state, are not decisive. The case-law of the Community has shown, however, that providers of services have been able to work in host states for several years without considered established in the meaning of Article 49. This has been true for example in the case of entrepreneurs engaged in large-scale constructions.[57]

A fundamental requirement for Article 49 to apply, is finally that the provision of services must involve an inter-state element, i.e. it must be directed at persons living in another Member State than the one where the provider of services is established. The Court has, however, ruled that Article 49 applies even if the services are provided to the fellow nationals of the provider, as long as the recipients of the service receive it in another Member State than that of the provider.[58]

4.5 Limitations on the right of free movement

[57] Brinch Jörgensen, Ellen, „Union Citizens – Free movement and non-discrimination”, Jurist- og Ekonomforbundets Forlag, Danmark, 1996, p. 40.
[58] Case C-154/89 *Commission v. France* (Tourist Guide), [1991] ECR I-659.

There are, however, two exceptions to the principle of free movement of professionals in the Treaty. The first is stated in article 45 (former 55), where activities connected to the exercise of official authority, even if it is temporary, are excluded from liberalization. From the rulings of the Court of Justice[59] concerning this particular question, a few special features in the nature of the limitations can be discerned. A justified limitation within the scope of article 45 must be interpreted restrictively, apply solely to certain activities of a profession and not to a whole professional category[60] and be based on a direct and specific exercise of official authority.

The second exception can be found in article 46 (1) (former 56 (1)), stating that Member States are not prevented from applying provisions involving special treatment to foreign nationals, where it is justified on grounds of public policy, public security or public health. This article has been interpreted by the Court in a number of cases.[61]

4.6 Implementation of the Treaty

In order to achieve freedom of movement for professionals, restrictions and discrimination on the ground of nationality or domicile must be abolished. In the Treaty, this is reflected by articles 39, 43 and 50 (former 48, 52 and 60), prescribing that the workers and self-employed persons must be allowed to exercise their activity under the same conditions as the host state imposes upon its own nationals. Furthermore, article 47 (former 57) of the Treaty imposes a duty on the Council to issue Directives for the mutual recognition of diplomas and for the coordination of Member States´ national legislation concerning the undertaking of activities as self-employed persons.

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[59] Case 2/74 *Jean Reyners v. Belgium* [1974] ECR 631, Case 147/86 *Commission of the European Communities v. Greece* [1988] ECR 1637.

[60] The Court stated in the *Reyners* case that the limitation provided for in article 45 (former 55) may be extended to a whole professional category solely if the exercise of professional authority is considered an undistinguishable aspect of the profession as a whole.

[61] Case 41/74 *Van Duyn v. Home Office*, [1974] ECR 1337, Cases 115 and 116/81 *Rezguia Adoui and Dominique Cornuaille v. Belgium*, [1982] ECR 1665, Case 67/74 *Bonsignore v. Oberstadtdirektor der Stadt Köln*, [1975] ECR 297, among others.

It took quite a long time to implement the rules of the EEC Treaty, as regards the issuance of directives facilitating the exercise of professional activities within the area of free movement for professionals. In the beginning of the 1960´s, the Council of Ministers issued two general programmes[62], mentioned in former Treaty articles 54 (1) and 63 (1), failing, however, to issue specific directives regulating each individual profession within the time-frames given in those general programmes. During this time, however, the principle of equal treatment of the citizens of the Member States became affirmed and consolidated, which was considered a necessary condition to move ahead with the liberalization process. [63]

The lack of directives implementing the freedoms of establishment and to provide services made it possible for reluctant Member States to continue hampering Community citizens to exercise their professions in Member States outside their own. The initial resistance of the Member States was, however, sucessfully defied by the Court of Justice, that in 1974 commenced the liberalization process passing judgment in two important cases.

4.6.1 Case law of the Court of Justice

The first of the aforementioned cases was the *Reyners*[64] case, concerning the interpretation of, among others, former article 52 (current article 43) of the EEC Treaty, relating to the right of establishment. Reyners was a Dutch national in possession of a legal diploma entitling him to undertake the profession of *avocat* in Belgium, to which profession, however, he was denied access because of his nationality. The Court affirmed the rule on equal treatment as one of the fundamental Community legal principles, and

[62] General Programme on the abolition of restrictions to the freedom to provide services, OJ 2, January 15th, 1962 and General Programme on the abolition of restrictions to the freedom of establishment, OJ 2, January 15th, 1962.
[63] Capelli, F, „The Free Movement of Professionals in the European Community" in „Free Movement of Persons in Europe. Legal Problems and Experiences." ,Editors: Schermers, Flinterman, Kellerman among others, TMC Asser Instituut, The Hague, 1993, p. 438.
[64] Case 2/74 *Jean Reyners v. Belgium* [1974] ECR 631.

ruled that after the expiry of the transitional period granted to this legal area, article 52 was a directly applicable provision, despite the absence of the specific directives which were to be issued according to former Treaty articles 54 (2) and 57 (1). The nationality issue was therefore sanctioned by the Treaty itself with direct effect, rendering restrictions based on nationality unfeasible.

The second case was that of *Van Binsbergen*[65], concerning the interpretation of former articles 59 and 60 (current articles 49 and 50) relating to the freedom to provide services. In this case, the issue was whether a requirement imposed by Dutch law, prescribing that legal representatives be permanently established in the Netherlands, could be considered compatible with the prohibition on all restrictions on the freedom to provide services within the Community in articles 59 and 60 of the Treaty. (The legal representative in question had, during the course of legal proceedings, changed his place of residence from the Netherlands to Belgium.) The Court held, just as in the *Reyners* case, that the Treaty provisions in question were directly effective and subsequently the requirement of habitual residence, denying persons established in another Member State the right to provide services in the territory of the state issuing the restrictions, was contrary to the provisions of the Treaty and could not be further upheld.

By deeming former articles 52 and 59 (current 43 and 49) directly applicable, the Court of Justice seemed to have made the issuance of particular directives in order to remove hindrances in the exercise of the right of free movement almost superfluous. However, it must be remembered, that, although the provisions of the Treaty in a certain moment gained direct applicability, they still depend on detailed legislation to become efficient and commonly relied upon. Consequently, the directives issued on the basis of the rules of the Treaty must be seen not as creating new rights, but as perfecting and defining the existing ones. This, as well as

[65] Case 33/74 *Maria van Binsbergen v. Bestuur van de Bedrijfsvereniging* [1974] ECR 1299.

the fact that issued directives constitute both a statement of the law and a useful indicator on what still needs to be done, is the reason for the necessity to adopt directives, notwithstanding the direct effect of Treaty provisions.[66]

The judgments given by the Court did, nevertheless, result in the abolition not only of direct discrimination on the grounds of nationality or residency, but also of all sorts of protectionist rules and regulations, limiting indirectly the free exercise of professions within the Community. Examples of such limitations may be restrictions on purchase and rental of real estate for foreign nationals only[67], as well as requirements of the possession of a diploma from a national seat of learning.[68]

All in all, the Court of Justice has played a basic role in defeating the initial reluctance of the Member States in implementing the freedom of movement of professionals within the Community, in many cases notwithstanding the absence of relevant directives.

[66] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 38.
[67] Case 305/87 *Commission of the European Communities v. Greece* [1989] ECR 1461.
[68] Capelli, F, „The Free Movement of Professionals in the European Community" in „Free Movement of Persons in Europe. Legal Problems and Experiences.",Editors: Schermers, Flinterman, Kellerman among others, TMC Asser Instituut, The Hague, 1993, p. 441.

5 Mutual Recognition of Professional Qualifications

5.1 Introduction

As it must have been clear already to the fathers of the EEC Treaty, that the different systems of education in the Community in itself constituted a major impediment to the free movement of professionals, the Treaty contains an article clearly exhorting the enactment of directives for the mutual recognition of diplomas and certificates (Article 47 (1), former Article 57).

In the well-known case of *Thieffry*[69], the Court of Justice referred to Article 47, stating that its aim was to reconcile the freedom of establishment with „application of national professional rules justified by the general good, in particular rules relating to organization, qualifications, professional ethics,…and liability, provided that such application is effected without discrimination".

The notion of mutual recognition of qualifications is meant to have a wide coverage. This can be deducted from the wording of Article 47, which refers to „diplomas, certificates and other evidences of qualification", where especially the latter could imply almost anything. Mutual recognition of qualifications means that professional qualifications of persons, that were obtained in another Member State than that in which the person concerned wishes to pursue his profession, shall rank equal to the corresponding qualifications in that Member State.

A slightly inconvenient situation was due to the placement of the provision on mutual recognition in the Treaty chapter on freedom of establishment. There was a similar rule concerning the provision of

[69] Case 71/76 *Jean Thieffry v. Conseil de l´ordre des avocats à la Cour de Paris* [1977] ECR 765, para. 12.

services[70], but none regarding the free movement of workers. This could lead to the idea, that secondary legislation, enacted on the basis of the provisions mentioned, would apply solely to self-employed persons. The Council has, however, extended the scope of the relevant directives also to wage-earners.[71]

Article 47 (2) does also provide for coordination of the provisions of the Member States, concerning mutual recognition in connection with the access to and pursuit of professional activities. Although substantial progress in this area has been made over the years, the coordination process as a whole has been delayed, and the requirement of the enactment of relevant directives was not fulfilled within the prescribed transition period. A number of directives have, however, been issued, especially when it comes to the mutual recognition of diplomas of „liberal" professions, such as architects, doctors and other medical and para-medical professions.

The legal approach regarding mutual recognition of diplomas, first taken by the Community institutions, consisted in a detailed harmonization of the professional training given in the various Member States. This proposal was abandoned because of the serious technical problems that would be involved, and also because such an approach would intrude on the independence of Member States to freely develop the training methods of their choice. Instead, each directive was to comprise a list of the various diplomas given by the Member States within a certain profession, that henceforth must be recognized throughout the Community. Certain minimum instruction requirements, regarding for instance the duration and contents of the training, were also laid down. The aim of this approach was not to unnecessarily intrude on the competences of the Member States, simultaneously providing Member States with reasonable guarantees, as regarded the quality of the given education.[72]

[70] Article 55 (former Article 66).
[71] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 36.
[72] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 38.

This second legislative approach was laid down in Council Resolution of June 6th, 1974, on the mutual recognition of diplomas, certificates and other evidence of formal qualifications, which set the ground for sectoral directives on the various professions.[73]

5.2 Recognition of diplomas for academic purposes

Regarding the EU legislation in the area of mutual recognition of diplomas and qualifications, it is crucial to make the distinction between the recognition of diplomas for academic purposes and the recognition of diplomas for professional purposes.

For the institutions of the Community, the issue of mutual recognition is a practical one, since it determines the access to and the exercise of certain economical activities. This is the reason why Community law does not deal with academic recognition of qualifications.

Generally, diplomas for academic purposes are recognized so that their possessors will be able to pursue their education in another country. There are no EU rules concerning recognition of diplomas or qualifications for academic purposes: this has been left to every Member State to decide on individually. Generally, in such matters, each Member State commissions the national competent authorities to carry through a detailed comparison of the study programmes leading up to the acquisition of the diploma in question of the country concerned.[74]

As regards Poland, the recognition of education received abroad is regulated on the basis of bilateral and multilateral international treaties and agreements. Poland has concluded bilateral agreements on the recognition of diplomas for academic purposes only with two EU countries, namely

[73] OJ 1974 C 98/1.

[74] „Stanowiska negocjacyjne: swoboda przeplywu osob, sprawy wewnetrzne i wymiar sprawiedliwosci, kontrola finansowa" in „Wspolnoty Europejskie – Biuletyn Informacyjny", copyright: Instytut Koniunktur i Cen Handlu Zagranicznego, Nr 1 (101) styczen 2000, p. 23.

Austria (the agreement was concluded on January 23rd, 1995 and concerns secondary certificates giving access to higher education, higher education diplomas and the academic degree of *doktor*) and the Federal Republic of Germany (the agreement was concluded on July 23rd, 1997 and concerns higher education diplomas and academic degrees). A currently negotiated bilateral agreement with France is reportedly at an advanced stage.[75]

The multilateral agreements concluded by Poland, concerning recognition of training and education received abroad, consist mainly of the 1979 UNESCO Convention[76] and a package of European Conventions, adopted by Poland in 1994. Poland is currently preparing for ratification of the joint Council of Europe and UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region (the so called Lisbon Convention of April 11th, 1997), which, when ratified, is to replace all existing multi-lateral conventions on this subject-matter.[77]

5.3 Recognition of diplomas for professional purposes

5.3.1 Introduction

As mentioned above, the recognition of professional qualifications, as well as the coordination of provisions regulating the exercise of professional activities, is an indispensable element of the free movement of professions and services in the European Union. Community legislation must therefore be able to provide satisfactory assurance that the required common standard level, as regards the different professions, is met in all Member States. It

[75] Source: website of the Polish Bureau for Academic Recognition and International Exchange, www.buwiwm.edu.pl.

[76] Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region, concluded in Paris, December 21st, 1979 and available at www.unesco.org.

remains a crucial task to build confidence between Member States, as to the skills and competence of professionals, that have acquired their qualifications in one of the other Member States.

The difficulty is that many of the professions concerned enjoy a quite significant autonomy. They have developed their own professional codes and practices, in accordance with which they conduct their affairs, and they are not seldom, in restrictive, if not discriminatory manners, seeking to limit the access to their profession for "outsiders".

A fundamental principle of Community legislation in this area, not to be forgotten, is, however, that in the absence of Community legislation on minimum educational qualifications applicable to all Member States, each Member State is free to set its own national standards in the fields concerned.

5.3.2 Sectoral directives

The Member States of the European Union have settled several so called sectoral Directives as regards mutual recognition of diplomas and qualifications for certain professions. These go under the name "regulated professions", and consist of eight chosen professions, for the practice of which there is a legal obligation to be in possession of a given diploma or other professional qualifications and that are to be automatically recognized in all EU countries.[78] The explicit aim of the sectoral directives is to guarantee the practitioners access to practice in any of the EU countries.[79]

The professions regulated by the sectoral Directives are predominantly of a medical or paramedical nature, as they comprise the

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[77] „Wzajemne uznawanie dyplomow." Anna Matuszak in „Unia Europejska. Serwis Informacyjny." Nr. 3 (03) Kwiecien 2000, Agencja Unia-Press, Warszawa, ISSN 1509-3069, p. 159.

[78] It is important to make the distinction between the EU-regulated professions and professions regulated in national legislation, the latter being of a much larger extent.

[79] „Stanowiska negocjacyjne: swoboda przeplywu osob, sprawy wewnetrzne i wymiar sprawiedliwosci, kontrola finansowa" in „Wspolnoty Europejskie – Biuletyn

professions of medical doctor, nurse, midwife, dentist, pharmacist and veterinary surgeon; the remaining professions being the ones of architect and lawyer. Each "main" directive is, in general, supplemented by an appurtenant directive on the coordination of the training requirements of the different Member States.[80]

As concerns the relatively new directive on medical doctors, it lacks the appurtenant coordination directive, as it in itself consolidates these two aspects. Also for architects, there exists solely one single directive, which, however, only provides for mutual recognition of the different national qualifications. For lawyers, there are two directives, one issued in 1977, concerning their freedom to provide services and another, adopted in 1998, on the right of establishment for lawyers. None of these two does really provide for mutual recognition or the coordination of training requirements, which to a large extent is due to the differences of the national legal systems. Consequently, in this aspect the legal profession holds a special position.[81]

In the following, the general shape of the sectoral directives will be examined, commencing with a rather detailed scrutiny of the directive on the profession of medical doctor.[82]

5.3.2.1 Medical Doctors [83]

As regards medical doctors, the document of vital importance is Council Directive 93/16/EEC of April 5th, 1993, to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other

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Informacyjny", copyright: Instytut Koniunktur i Cen Handlu Zagranicznego, Nr 1 (101) styczen 2000, p. 23.

[80] Craig, Paul & De Burca, Grainne, "EU Law. Text, Cases and Materials.", United Kingdom, 1998, p. 739.

[81] John Handoll, „Free Movement of Persons in the EU", John Wiley & Sons, Great Britain, 1995, p. 211 f.

[82] The medical and para-medical directives cover both employed and self-employed persons. In consequence, the provisions of Council Regulation 1612/68 on the freedom of movement for workers within the Community are applicable to all members of these professions.

[83] Council Directive 93/16 EEC of April 5th, 1993, to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993, L 161/1).

evidence of formal qualifications. It requires each Member State to recognize all the qualifications listed in the directive, by giving them the same effect throughout the Community.

The directive deals with the medical qualifications of physicians by breaking them down into three main categories: qualifications in general medicine, according to Article 2 and 3, qualifications in specialized medicine common to all Member States, in accordance with Articles 4 and 5, and qualifications in specialized medicine peculiar to two or more Member States, according to Article 6 and 7.

According to Article 8, nationals of Member States, wishing to obtain qualifications not mentioned in the first two categories, alternatively one of those listed in the third, must, if required by a host Member State, accept to fulfil conditions of training for these specialities, that may be laid down in the domestic law of the host state. The host state must, in turn, take into consideration in whole or in part, the training periods completed by such applicants, provided they are attested by the competent authorities.

Article 9 provides for recognition of qualifications obtained before a certain date (for most Member States this is December 20th, 1976), as long as the qualifications are accompanied by a certificate, stating that the applicant has effectively and lawfully been engaged in the activities in question at least three consecutive years during the five years prior to the date when the certificate was issued. In cases regarding specialist medicine, longer periods may be provided for.

According to Article 10, the persons fulfilling the above conditions must also be ensured the use of their appropriate academic title in the language of the host state. However, should there exist a risk of confusion between the academic title used in the state of origin of the applicant and a title, in the host state requiring additional training which the applicant has not undergone, the host state may require the applicant to use the title concerned in a suitable wording, to be drawn up by it.

The following Articles (11 – 20), are concerned with the right of establishment and the provision of services by physicians covered by the directive.

Article 11 relates to the so called proof of good character, which may be required by some host Member States of persons (nationals and non-nationals alike) that are about to undertake, for the first time, one of the medical activities envisaged in the directive. Such a host state is required to accept as sufficient evidence, as regards a foreign national, a certificate issued by a competent authority in the Member State of origin, confirming that the requirements of the Member State as to good repute have been met. In some cases, the host state may also require an extract from the judicial record in the state of origin (Article 11 (2)). The article in question does also provide for the flow of information between Member States, should the host state gain detailed knowledge of "serious matters", that have occurred outside its territory and are likely to affect the undertaking of a medical activity by a person covered by the directive. A state of origin informed of such matters must carry through an investigation, deciding independently, however, on its nature and extent, whereupon the state of origin must notify the host state of any consequential action taken with regard to issued certificates or other documents.

Article 13, on presentation of health certificates, calls for host Member States, requiring certificates of physical and/or mental health both of nationals and non-nationals wishing to undertake medical activities, to accept as sufficient evidence the corresponding document required in the state of origin or, if such does not exist, another relevant certificate issued by a competent authority of that state.

As regards membership of professional bodies, Article 17 of the directive provides that where membership of, registration with or authorization by a professional body is required of nationals of a Member State, that state in the case of provision of services by non-nationals shall exempt them from that requirement. The provision of services by the persons concerned shall nevertheless be connected to the same rights and

obligations as if the services were provided by a national of that host state – this is to be the case in particular as concerns rules of conduct of professional or administrative nature applied in that host state.

Article 19 provides for the right of use, by nationals of other Member States who fulfil the conditions laid down in Articles 2, 3, 5 and 9, of professional titles and abbreviations of the host Member State, that correspond to the qualifications of the persons concerned.

As regards linguistic requirements, it is laid down in Article 20 (3), that it falls upon the host state to ensure that the persons concerned have acquired the necessary linguistic knowledge for the exercise of their profession in that country.

Furthermore, in the same article it is laid down that Member States must provide the persons concerned with the possibility to obtain information on *inter alia* the country´s health and social security legislation, for instance by setting up information centres. Also, Article 21 states, that if the nationals of a host state are required to complete a preparatory training period to become eligible for appointment as doctors serving within that social security system, the same requirement may be imposed on non-nationals, provided the period in question does not exceed a time of six months.

As mentioned in section 6.3.2, the provisions on coordination of the training requirements in respect of the profession of medical doctor, have not – as previously was common practice - been gathered in a particular directive, but have been encompassed in the new directive 93/16.[84] These provisions are to be found in Title III (Articles 23 – 29) of the directive.

Article 23 comprises a requirement for Member States to ensure that the holder of a diploma in medicine during his complete training has acquired the knowledge and skills listed in the Article, such as for instance

[84] The previous important legislative acts in this area consisted of Council Directive 75/362 EEC of June 16th, 1975, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services (OJ 1975, L 167/1) and the appurtenant Council Directive 75/363 EEC of June 16th, 1975, concerning

the knowledge of the sciences on which medicine is based, knowledge of clinical disciplines and practices and suitable clinical experience in hospitals, obtained under appropriate supervision. It is also laid down, that a complete period of medical training shall be constituted of a minimum six-year course, comprising 5, 500 hours of theoretical instruction at university level.

However, the directive is not to pose any impediments in cases where a Member State in accordance with its own rules chooses to grant holders of professional qualifications obtained outside the Community licence to practice as doctors within the territory of that Member State.

Article 24 is concerned with special training requirements in the field of specialized medicine that are to be met for the directive to apply, while Articles 26 and 27 define the minimum lengths of specialization training courses, that must be complied with. These requirements will not be enumerated here. The remaining provisions of the directive are concerned with specific training in general medical practice and final statements.

Aiming to ensure the maintenance of the high standards in the area of medicine, the Council has set up an Advisory Committee on Medical Training[85], comprised of experts nominated by the Member States. According to Article 3 of Council Decision 75/364, setting up the Committee, each Member State may appoint three experts to represent it, each of those coming from the practicing environment, the academic world and the health administration respectively. Furthermore, the Council also has established a Committee of Senior Officials on Public Health[86] to, among other things, monitor the implementation of the issued directives on medical doctors.[87] Decision 75/365, setting up the Committee of Senior Officials on Public Health, was later amended by Council Decision

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the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1975, L 167/14).

[85] Council Decision 75/364 of June 16th, 1975, setting up an Advisory Committee on Medical Training (OJ 1975, L 167/17).

[86] Council Decision 75/365 of June 16th, 1975, setting up a Committee of Senior Officials on Public Health (OJ 1975, L 167/19).

[87] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 155 f.

80/157[88], extending the responsibilities of the Committee of Senior Officials to encompass issues regarding the implementation of the directives on nurses, dental practitioners and midwives.

5.3.2.2 Nurses

Council Directive 77/452/EEC of June 27th, 1977, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services[89], does in general follow the model outlined in Directive 93/16 on medical doctors.

The only significant difference, due to the much earlier date of issuance of the nurses directive, is that it does not comprise the provisions on coordination of training requirements, which are laid down in the complementing Directive 77/453.[90] The aim of this directive is, obviously, achieving a common standard of training as regards the profession of nurse (responsible for general care), leading to mutual recognition of qualifications in this area.

According to Article 1 (2) of Directive 77/453, the basic training of a nurse shall include at least ten years of general school education, confirmed by a diploma or other certificate necessary for entrance to a nurses´ training school and a vocational course of three years, comprising 4, 600 hours of theoretical and practical instruction. The training can also be of a part-time nature, as long as the total period of the training is not shorter than that of full-time training (Article 2).

The training programme is outlined in the appurtenant Annex to the Directive and consists of both theoretical and technical instruction in

[88] Council Decision 80/157 of January 21st, 1980, amending Decision 75/365/EEC setting up a Committee of Senior Officials on Public Health (OJ 1980, L 33/15).
[89] OJ 1977, L 176/1.
[90] Council Directive 77/453/EEC of June 27th, 1977, concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of the activities of nurses responsible for general care (OJ 1977, L 176/8).

nursing (*inter alia* professional ethics, nursing principles in relation to general and specialist medicine), basic sciences (such as anatomy, pathology and pharmacology), and also social sciences (sociology, psychology, social and health legislation etc.). Clinical instruction in a number of fields (such as surgery, paediatrics, maternity care, mental health or geriatrics), concerning nursing in both general and specialist medicine, is also to be included in the training programme.

Also as regards this profession, an Advisory Committee on Training in Nursing[91] has been set up to safeguard the high standard of the profession and assist the Commission in monitoring the application of the directives in this field. Furthermore, as mentioned above, the directives on nursing are under the supervision of the Committee of Senior Officials on Public Health.

5.3.2.3 Midwives

In accordance with the predominant pattern of Community legislation as regards sectoral directives, also in the field of midwifery two directives have been issued, namely Council Directive 80/154/EEC[92] and the complementing Council Directive 80/155/EEC on the coordination of training requirements[93].

According to Article 1 (2) of Directive 80/155, midwifery is to be taught in a basic course of three years, as regards new applicants, and in a course of 18 months, as regards qualified nurses wishing to specialize in midwifery. The Directive provides minimum requirements for the training, which, according to Article 2, also may be conducted part-time, as long as the total length and standard of the training remains unimpaired.

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[91] Council Decision 77/454 of June 27th, 1977, setting up an Advisory Committee on Training in Nursing (OJ 1977, L 176/11).

[92] Council Directive 80/154/EEC of January 21st, 1980, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in midwifery and including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1980, L 33/1).

Just as for nurses, a detailed training programme is provided in an appurtenant Annex, comprising *inter alia* theoretical and technical instruction in general subjects and those specific to the profession of midwife, and also practical and clinical training including ante- and post-natal care.

The implementation of these two Directives is supervised, as mentioned above, by the Committee of Senior Officials on Public Health (reference to the Committee may be found in Article 7). An Advisory Committee on the Training of Midwives has, however, also been created by Decision 80/156 of the Council[94].

5.3.2.4 Dental practitioners

Following the established pattern, also in the area of dentistry there have been issued two directives, namely Council Directive 78/686/EEC[95] and the complementing Council Directive 78/687/EEC[96], the latter providing for the coordination of rules on the required training.

According to the provisions of Directive 78/687, the basic requirement for qualifying as dental practitioner is the completion of a five-year full-time course, comprising both theoretical and practical instruction on university, or equivalent, level (Article 1 (2)). The corresponding criteria for practitioners of specialized dentistry is the further completion of a minimum three-year full-time course (Article 2 (1)). Part-time specialized training may be allowed by the Member States, provided it fulfils the standards of the corresponding full-time course (Article 3 (1)). The detailed

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[93] Council Directive 80/155/EEC of January 21st, 1980, concerning the coordination of provisions laid down by Law, Regulation or Administrative Action relating to the taking up and pursuit of the activities of midwives (OJ 1980, L 33/8).

[94] Council Decision 80/156 of January 21st, 1980, setting up an Advisory Committee on the Training of Midwives (OJ 1980, L 33/13).

[95] Council Directive 78/686/EEC of July 25th, 1978, concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1978, L 233/1).

[96] Council Directive 78/687/EEC of July 25th, 1978, concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of the activities of dental practitioners (OJ 1978, L 233/10).

training programme is to be found in the appurtenant Annex and is, in this case, comprised of *inter alia* general medical and medico-biological subjects and subjects specifically related to dentistry.

The implementation of these directives falls under the supervision of the Committee of Senior Officials on Public Health. There does also exist an Advisory Committee on the Training of Dental Practitioners, set up by Council Decision 78/688[97], which is to be an aid to the Commission in assessing the functioning of the system.

5.3.2.5 Pharmacists

The general legislative pattern was repeated also in the field of pharmacy, giving rise to Council Directive 85/432/EEC[98] on coordination of training requirements and Council Directive 85/433/EEC[99] on mutual recognition of diplomas and certificates in the field of pharmacy.

In accordance with Article 2 (3), holders of diplomas in pharmacy must have completed a period of a five-year, full-time training, comprised of at least four years´ theoretical and practical training at university (or equivalent) level and a minimum six-month-period of in-service training in a pharmacy open to the public. Instead of the usual Annex, Article 2 (5) lays down the standard training programme, which in this case consists of theoretical and practical instruction in biology, physics, biochemistry, microbiology, toxicology, legislation and professional ethics, among others.

Article 6 refers to a Pharmaceutical Committee, set up by Council Decision 75/320[100], which, in conjunction with *inter alia* the Commission is

[97] Council Decision 78/688 of July 25th, 1978, setting up an Advisory Committee on the Training of Dental Practitioners (OJ 1978, L 233/15).

[98] Council Directive 85/432/EEC of September 16th, 1985, concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of certain activities in the field of pharmacy (OJ 1985, L 253/34).

[99] Council Directive 85/433/EEC of September 16th, 1985, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy (OJ 1985, L 253/37).

[100] Council Decision 75/320 of May 20th, 1975, setting up a Pharmaceutical Committee (OJ 1975, L 147/23).

to investigate possible difficulties, that might arise in the application of the Directive.

5.3.2.6 Veterinary Surgeons

As regards veterinary medicine, there are two sectoral directives, Council Directive 78/1026/EEC[101] and Council Directive 78/1027/EEC[102], the latter dealing with the provisions on coordination of training requirements.

Article 1 (2) of Directive 78/1027 lays down the basic requirements on veterinary surgeons, which, among others, comprise the completion of at least a five-year, full-time course of theoretical and practical instruction at university (or equivalent) level. The directive does, as customary, contain an Annex, which provides the detailed standard study programme of veterinary surgeons, in this case *inter alia* comprising subjects of basic science (physics, chemistry, biology), clinical science, food hygiene and animal production.

A Council Decision[103], concerning an Advisory Committee on Veterinary Training has also been issued. The aim of the Committee is to ensure the high standard of veterinary training within the Community (Article 2 (1)), whilst, when necessary, providing the Commission and/or the Member States with opinions and advice on matters relating to veterinary training (Article 2 (3)).

5.3.2.7 Architects

[101] Council Directive 78/1026/EEC of December 18th, 1978, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1978, L 362/1).

[102] Council Directive 78/1027/EEC of December 18th, 1978, concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of the activities of veterinary surgeon (OJ 1978, L 362/7).

[103] Council Decision 78/1028 of December 18th, 1978, setting up an Advisory Committee on Veterinary Training (OJ 1978, L 362/10).

As regards the profession of architect, there exists only one directive[104], concerned with mutual recognition of diplomas and certificates in architecture. Due to the great variety of training methods and conditions under which activities in the field of architecture may be exercised in the different Member States, no directive on the coordination of training requirements has been issued.

The numerous problems in this area have been outlined in the preamble of the aforementioned directive. A large difficulty consists of the lack of a legal definition of the activities in the field of architecture, which could be common to all Member States. Moreover, differences in training standards seem to differ not only between Member States, but also within the states themselves, and, finally, not all states have laid down the conditions regulating the undertaking and pursuing the activities in question.[105]

However, Directive 85/384 in general follows the legislative model of the sectoral directives discussed above. Article 1 states the scope of the directive, which is to apply to "activities in the field of architecture, usually pursued under the professional title of architect". No closer definition, explaining the meaning or delimitation of the term "activities", is given. In Articles 3 and 4, recognition of qualifications is made conditional upon fulfilling a minimum four-year, full-time course on university (or equivalent) level, concluded by an examination and, also, on the acquisition of quite a number of enumerated skills.

Doubts concerning fulfillment of the requirements of the directive by a particular diploma are, according to Article 9, to be referred to the Advisory Committee on Education and Training in the Field of Architecture, or, eventually, to the Court of Justice. Articles 10 to 15 provide for mutual recognition of qualifications already obtained in accordance with the

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[104] Council Directive 85/384/EEC of June 10th, 1985, on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985, L 223/15).

[105] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 160.

existing rules or practice of the different Member States (Article 11 provides a detailed enumeration of the diplomas/certificates in question). The remaining provisions deal with issues such as use of academic title, proof of good repute, membership of professional organizations and insurance for reason of professional liability, according to the habitual legislative model.

In the final statements (Article 29), it is laid down that also employed persons, exercising the profession of architect in accordance with Directive 85/384, are covered by Council Regulation 1612/68[106] on free movement of workers and may benefit from its provisions.

5.3.2.8 Lawyers

Also as regards the legal profession, there are numerous issues waiting to be addressed in the area of mutual recognition. For a long time, the harmonization process in this field showed little progress. Difficulties in this area usually arise from the predominantly "home-based" nature of the legal profession (save practice before international courts and institutions) and the differences of the national legal systems. Moreover, the proximity to public service (as judges and public prosecutors are recruited from the legal profession), may also create difficulties.[107]

Nevertheless, two directives[108], Directive 77/249/EEC and Directive 98/5/EEC, have been adopted also in this area. None of them provides for mutual recognition of qualifications as such, addressing instead the issues of providing services and of establishment, respectively. Due to the differences in national legislation, there are no provisions on coordination of the minimum educational standards, that could have laid the ground for mutual

[106] Regulation No 1612/68 of the Council of October 15th, 1968, on freedom of movement for workers within the Community (OJ 1968, L 257/14).

[107] D. Lasok, „The Professions and Services in the European Economic Community", Kluwer Law and Taxation Publishers, 1986, p. 162.

[108] Council Directive 77/249/EEC of March 22nd, 1977, to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977, L 78/17) and Directive 98/5/EC of the European Parliament and of the Council of February 16th, 1998, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998, L 77/36).

recognition. The "recognition" in the case of legal practitioners rests on their legal right to practice in another Member State.[109]

A paradox as regards the practice of legal professions is the limited movement within some Member States, in contrast to the free cross-border movement guaranteed by the Treaty. German lawyers, for instance, are admitted to solely one civil court of law, and are prohibited to take residence or establish themselves outside the district of that court. Protected by the rules of the Treaty, foreign nationals may, however, freely choose the locality in which they wish to establish themselves or provide services.[110]

Returning to the Directives, Directive 77/249 is aimed at liberalization of the activities exercised by lawyers as providers of services. The preamble declares the end of any restrictions (based on nationality or residence) as to provision of legal services, but does also state that it does not contain any provisions on the mutual recognition of qualifications.

In the first paragraph of Article 1, the scope of the Directive is limited to "activities of lawyers pursued by way of provision of services", while the second paragraph provides an enumeration of national professional titles, whose bearers are to be recognized as "lawyers" in the meaning of the Directive[111].

Article 4 (1) lays down that the activities envisaged by the Directive, i.e. representation of clients in legal proceedings or before public authorities, shall be pursued in the host state under the same conditions that apply to lawyers established in that Member State, except for conditions of residence or of registration with a professional organization. Article 4 (2) states that the rules of professional conduct of the host state must be observed. The last paragraph of the Article provides, however, that, as regards other activities than those mentioned in paragraph 1, the exercising lawyer remains subject to the rules of professional conduct of his home state, without prejudice to

[109] Brian Bercusson, „European Labour Law", Butterworths Law in Context Series, 1996, p. 388.
[110] Brian Bercusson, „European Labour Law", Butterworths Law in Context Series, 1996, p. 392.
[111] Notaries public and legal advisors are some of the categories considered excluded from the scope of the Directive.

respect for the rules governing the profession in the host state. The provisions of the host state can be applied only if they are deemed capable of being observed by a lawyer not established in that state.

Article 5 provides *inter alia* for the possibility of Member States to require lawyers, representing clients in legal proceedings, to work in conjunction with a lawyer who practises before the judicial authority in question and may be answerable to it, if necessary. Article 6 provides for the exemption of "in-house lawyers", i.e. lawyers in the salaried employment of undertakings, from representing that undertaking in legal proceedings, under the condition that lawyers established in the host state are likewise exempted. Finally, Article 7 infers an obligation on lawyers providing services to prove their qualifications as lawyers in the meaning of the Directive, at the request of host state authorities.

Directive 98/5, the so called Establishment Directive, had been long awaited when it was finally adopted in 1998. The objectives of the directive are set out in its lengthy preamble, which emphasizes the need of action in this area, due to the fact that only few Member States permit permanent practice by lawyers under their home country title, which, in turn, results in distortion of competition and constitutes an impediment to the freedom of movement.[112]

The basic object of the Directive is, obviously, to facilitate the establishment of lawyers in other Member States than those in which they have obtained their diplomas (Article 1 (1)). Both permanent practice under the home country title of lawyer (Article 2) and by way of integration into the host state legal profession (Article 10) is covered. Article 3 contains provisions on the obligation to register with the competent authority of the host state, as well as on the obligation to be registered with such an authority in the home state. Since the home registration requirement is mandatory in order to fall under the scope of the Directive, whilst some of the Bars of the Member

[112] Hamish Adamson, „Free Movement of Lawyers", Butterworths Current EC Legal Developments Series, 1998, p. 95.

States still persist in removing lawyers that have moved outside their territory, from the national register, this may constitute a problem.[113]

Article 4 makes the distinction between the use of the home state professional title and the professional title of the host state. The aim of this provision is to ensure the proper use of professional titles, in order to minimize the risk of misleading the public, in particular when legal advice is given in areas, in which the lawyer may have no formal qualifications (such as host state law).

Article 5 is one of the basic provisions of the Directive, stating that lawyers practising under their home titles may undertake the same professional activities carried on by lawyers of the host state. Those activities comprise, *inter alia*, the home state law of the lawyer in question, Community and international law and host state law. However, where the law of the host state reserves the representation or defence of a client in legal proceedings to host state lawyers, lawyers practicing under home title may be required to work in conjunction with a lawyer practicing before the judicial authority in question and who would be answerable to it, if necessary (Article 5 (3)).

Article 6 lays down that lawyers practicing under his home professional title nevertheless shall be subject to the host state rules of professional conduct, which are supposed to prevail in case of a conflict between the two. Consequently, Article 7 on disciplinary proceedings apply for lawyers with home professional titles in the same way, as for host state lawyers. However, the Article also provides for contact and cooperation with the home state of the lawyer concerned.

The aforementioned Article 10 is also a very important provision, laying down the assimilation mechanisms for foreign lawyers, enabling those who wish it, to reach full integration with the host state profession. This can be done through the obtaining of dispensation from the conditions of General Directive 89/48/EEC, which shall be given in cases where the

[113] Hamish Adamson, „Free Movement of Lawyers", Butterworths Current EC Legal Developments Series, 1998, p. 97.

lawyer “effectively and regularly”, for a period of at least three years, has practiced the law of the host state together with Community law; the dispensation may also be allowed if the law of the host state has been practised only during a shorter period in the three years mentioned, after making an assessment of the knowledge and experience of the lawyer in question (Article 10 (1) and (3)). Under Article 10 (2), a lawyer practising under home title may also apply for admission to the profession of lawyer of the host state in accordance with General Directive 89/48/EEC, which, however, most probably will require the passing of an aptitude test. The authorities of the host Member State in question may, in accordance with Article 10 (4), refuse to allow a lawyer to benefit from the article in question, on reasoned grounds of public policy, such as disciplinary proceedings or complaints.

In consequence, a “foreign” lawyer seems to have three main options to choose between: the permanent practice of his profession under his home title; the seeking of integration with the legal profession of the host state under Article 10 (1) and (3) of Directive 98/5/EEC, referring to certain periods of practice, or the seeking of integration under Article 10 (2) of the Directive, which implies an aptitude test or adaptation period in accordance with Article 4 (1b) of the first General Directive 89/48, to be examined in the next section.

5.3.3 General directives

Next to the sectoral directives, the EU legislation concerned with recognition of professional qualifications is comprised of three general

directives, i.e. Council Directive 89/48/EEC[114], Council Directive 92/51/EEC[115] and the recent Directive 99/42/EEC[116].

Directive 89/48 on a first general system of mutual recognition concerns the recognition of qualifications obtained when completing higher education of not less than three years´ duration and is based on the idea of mutual trust between Member States. Directive 92/51 on the second General System regards qualifications attested by other diplomas or certifications than mentioned in Directive 89/48/EEC, which it is intended to supplement. Directive 99/42 is concerned with the introduction of recognition mechanisms for professional activities not covered by the two first directives.

As regards Directive 89/48, it is clear that its specific aim is to provide access to professions regulated in other Member States through the recognition of relevant diplomas. Article 1 of the Directive provides definitions of numerous key terms, such as "diploma", "host Member State", "regulated profession", "regulated professional activity", "adaptation period" and "aptitude test". According to Article 2, the Directive is applicable to all Member State nationals wishing to pursue a regulated profession in another Member State. The profession will be considered a regulated one insofar as the exercise of the professional activity, constituting the profession, will be subject to national laws or administrative provisions, requiring possession of a diploma. The Directive is, however, not applicable to professions covered by separate directives on mutual recognition.

Article 3 lays down the basic principle of automatic recognition by the host state, providing that host state authorities may not refuse (on the

[114] Council Directive 89/48/EEC of December 21st, 1988, on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years´ duration (OJ 1989, L 19/16).
[115] Council Directive 92/51/EEC of June 18th, 1992, on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, (OJ 1992, L 209/25).
[116] Directive 1999/42/EEC of the European Parliament and of the Council of June 7th, 1999, establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalization and transitional measures and supplementing the general systems for the recognition of qualifications (OJ 1999, L 201/77).

grounds of inadequate qualifications) to authorize a non-national to undertake a regulated profession under the same conditions as the nationals of that state, if the applicant is in possession of a relevant diploma or has pursued the profession for at least two years during the previous ten years in a state, where the profession is not regulated, if the applicant also can present evidence of formal qualifications equivalent to a diploma.

Article 4 comprises the exception to the aforementioned basic principle, in certain cases providing for the imposition of additional requirements on evidence of professional experience of no more than four years (paragraph 1a), alternatively requiring the applicant to take an aptitude test or to complete an adaptation period not exceeding three years (paragraph 1b). Usually, the applicant is free to choose between the aptitude test and the adaptation period, but, when it comes to professions that require precise knowledge of national law when giving advice to clients, such as for instance the legal profession, it is for the Member State to decide.

The remaining provisions to be noted relate *inter alia* to requirements of good repute and evidence of physical and mental health (Article 6), the use of professional titles (Article 7), and documentation accepted as proof, as well as procedures in the examining of applications (Article 8).

According to Council Recommendation 89/48/EEC[117], third country diplomas awarded to nationals of Member States should be recognized as well, giving the holders of these diplomas right to undertake and pursue regulated professions within the Community.[118]

Through Directive 92/51 on a second general system, which closely follows the model of Directive 89/48, the Community legislators have extended the system of mutual recognition to professions with slightly lower training requirement levels. Directive 92/51 distinguishes so called level one and

[117] Council Recommendation 89/49/EEC of December 21st, 1988, concerning nationals of Member States who hold a diploma conferred in a third State (OJ 1989, L 19/24).

[118] „Wzajemne uznawanie dyplomow." Anna Matuszak in „Unia Europejska. Serwis Informacyjny." Nr. 3 (03) Kwiecien 2000, Agencja Unia-Press, Warszawa, ISSN 1509-3069, p. 159.

level two training, which is covered by the Directive, level three training being covered by Directive 89/48. [119]

According to Article 1 (1b), Directive 92/51 provides for recognition of certificates, showing that the holder, after having followed a course of secondary education, has completed a course of education and training provided at an educational establishment or on the job (level one). The Directive also provides (in Article 1 (1a)) for recognition of diplomas, showing that the holder has completed either a post-secondary course of at least one year´s duration or one of the educational and training courses listed in an Annex to the Directive (level two).

According to Articles 3 and 5, such certificates and diplomas are to be recognized in host states; compensatory measures, such as adaptation periods (not exceeding three years) or aptitude tests, may, however, be required from applicants, in cases where the training received by them is found to differ substantially from that provided in the host state (Article 4).

In Articles 5 and 9, the Directive also provides for possible conflict between the two levels of training, which may occur if a state only requires level one training for a certain profession, while another requires level two for the same profession. In such a case, the applicant would have to take an aptitude test or complete an adaptation period.

As regards the most recent general directive, Directive 99/42, it generally repeats the legislative pattern of the two aforementioned Directives. It extends the system of recognition of qualifications to activities not covered by the directives on the first and second system, the activities, however, being of a quite different character than those in the earlier issued directives. The activities, to be found on several lists in the appurtenant Annex, are almost all related to industry and trade, and concern for instance food manufacturing, the beverage industry, the buying and selling of goods by itinerant tradesmen, activities of self-employed persons in retail trade,

[119] Catherine Barnard, „EC Employment Law", Oxford EC Law Library Series, 2nd edition, Oxford University Press, 2000, p. 164.

activities in wholesale trade and activities of intermediaries in commerce, industry and small craft industries etc.

The Directive provides for recognition of formal qualifications awarded by another Member States, recognition of professional qualifications on the basis of professional experience acquired in another Member States and recognition of other professional qualifications obtained in other Member States.

5.3.4 Case law of the Court of Justice

The question of mutual recognition of qualifications has been considered by the Court of Justice on numerous occasions.

It all started with the case of *Thieffry*[120], a Belgian advocate and holder of a Belgian legal diploma, who was refused admission to the Paris Bar on the ground that he lacked a French diploma evidencing his degree. The refusal did not acknowledge the fact that Mr. Thieffry had obtained recognition of his diploma by a French university as being equivalent to a French law degree and had successfully passed a French state examination (Qualifying certificate for the profession of advocate). The Court ruled that the denial of admission to the Paris Bar constituted an unjustifiable restriction on the freedom of establishment guaranteed by the Treaty (former article 52, currently 43), notwithstanding the absence, at the time, of special directives regulating the mutual recognition of qualifications in accordance with Treaty article 57 (currently 47).[121]

The case of *Thieffry*, together with the subsequent case of *Patrick*[122] highlighted the problem of mutual recognition and the necessity of action within this area. Patrick was a British architect, who had applied for authorization to practise in France, but was denied on the grounds that the

[120] Case 71/ 76 *Jean Thieffry v. Conseil de l´ordre des avocats à la Cour de Paris* [1977] ECR 765.
[121] Craig, Paul & De Burca, Grainne, ”EU Law. Text, Cases and Materials.”, United Kingdom, 1998, p. 735.
[122] Case 11/77 *Patrick v. Ministre des Affaires Culturelles* [1977] ECR 1199.

granting of such authorization was exceptional and that there existed no reciprocal convention in this area between France and Great Britain. The Court ruled that a national of a Member State in possession of a certificate recognized as equivalent to certificates required in the host state (a French decree had recognised Patrick´s certificate as equivalent), had the right to be admitted to and the right to practice the profession in question on the same terms as the host state nationals, without having to meet any additional conditions.

Another important case was the case of *Klopp*[123], a German lawyer, who was refused access to the Paris Bar on the grounds that maintaining his practice in Germany was contrary to standing French practice, requiring lawyers to have only one professional residence, placed in the district where they are established. The Court ruled that the practice in question would prevent lawyers from other Member States in the exercise of their right of establishment through integration in the legal profession of the host state. The effect of *Klopp* was a serious blow to internal practices of „unicité de cabinet", which existed not only in France, but also in Germany and some other Member States, at the same time constituting a strengthening of the right of lawyers to maintain offices in more than one Member State.[124]

Another case in this area is the case of *Gullung*[125], who, after having practised as a notary in France and been denied access to a number of French Bars, finally registered with a German Bar and claimed the right to practise in France on the basis of his status of German lawyer. The Court ruled that where a host Member State requires lawyers to be registered at a (national) Bar, it may impose this condition also on „foreign" lawyers, availing themselves of the right of establishment under the Treaty. The claim of Gullung, that an admission as a lawyer in Germany was automatically equivalent to admission as a lawyer in France, was denied.

[123] Case 107/83 *Ordre des Avocats au Barreau de Paris v. Klopp* [1984] ECR 2971.
[124] Hamish Adamson, „Free Movement of Lawyers", Butterworths Current EC Legal Developments Series, 1998, p. 36.
[125] Case 292/86 *Gullung v. Conseil de l´Ordre des Avocats du Barreau de Colmar et de Saverne* [1988] ECR 111.

This was, however, a rather complicated case, leaving a number of issues unclear.

Many doubts from *Gullung* concerning cross-border practice were, however, cleared in the case of *Gebhard*[126]. Gebhard was a German lawyer, against whom disciplinary proceedings were brought by the Bar of Milan for pursuing the profession of lawyer in Italy on a permanent basis in his own law firm and using the title of *avvocato*, though he had not been admitted to the Milan Bar and had not obtained recognition of his qualifications in Italy. The ruling of the Court implied *inter alia* that rules governing a certain profession in a host Member State should be complied with, but that the Member States also must take account of the equivalence of diplomas and, when necessary, compare the national reqiurements with those of the person concerned. Furthermore, the Court ruled that any national measures which might hinder the exercise of the basic freedoms guaranteed by the Treaty, must fulfil four conditions, namely: apply in a non-discriminatory manner, be justified by requirements in the general interest, be suitable to secure the attainment of their aim and not exceed what is necessary. This judgment confirmed the right of lawyers to establish themselves under home title in other Member States and cleared numerous concepts in the area of services, integration and establishment.[127]

The case of *Heylens*[128] concerned a Belgian in possession of a Belgian football trainer´s diploma, who had been refused recognition of the equivalence of his diploma by the French Ministry of Sport, without obtaining the reasons for the decision, and was later prosecuted for continuing to practise as trainer. The Court ruled that the authorities should make an assessment of the equivalence of the diploma, based solely on the level of knowledge and qualifications of the holder, and continued stating that, where employment depended on the recognition of qualifications, it must be possible to acquire knowledge of the reasons for a denial of

[126] Case C-55/94 *Gebhard v. Consiglio dell´Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I-4165.
[127] Hamish Adamson, „Free Movement of Lawyers", Butterworths Current EC Legal Developments Series, 1998, p. 43.

recognition by the authorities, and that the decision must be subject to judicial review.

This line of reasoning was developed in the rather significant case of *Vlassopoulou*[129], concerning a Greek national in possession of a Greek law degree, who had practised German law in Germany as legal adviser for several years, but was denied admission to the German Bar, as well as licence to practice as lawyer, on the grounds that she had not passed relevant German exams and consequently had to lack the necessary qualifications. The Court ruled that national requirements, although applied without national discrimination, could have an impeding effect on the right of establishment guaranteed by the Treaty, and stated that the German authorities had to take into consideration the knowledge and qualifications already acquired by the applicant and to contrast it to the requirements of national legislation. If found equivalent, the qualifications concerned must be recognized, if not, the host state must assess if the knowledge or exercised practice, acquired in that state, makes up for the lacking qualifications.

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[128] Case 222/86 *UNECTEF v. Heylens* [1987] ECR 4097.
[129]Case 340/89 *Vlassopoulou v. Ministerium fur Justiz, Bundes- und Europaangelegenheiten Baden-Wurttemberg* [1991] ECR 2357.

6 Polish Law Harmonization in the area of Mutual Recognition of Professional Qualifications

6.1 Implementation of the General Directives on recognition of qualifications

Currently, Poland is generally in lack of a system of recognition of professional qualifications as defined in the Community directives. Instead, there is a system based on nostrification of diplomas and certificates which applies to all foreign citizens, unless international agreements provide otherwise.

In order to implement the system of general recognition of professional qualifications into Polish legislation, there was a need of drafting and adopting legal acts harmonising Polish legislation with Directives 89/48/EEC, 92/51/EEC and 99/42/EC. Furthermore, a list of regulated professions falling within the scope of Directives 89/48/EEC and 92/51/EEC and also the professional activities covered by Directive 99/42/EC, had to be drawn up. There was also a need of developing new procedures and structures, able to take on mutual recognition questions after Poland´s accession to the European Union.[130]

It was decided that the implementation of Directives 89/48/EEC and 92/51/EEC was to be carried through by issuing a new horizontal law[131], amending all Polish legal acts related to regulated professions, exempting,

[130] Screening A-List, Chapter 2, Freedom of Movement of Persons, Mutual Recognition of Professional Qualifications. Social Security Schemes. Ministry of Health and Social Welfare, Print Date: 17/03/1999, pp. 3 – 4.

obviously, those covered by sectoral directives. This new law on recognition of qualifications acquired in EU Member States for pursuit of regulated professions opens up the practice of regulated professions in Poland to EU citizens, in accordance with Directives 89/48/EEC and 92/51/EEC. This law was adopted by the Polish Parliament, the Sejm, during the last months of 2001 and will enter into force on the date of accession.

The legislative model of the law in question corresponds closely to the one used in the Community General Directives. In short, the law provides for the recognition of professional qualifications obtained by nationals of Member States within the Community, as regards regulated professions and in accordance with the conditions laid down (Article 1). In Article 2, the law provides for recognition of all three levels of training, covered by Directives 89/48/EEC and 92/51/EEC. Article 4 defines the Polish authorities, namely appropriate government ministers, central agencies and professional self-governance organs, that are to be competent to accept and consider applications for recognition of professional qualifications, and also issue binding decisions.

Remaining articles deal with the procedure of application for recognition, fulfillment of training requirements (in accordance with Directives 89/48/EEC and 92/51/EEC), presentation of documents, requirements of compensation measures (aptitude tests, adaptation periods, proof of experience), use of title, proof of good character and, finally, the internal administration monitoring the implementation of the legal act in question. The provisions of the legal act in question do closely and in detail follow the provisions of both General Directives.

The Polish Minister of Education is obliged to ensure a uniform application of the rules on general recognition. Assisting him in this task is, *inter alia*, the Polish NARIC Centre (National Academic Recognition Information Centre), active since January 1st, 1999, and developed within the frames of the existing Bureau of Academic Recognition and

[131] Law of April 26th, 2001 on the rules governing the recognition of qualifications acquired in EU Member States for the pursuit of regulated professions (Journal of Laws 2001, No.

International Exchange, to provide information on the system of recognition of qualifications in Poland and the EU.[132]

Due to the specific nature of the third, recently issued Community Directive 99/42/EC, supplementing the two general systems of recognition of qualifications of Directives 89/48/EEC and 92/51/EEC, the drafting of rules on its implementation has been entrusted to the Polish Ministry of Industry, as opposed to the Ministry of Education. The Ministry has prepared a project of a separate legal act, to implement Directive 99/42/EC into Polish legislation. The legislative model used in the project is very similar to the ones described above. Attached to the project is quite an extensive Annex, containing a list of activities covered by the law-to-be, corresponding, of course, to Directive 99/42/EC. The activities comprised are connected to, for instance, the textile industry, construction, fisheries, the beverage and food manufacturing industries, the chemical industry, the glassworks industry, the steel industry, but also the buying and selling of goods by itinerant tradesmen, retail trade and provision of services by hairdressers.

The project[133] was approved by the Council of Ministers at the end of 2001, and was adopted by Parliament on May 10th this year. It has, however, not yet been officially published in the Polish Journal of Laws. The new law will enter into force on the day of Poland´s accession to the European Union.

The three Community directives mentioned above will also be implemented into Polish legislation by a number of executive acts to Polish laws, consisting mainly of ordinances of the Minister of Education concerning, *inter alia*, the conditions and procedure of recognition of higher-education diplomas and certificates obtained abroad, the designation

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87, Item 954).

[132] Screening A-List, Chapter 2, Freedom of Movement of Persons, Mutual Recognition of Professional Qualifications. Social Security Schemes. Ministry of Health and Social Welfare, Print Date: 17/03/1999, pp. 10 – 11.

[133] Ustawa z dn. 10 maja 2002 r. o zasadach uznawania nabytych w panstwach czlonkowskich Unii Europejskiej kwalifikacji do podejmowania lub wykonywania roznych zawodow.

of appropriate administrative bodies, the organization of adaptation periods and the offering of aptitude tests.

6.2 Implementation of the Sectoral Directives

The sectoral directives will be implemented by way of amendments of appropriate Polish legal acts, governing the eight professions regulated by means of sectoral directives.

The modification of Polish legislation which is to be brought about in this area will imply the abolishment of, in particular, requirements of Polish nationality and domicile, wherever, under the existing laws, they constitute preconditions for the practice of regulated professions. The competence of the professional self-government organs will be modified so as to ensure that all EU-citizens in possession of the professional qualifications required by law, will be admitted to practice of their professions under the same rules as Polish citizens. [134]

Full approximation of Polish law to Community legislation as regards medical and paramedical activities will be obtained by introducing the principle of equal treatment of Polish and Community citizens in the granting of licenses to practice. The requirement on sufficient knowledge of the Polish language for the exercise of these professions in Poland will be upheld (by for example creating an obligation to complete a language course); current provisions on mandatory passing of a formal language test will, however, be lifted, as such tests have been considered incompatible with Community law.[135]

It is important to bear in mind that all amendments made in Polish legislation in expectation of the EU accession will apply towards

[134] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 41.

[135] Informacja dla Sejmowej Komisji Zdrowia na temat przystosowania polityki zdrowotnej Polski i harmonizacji prawa z zakresem ochrony zdrowia do wymogow Unii Europejskiej, Ministerstwo Zdrowia, Warszawa, listopad 1999, pp. 90 – 91.

Community nationals only. Third country nationals will also in the future be submitted to the "old", restrictive regulations.

6.2.1 Medical Doctors and Dental Practitioners[136]

In Polish legislation in the medical area, the notion of "doctor", comprises both medical doctor and doctor of stomatology, i.e. dental practitioner. These two professions are regulated jointly in the two main legal acts governing the exercise of the profession of doctor (Articles 1 and 3, Law on the profession of Doctor and Article 3, Law on Chambers of Physicians). The following description will consequently not distinguish between these two, using the term "doctor" for both professions.

The profession of doctor consists of two main legal acts, namely the Law of December 5th, 1996, on the profession of Doctor[137] (Journal of Laws 1997, No. 28, Item 152), and the Law of May 17th, 1989, on Chambers of Physicians[138] (Journal of Laws 1989, No. 30, Item 158), both latest amended by the Law of April 18th, 2002, amending the law on the profession of Doctor and other laws[139] (Journal of Laws 2002, No. 21, Item 204). There is also a number of executive acts in this area, consisting of ministerial ordinances, the most important concerning the necessary command of the Polish language, lists of documents certifying formal qualifications for the exercise of the profession of doctor and lists of academic titles and degrees which may be used in Poland by doctors who are nationals of one of the Member States. Many of these executive acts are in the process of being adopted by Parliament.

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[136] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, section 2.9.
[137] Ustawa z dn. 5 grudnia 1996 r. o zawodzie lekarza (Dz.U. z 1997 r, Nr. 28, Poz. 152).
[138] Ustawa z dn. 17 maja 1989 o izbach lekarskich (Dz.U. z 1989 r, Nr. 30, Poz. 158).
[139] Ustawa z dn. 18 kwietnia 2002 r. o zmianie ustawy o zawodzie lekarza (Dz.U. z 2002 r, Nr. 21, Poz. 204).

The current regulations concerning medical doctors and doctors of stomatology in Poland are of the shape outlined in the following.

On the basis of the Law on Chambers of Physicians, a self-government organ concerning the professions of medical doctor and doctor of stomatology has been created (Article 1 of the Law on Chambers of Physicians). It is an independent organ, subject only to the provisions of the aforementioned law in the exercise of its tasks, which are laid down in Article 4. The organisational units of the self-governance are comprised of one Main Chamber of Physicians and several Regional Chambers of Physicians (Article 1 (3)). The law in question regulates *inter alia* the rights and obligations of the members of the Chamber, the competence and principles of functioning of the organs of the self-governance and the professional responsibility of doctors. A new provision in Article 61 has been adopted, regarding the flow of information between Member States of the European Union on possible improper exercise of the medical profession by individuals; this provision will, however, just as almost all legal amendments carried through by reason of the coming enlargement, enter into force first on the day of accession of Poland to the European Union.

According to Article 5 (1) of the law on the profession of doctor, the Regional Board of Physicians can grant licences to exercise the profession of doctor to a person who is: a Polish national, in possession of a diploma awarded by a Polish seat of learning or a foreign university (provided that the diploma is recognized in Poland according to relevant provisions), is legally capable, has completed a one-year post-diploma internship[140] and at the end of that period has passed a state examination, is considered to be of "good ethical standing" and, finally, in a satisfactory state of health. In order to obtain a license to practice, the applicants have to present to the Regional Board of Physicians, adequate to the region where they wish to practice, documents proving that the conditions are met (Article 6 of the law on the

[140] In accordance with Article 15, paragraph 5, of the law on the profession of doctor, it is for the Minister of Health to, by way of ordination, lay down *inter alia* the programme to be completed and the duration of the internship period, as well as the procedure of recognition of equivalence of an internship, in full or in part carried through outside Poland.

profession of doctor). The Board can then grant both full and limited licences. A limited licence can be granted in cases where the internship requirement hasn´t been met. All doctors holding a licence, notwithstanding the grade, are subject to registration with the professional register, kept by the Regional Board of Physicians (Article 8 (1)of the law on the profession of doctor). Article 8 (2) of that same law provides for the Main Board of Physicians to lay down the detailed procedure, both as regards the granting of licence to practice and registration.

According to Article 10 of the law on doctors, additional training is required by law in cases where a doctor wishes to start exercise his profession after more than five years from the moment when he was awarded his diploma. The same requirement is upheld towards doctors that have less than five years´ experience of medical practice and wish to start practice again after taking a pause.

Specialist status is awarded to doctors after completed specialization training completed in accordance with Article 16 of the law on the profession of doctors, and after passing a state examination or, in cases of specialist status being awarded outside Poland, after recognition of the foreign title of specialist in accordance with relevant provisions.

The current conditions of exercise of the profession of doctor by foreign nationals in Poland are as follows:

According to Article 7 of the law on the profession of doctor, a foreign national may be granted licence to practice in Poland if he possesses a medical diploma (either awarded by a Polish seat of learning or awarded outside Poland, provided it has been recognized in accordance with relevant provisions), is legally capable, has completed the post-diploma internship and passed the state examination mentioned above, and also if he is considered to be of a "good ethical standing" and is in a state of health, allowing him to properly exercise his profession. Foreign nationals may also be granted limited licence to practice, if the internship requirement is not met. However, foreign nationals are required to demonstrate the linguistical knowledge necessary in order to properly practice their profession in Poland,

which currently entails the passing a mandatory state examination (Article 5 (2)).

However, according to Article 9 of that same law, a qualified doctor lacking licence to practice in Poland may, provided he holds a licence to practice in another country, upon invitation by a doctor holding a licence to practice in Poland and after obtaining permission from the Regional Board of Physicians concerned, partake in medical consultations and perform necessary operations.

A comparison of the two main Polish laws in this area with Directive 93/16/EEC, shows that Polish legislation does not fully conform with Community law. The first issue to be discussed in this context concerns the principle of non-discrimination on grounds of nationality. The Polish provisions envisage persons applying for licences to practice the profession of doctor to be of Polish nationality. As discrimination on grounds of nationality is prohibited under Article 12 (former Article 6) of the EEC Treaty, the Polish provisions should not make a difference between Polish nationals and nationals of the Member States of the European Union.

Next, there is the problem of the concepts of freedom of establishment and freedom to provide services. Polish law does not distinguish between the two concepts of provision of services and establishment. Consequently, it requires mandatory membership of the professional self-governance organization of all persons holding a licence to practice the profession in question, notwithstanding the permanent or temporar character of the activities exercised (Article 8 of the law on the profession of doctor). However, doctors of the Member States of the European Union, that temporarily are providing services on Polish territory, should be exempted from the requirements of possessing a licence and being submitted to registration (unless the registration requirements conform with Articles 17 and 18 of Directive 93/16/EEC, providing *inter alia* for pro forma or automatic temporary registration). The provisions concerning the partaking of a foreign doctor in medical consultations conducted in Poland constitute a clear example of provision of services and should as such be

submitted to regulations governing the freedom of providing services. The Polish provisions envisaging mandatory invitations to such consultations, as well as obtaining permissions from the Regional Boards of Physicians must also be deemed incompatible with Article 54 (former 65) of the EEC Treaty.

As regards training requirements, Polish training standards for medical doctors has been found generally to conform to the requirements of the Community directives.The training standards for doctors of stomatology (dental practitioners) are even broader than those provided for in Community legislation, which, in any case, does not prove contrary to the Community directives. However, it is important to continue to monitor the educational programmes of the Medical Academies, so as to ensure that both the six-year medical studies and the five-year stomatology studies, as well as the post-diploma internships and additional specialist training programmes do not cease to meet the minimal requirements laid down in Directives 93/16/EEC and 78/686/EEC and 78/687/EEC.[141]

Unacceptable requirements have also been found in Articles 10 and 11 of the law on the profession of doctor, concerning the additional training period which is required of doctors who haven´t exercised the profession for over five years and also in cases of suspicion of possessing unsatisfactory professional qualifications. Amendments will probably also have to be made to Article 12 of the law on the profession of doctor and the Ordinance of the Minister of Health of September 2nd, 1991, both concerning the possibility to withdraw the right of exercise of the profession of doctor on the ground of physical uncapability to perform the profession. Article 12 of Directive 93/16/EEC provides for such exclusion only in cases of serious professional misconduct in connection with pending disciplinary procedures or conviction of criminal offences, which is why the Polish legislator, if he wishes to maintain a provision on exclusion from the profession, should adjust the existing provision to comply with the Directive.

[141] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 179.

Also the requirement of completing a one-year professional internship period to obtain a licence to practice is incompatible with Community law and will have to be abolished towards Community citizens on accession to the European Union.

Finally, there is the question of linguistical abilities. Current legislation (Article 5 (2) and 7 of the law on the profession of doctor) infers on a foreign national, wishing to practice in Poland, a requirement to pass a state language examination in order to prove the possession of satisfactory knowledge of the Polish language. This requirement is incompatible with Community law and will be abolished towards nationals of the Member States of the European Union, *inter alia* by amendment of the Ordinance of the Minister of Health of February 18th, 1998, on the procedure of the examination of the Polish language, undertaken by foreign nationals applying for licence to practice as medical doctors or dental practitioners in Poland (Journal of Laws 1998, No. 37, Item 213).[142] Towards other foreign nationals, however, the requirement most certainly will be upheld. [143]

The necessary amendments mentioned above have been adopted by Parliament during the long process of adjustment that the laws in this area have been subject to. The law on the profession of doctor has been in and out of Parliament with an impressive frequency during the last three or four years. As already mentioned, it is the aim of the government that all necessary amendments to Polish legislation be introduced by the end of December, 2002, despite the fact that they will not enter into force earlier than on the date of Poland´s accession to the European Union.

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[142] Rozporzadzenie Ministra Zdrowia i Opieki Spolecznej w spr. sposobu i trybu przeprowadzania egzaminu z jezyka polskiego, skladanego przez cudzoziemca ubiegajacego sie o prawo wykonywania zawodu lekarza, lekarza stomatologa lub ograniczone prawo wykonywania zawodu lekarza, lekarza stomatologa (Dz.U. 1998, Nr. 37, Poz. 213).

[143] Screening A-List, Chapter 2, Freedom of Movement of Persons, Mutual Recognition of Professional Qualifications. Social Security Schemes. Ministry of Health and Social Welfare, Print Date: 17/03/1999, pp. 2 and 17.

6.2.2 Nurses and Midwives

Just as in the case of doctors, the professions of nurse and midwife are regulated jointly in Polish legislation, by way of two main legal acts, namely the Law of July 5th, 1996, on the profession of nurse and midwife[144] (Journal of Laws 1996, No.91, Item 410), most notably modified by the Law of February 3rd, 2001, amending the Law on the profession of nurse and midwife[145] (Journal of Laws 2001, No. 16, Item 169) and the Law of April 19th, 1991, on professional self-government of nurses and midwives[146] (Journal of Laws, 1991, No. 41, Item 178).

On the basis of the Law of April 19th, 1991, on professional self-government of nurses and midwives, a professional and independent self-govenment organization was created to safeguard the interests of these two professions. The organisational units of the self-government consist of the Main Chamber of Nurses and Midwives and several Regional Chambers of Nurses and Midwives. The law regulates the tasks and structure of the self-government organization, the ways of functioning of the self-government organs, the rights and obligations of the members of the organization and also questions of professional responsibility.

According to Article 11 (2) of the law on the profession of nurse and midwife, licence to practice can be granted by the Regional Board of Nurses and Midwives to a person who is: a Polish national, in possession of a diploma of a school of nursing or midwifery, obtained either in Poland or abroad (provided that the foreign diploma is recognized in Poland according to relevant provisions), has completed a one-year post-diploma internship, is legally capable and in a satisfactory state of health. Limited licences are granted in cases where the internship requirement hasn´t been fulfilled (Article 11(3)). In Article 15 it is laid down, that additional training is

[144] Ustawa z dn. 5 lipca 1996 o zawodach pielegniarki i poloznej (Dz.U. 1996, Nr. 91, Poz. 410).
[145] Ustawa z dn. 3 lutego 2001 r. o zmianie ustawy o zawodach pielegniarki i poloznej (Dz.U. 2001, Nr.16, Poz. 169).

required in cases where the person concerned hasn´t practiced the profession for over five years or where at least five years have passed from the moment of completion of the internship period. Nurses and midwives may also, in accordance with Article 25, keep individual practice after obtaining permission from the appropriate Regional Board of Nurses and Midwives. Permission is granted if the person concerned is in possession of a licence to practice and has at least two years of experience.

Foreign nationals can also be granted licence to practice by the appropriate Regional Board of Nurses and Midwives under Article 13, provided that they are in possession of a Polish residence permit, a satisfactory knowledge of the Polish language (to be demonstrated), a diploma of a Polish or foreign school of nursery or midwifery (foreign schools must be recognized according to separate provisions), a certificate of the holding of a licence to practice in a country outside Poland, be in possession of legal capacity and in a state of satisfactory health. Licence can also be granted even if the residence requirement isn´t met, provided that all other conditions are fulfilled. If only the health, legal capacity and diploma requirements can be met, a limited licence can be granted. Furthermore, just as in the case of doctors, qualified nurses and midwives, possessing licence to practice in a country outside Poland, may partake in consultations and perform necessary operations, provided an invitation has been issued by Polish hospitals, scientific institutions or one of the Polish Boards of Nurses and Midwives.

When comparing the Polish regulations in this area with the law of the Community, and especially with Community Directives 77/452/EEC, 77/453/EEC, 80/154/EEC and 80/155/EEC, non-compliance in important fields become apparent.

First, there is discrimination on grounds of nationality, as regards the provisions requiring applicants for a licence to practice to be of Polish nationality. It is only by way of exemption that foreign nationals, holding a

[146] Ustawa z dn. 19 kwietnia 1991 o samorzadzie pielegniarek i poloznych (Dz.U. 1991, Nr. 41, Poz. 178).

residence permit, can obtain licence to practice in Poland. Both the nationality requirement, as the requirement of holding a residence permit in Article 17 are incompatible with the EEC Treaty. Furthermore, it must be ensured, that the condition of demonstrating necessary language skills in Article 13 not will be used in order to restrict access to the profession. It is a delicate balance of not setting extensive requirements, while at the same time making sure that the persons concerned have acquired the linguistic knowledge necessary for the exercise of their profession. It may pose some difficulties to create a satisfactory official control system in this respect.[147]

Also unacceptable from the Community point of view are the provisions of Articles 14 and 15 requiring invitations for foreign professionals to partake in consultations and the requirement of additional training after a pause of more than five years in exercising the profession in question. Requirements of mandatory membership in the professional self-government organization of nurses and midwives do also pose problems in cases of (temporary) provision of services.[148]

The training programmes of nurses and midwives in Poland have not been considered to reach Community standards, as they comprise fewer hours of training. A new educational programme for nurses has, since 1996, therefore, gradually been introduced in Poland. Preparations are underway for the introduction of a new training programme for midwives, meeting Community requirements.

Finally, Polish provisions should regulate the exercise of the professions of nurse and midwife in a manner distinguishing between temporary and permanent practice (provision of services and establishment), and adjust the requirements connected to these two forms of practice (for instance mandatory registration) accordingly.

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[147] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 198.

[148] Ustawa z dn. 19 kwietnia 1991 o samorzadzie pielegniarek i poloznych (Dz.U. 1991, Nr. 41, Poz. 178).

As mentioned above, the 1996 Law on the profession of nurse and midwife was amended by another law of February 3rd, 2001. The issues discussed above have been rather satisfactorily resolved, *inter alia* by not letting certain requirements apply to Community citizens (from the moment of accession) but towards third country citizens only.

New provisions have been adopted, creating *inter alia* a whole new system of higher level-education in Poland for nurses and midwives, which is to render total equivalence to Polish and Community standards in this respect, also inferring an accreditation obligation on Polish higher schools and faculties to ensure fulfilment of Community minimal training standards. [149]

There are also new provisions regulating the use of foreign professional and academical titles (Articles 8 and 10 of the Law on the profession of nurse and midwife) and setting a time-frame of three months for Polish authorities to provide Community nationals with decisions on licence to practice.The requirements for Community citizens to obtain a licence to practice have been notably alleviated (Article 11 of the aforementioned law). According to the amended Article 25, licence for individual practice is to be granted only on the basis of possessing a licence to practice, without requiring the previous two years of experience. The internship requirement in Article 9 (1) is only to be upheld towards persons graduating from Polish post-secondary schools. Recruitment to these schools is to cease in 2003, as the new higher-level educational system for nurses and midwives is considered to be implemented by then.

Some differentiation between the provision of services and establishment has also been carried through, bringing about an alleviation in the requirements of temporary practice. This can be seen for instance in Article 11 of the law on the profession of nurse and midwife, which requires nurses and midwifes, already possessing licence to practice in one of the

[149] Kadalska, Ewa, Regulacje prawne zawodu pielegniarki i poloznej w swietle dyrektyw Unii Europejskiej, in "Zdrowie i Zarzadzanie", Tom III, Nr 5/2001, Krakow, ISSN 1506 - 882X, p. 11.

Community countries and wishing to provide services in Poland, only to inform the appropriate Board of Nurses and Midwives and to produce the licence in question. As regards the question of linguistical abilities, Article 11 (8) requires the Minister of Health to define the precise extent of knowledge of the Polish language, which is to be required by all Community citizens wishing to practice the professions of nurse and midwife, however, without inferring on this group an obligation to undergo verification of their skills in this respect.[150]

6.2.3 Pharmacists

The profession of pharmacist is regulated in Polish legislation by the Law of April 19th, 1991, on Chambers of Pharmacists[151] (Journal of Laws, 1991, No. 41, Item 179) , complemented by a number of executive acts.

The current provisions lay down the following criteria for obtaining a right to practice as pharmacist: the person in question must be of Polish nationality, hold an appropriate diploma that has been awarded either in Poland or abroad (foreign diplomas must be recognized according to separate provisions), have completed a one-year internship in a pharmacy, be legally capable and be registered with the appropriate Regional Chamber of Pharmacists (Article 4 (1) of the Law on Chambers of Pharmacists). The Regional Chambers of Pharmacists are obliged to keep registers of persons exercising the profession of pharmacist (Article 15).

Foreign nationals, wishing to obtain licence to practice in Poland, can, provided they are in possession of an appropriate diploma obtained in Poland or abroad (foreign diplomas must be recognized as mentioned above), have fulfilled the internship requirement, are legally capable and have demonstrated a sufficient fluency of the Polish language, be granted

[150] Kadalska, Ewa, Regulacje prawne zawodu pielegniarki i poloznej w swietle dyrektyw Unii Europejskiej, in "Zdrowie i Zarzadzanie", Tom III, Nr 5/2001, Krakow, ISSN 1506 - 882X, p. 13 and 14.
[151] Ustawa z dn. 19 kwietnia 1991 r. o izbach aptekarskich (Dz.U. 1991, Nr. 41, Poz. 179).

permission by the Minister of Health to practice their profession on the conditions stated in the permit (Article 4 (2)).

The law also contains (in Article 17) the usual provision on additional training for pharmacists that never started practicing during the first five years after graduation or have had a pause of at least five years in the practice of their profession. Besides the provisions mentioned, the law generally is concerned with the tasks and principles of functioning of the professional self-government organs, the rights and obligations of its members and questions of professional liability.

As regards conformity with Community legislation, there are discrepancies at a few points. Traditionally, there is discrimination on grounds of nationality, which must be abolished. Secondly, the Polish provisions should be adjusted so as to pose slightly different requirements towards foreign nationals providing services of a temporary nature (most notably as regards requirements of registration and membership of the self-government organization) than towards foreign nationals wishing to establish themselves in Poland.[152]

As regards education, the Polish training programmes of pharmacists have been considered to generally conform to the relevant Community standards, outlined in Directives 85/432/EEC and 85/433/EEC. However, the current requirement of completing a one-year internship for pharmacy graduates cannot be upheld towards Community citizens. Also the provisions on additional training in Article 17 of the law in question have proved unacceptable to the Community.

At present, a new legislative project on the amendment of the Law on Chambers of Pharmacists has been submitted to Parliament (submission was made on April 8th, 2002).The project in general presents the necessary qualifications for the exercise of the profession of pharmacist, as well as the regulations on obtaining and loss of professional privileges. The project

[152] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 209.

introduces, *inter alia*, a six-month period of practical training into the education programme of Polish pharmacists, which is to make up for the coming abolition of the one-year internship requirement. There are also provisions envisaging the self-government organs of pharmacists after accession merely to confirm the right of a Community national to exercise the profession of pharmacist, provided he presents an appropriate diploma, is legally capable, is considered to be of "good ethical standing" and in a satisfactory state of health, and, finally, in a satisfactory command of the Polish language (a personal declaration on this matter should be submitted to the Board of Pharmacists). Such confirmation, or denial to confirm, must be given within three months from the moment of application. There are also provisions on the use of professional and academical titles, professional liability and the flow of information between Member States as regards the proper practice of the profession.

Together with the legal act project, a number of executive acts were submitted to Parliament. They are concerned with, *inter alia,* the form of documents that are to certify licence to practice, the procedures connected to the keeping of a register of pharmacists and issues of professional liability.[153]

6.2.4 Veterinary Surgeons

The profession of veterinary surgeon is regulated by the Law of December 21st, 1990, on the profession of veterinary surgeon and medical veterinary chambers[154] (Journal of Laws 1991, No. 8. Item 27) and the complementing executive acts. The abovementioned law has been modified by an Act[155] of

[153] Understanding Negotiations. Poland´s Position Papers for the Accession Negotiations with the European Union, Government Plenipotentiary for Poland´s Accession Negotiations to the European Union, Chancellery of the Prime Minister of the Republic of Poland, 1st edition, Warsaw, 2000, ISBN 83-913753-2-3, p. 38.

[154] Ustawa z dn. 21 grudnia 1990 o zawodzie lekarza weterynarii i izbach lekarsko-weterynaryjnych (Dz.U. 1991, Nr. 8, Poz. 27).

[155] Ustawa z dn. 25 lipca 2001 r, o zmianie ustawy o zawodzie lekarza weterynarii i izbach lekarsko-weterynaryjnych, ustawy o zwalczaniu chorob zakaznych zwierzat, badaniu

July 25th, 2001 (Journal of Laws 2001, No. 129, Item 1438) amending this and other laws.

The provisions of the law on veterinary surgeons generally follow the legislative model outlined in precious sections.

There is an independent self-government professional organization, created by the aforementioned law (Articles 8 - 16), comprised of one National Medical Veterinary Chamber and several regional chambers. The law lays down the habitual provisions in this respect, *inter alia* regulating the rights and responsibilities of the members of the organization (Articles 17 - 22) and questions of professional liability (Articles 45 - 62).

According to Article 2 of the law, veterinary surgeons are granted licence to practice by the appropriate Regional Medical Veterinary Chamber, provided they are Polish nationals, in possession of an appropriate Polish or foreign (if recognized) diploma, and legally capable. After obtaining the right to exercise their profession, veterinary surgeons are obliged to register with the Medical Veterinary Chamber. The usual restrictions, in form of additional training requirements imposed on veterinary surgeons not having practiced during the five years preceding their application to the Chamber, are to be found also here (Article 2, paragraph 3). Article 3 provides that specialist status in a certain veterinary field may be awarded, after at least four years´ practice of the profession, completion of specialist training and passing of a specialist examination.

In accordance with Article 2, paragraph 5, foreign nationals may be granted the right to practice on certain conditions defined by the appropriate Regional Medical Veterinary Board, provided they are legally capable and can present a diploma, awarded either in Poland or abroad (if abroad, the diploma must be recognized in accordance with separate provisions).

The law on the profession of veterinary surgeon and medical veterinary chambers did not fully conform with Directives 78/1026/EEC and

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zwierzat rzeznych i miesa oraz o Inspekcji Weterynaryjnej oraz ustawy o organizacji hodowli i rozrodzie zwierzat gospodarskich (Dz.U. 2001, Nr. 129, Poz. 1438).

78/1027/EEC and with the provisions of the EEC Treaty.[156] First, also here there was discrimination on grounds of nationality, prohibited by Article 6 of the Treaty. The right to exercise the profession could therefore no longer be tied to a nationality requirement. However, the requirement of nationality imposed on members of the self-government superior organs could be maintained, as controlling the exercise of a profession in this respect is considered to constitute exercise of public authority and therefore falls outside the scope of the provisions on freedom of establishment and provision of services.

The provisions on access to the profession had to be amended in such a way, as to eliminate the current discretion of the Regional Medical Veterinary Boards as regards granting qualified Community nationals the right to exercise their profession and enrolling these in the official register on veterinary surgeons, and also to abolish the right of such Boards to pose limits and conditions on such nationals´ exercise of their profession. To this respect, the Act of July 25th, 2001, which amended the law on the profession of veterinary surgeon, introduced a new paragraph (Article 2, paragraph 5 a), laying down that foreign nationals already holding the right to exercise their profession within the Community, solely are obliged to present a certification of this right to the Regional Medical Veterinary Board in question, together with a written statement binding themselves to follow Polish law in their practice.

There was also a need of differentiation of the rules as regards registration and membership of the self-government organization, in order to alleviate the demands towards persons only providing temporary services.

Finally, certain provisions, such as the one on additional training, could not be upheld towards Community citizens. As regards linguistical abilities, the same requirements are true for veterinary surgeons as for the

[156] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 217.

other medical professions described above, i.e. there is a demand of possession of a satisfactory command of the Polish language.

The Polish training programme of veterinary surgeons has been considered to conform with Community standards. [157]

6.2.5 Architects

The exercise of the profession of architect in Poland was previously mainly regulated by the provisions of the Polish Building Law[158] of July 7th, 1994 (Journal of Laws 1994, No. 89, Item 414) and the Regulation of the Minister of Physical Planning and Construction of December 30th, 1994 (Journal of Laws 1995, No. 8, Item 38)[159], concerning independent technical functions in construction.

As regards education and training, the Polish programme of studies in architecture has been considered to comply with Directive 85/384/EEC.

Presently, foreign architects may exercise their profession and have their qualifications recognized only according to the provisions of the two legal acts mentioned above. Both these acts have proved incompatible with Directive 85/384/EEC. Article 12, paragraphs 2 and 3 of the Building Law provide for the granting of a "construction licence", which is obtained upon special examination to certify formal qualifications in architecture. Article 12 a of the same law provides, however, that, notwithstanding the requirement in Article 12, independent technical functions in construction may be granted to Community nationals who may exercise corresponding activities in another (Community) country, have obtained a diploma which

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[157] Understanding Negotiations. Poland´s Position Papers for the Accession Negotiations with the European Union, Government Plenipotentiary for Poland´s Accession Negotiations to the European Union, Chancellery of the Prime Minister of the Republic of Poland, 1st edition, Warsaw, 2000, ISBN 83-913753-2-3, p. 39.

[158] Ustawa z dn. 7 lipca 1994 r. - Prawo Budowlane (Dz.U. 1994, Nr. 89, Poz. 414).

[159] Rozporzadzenie Ministra Gospodarki Przestrzennej i Budownictwa z dn. 30 grudnia 1994 r. w sprawie samodzielnych funkcji technicznych w budownictwie (Dz.U. 1995, Nr. 8, Poz. 38).

is recognized in Poland and has an experience of minimum two years.This provision will enter into force on the day of accession.

Since Poland is unwilling to give up the requirement of possession of a "construction licence", to evidence, together with a university diploma, the formal qualifications obtained in architecture, the list of documents to be recognized as proving the qualifications of architects in Directive 85/384/EEC should be supplemented to include both Polish university diplomas and the "construction licence" in question.[160]

A new Law of December 15th, 2000, on the professional self-government of architects, construction engineers and urban planners (Journal of Laws 2001, No. 5, Item 42)[161] has, however, been adopted, which is to ensure the exercise of construction-related professions by Community nationals in Poland in accordance with Directive 85/384/EEC. The new law provides for the establishment of professional chambers with mandatory membership of all those admitted to the practice of the professions in question. The law also regulates the organization of the different self-governments, defining their aims and principles of functioning, and provides rules on, *inter alia,* the rights and obligations of members of the chamber and questions of disciplinary proceedings and professional liability.

6.2.6 Lawyers

In Poland, there exists a system of division between the two main legal professions into an official legal profession of *adwokat* (lawyer) and the profession of *radca prawny (*legal counsel), the latter commonly employed by the state and state undertakings during the communist period.

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[160] Understanding Negotiations. Poland´s Position Papers for the Accession Negotiations with the European Union, Government Plenipotentiary for Poland´s Accession Negotiations to the European Union, Chancellery of the Prime Minister of the Republic of Poland, 1st edition, Warsaw, 2000, ISBN 83-913753-2-3, p. 36.

[161] Ustawa z dn. 15 grudnia 2000 r. o samorzadach zawodowych architektow, inzynierow budownictwa oraz urbanistow (Dz.U. 2001, Nr. 5, Poz. 42).

These two legal categories are in many ways similar, for instance when it comes to the qualifications of obtaining each title and the exercise and organisation of each legal profession (both categories have created separate professional self-goverment structures). The differences consist in that legal counsels may not advise or represent clients in criminal cases and family matters, and also that legal counsels (as opposed to advocates) may exercise their profession under a regular employment contract. This situation is rather problematic as regards the future accession to the European Union, as the number of practicing lawyers, who are sure to be recognized by Community law, is considered to amount to a mere 4 200, as opposed to about 16 500 practicing legal counsels, whose professional position within the Community seems less clear (the profession of legal counsel is not as such separately regulated in the *acquis*). The question of a possible merger of the two professions has therefore been quite frequently raised.[162]

The legal professions mentioned are regulated by the Law on the Bar of May 26th, 1982 (Journal of Laws 1982, No. 16, Item 124)[163], last amended in March 2000[164], and the Law on Legal Counsellors of July 6th, 1982 (Journal of Laws 1982, No. 19, Item 145)[165], last amended also in March 2000[166].

As regards the profession of lawyer, the Law on the Bar lays down the criteria for, *inter alia,* enrolment in the register of lawyers in Poland. According to Article 65 of the law in question, the candidates to the profession of lawyer must have completed legal studies and obtained a Polish or foreign legal diploma (valid only if it is found equivalent and recognized), and also undergone a special period of practice (admittance is granted or denied after a special competition, held once a year) in certain institutions (*aplikacja adwokacka*), which is to be finished by passing an

[162] Hamish Adamson, „Free Movement of Lawyers", Butterworths Current EC Legal Developments Series, 1998, p. 165.
[163] Ustawa z dn. 26 maja 1982 r. - Prawo o adwokaturze (Dz.U. 1982, Nr. 16, Poz. 124).
[164] Ustawa z dn. 16 marca 2000 r. o zmianie ustawy o adwokaturze (Dz.U. 2000, Nr. 39, Poz. 439).
[165] Ustawa z dn. 6 lipca 1982 r. o radcach prawnych (Dz.U. 1982, Nr. 19, Poz. 145).
[166] Ustawa z dn. 16 marca 2000 r. o zmianie ustawy o radcach prawnych (Dz.U. 2000, Nr. 48, Poz. 545).

examination of lawyer. Polish legal studies are of five years´duration; the special practice period is to last for three and a half year (Article 76), but can be cut down to a time of two years, or (in cases where the candidate is highly qualified or already experienced) be entirely lifted. The candidate can be given placement by the Regional Board of Lawyers at several institutions, most notably the regional courts, the public prosecutors´ office and offices of notaries public. However, in order to find himself on the official list of lawyers, the candidate must prove to be of an immaculate character, legally capable and able to make use of all his public rights (Article 65).

A practicing lawyer may usually also not maintain an employment relationship "on the side", scientific and didactic employees exempted (Article 4 b, paragraph 3). According to Article 4 b, paragraphs 1 and 2, the profession of lawyer cannot be exercised by a person closely related to someone holding the positions of judge, prosecutor or investigator of the Chamber of Lawyers. Furthermore, the profession cannot be exercised by persons deemed permanently unfit to practice, not legally capable and also by those permanently or temporarily excluded from performing their professional activities.

If all the necessary conditions are met, the Regional Board of Lawyers should include the candidate in question into the offcial list of lawyers, within two months from the date of application (Article 47), at the same time appointing an appropriate location to undertake practice. If denied enrolment on the list, there is a possibility to lodge an appeal against the decision with the Minister of Justice (Article 47, paragraph 2).

As regards the exercise of the profession of lawyer by foreign nationals, amendments have already been made in order to better comply with Community law. First and foremost, the previous nationality requirement for enrolment on the list of lawyers, has been lifted. However, foreign nationals should possess a satisfactory written and spoken command of the language and they should also have completed the three and a half-year practice period mentioned above and passed the finishing examination. The practice period requirement can be lifted towards Community nationals

already holding the title of lawyer in a Community Member State, who are duly registered with the appropriate organ of that state and who possess experience of practicing the profession. Since the Polish legislator has abstained from regulating the legal areas in which foreign nationals may practice, it follows that they can work freely in the fields of the law of their original country, international and Community law and Polish law.[167]

As regards legal counsels, the conditions of the exercise of their profession laid down in the Law on Legal Counsellors, are similar to those of the Law on the Bar. Article 24 of the Law on Legal Counsellors lays down that persons applying for official registration as legal counsel must have completed legal studies and obtained a legal diploma in Poland or abroad (foreign diplomas must be recognized according to separate provisions) and also be in good command of the Polish language. As stated above, Polish legal studies last five years. After graduating, the applicant for the title of legal counsel must partake in a competition so as to possibly become admitted to the special practice period of three and a half years, which ends by passing an examination of legal counsel (Article 32). The practice period entails working in court, the public prosecutors´ office, offices of notaries public, offices of legal counsels or joint offices of lawyers and legal counsels. Article 38 paragraph 3 envisages also the possibility of legal counsel applicants to carry through the practice period together with lawyer applicants. This is a clear sign of the increasing closeness between the two professional categories.

Just as in the Law on the Bar, there is a provision (Article 25) limiting the practice period of legal counsels to two years, or lifting it entirely, for instance towards professors, but also as regards judges, prosecutors, lawyers and notaries that have been practicing for more than three years. Additional requirements to be met in order to become officially registered are stated in Article 24; they consist of demands on possessing

[167] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 89.

ones´ full public rights, being legally capable and having an immaculate character. According to Articles 26 and 28, legal counsels may be temporarily excluded from their right to practice if they try to combine their practice as legal counsel with practicing the profession of *inter alia* judge, public prosecutor, notary public and county police commissioner.

A decision of the Regional Board of Legal Counsellors on acceptance or denial to officially register the candidate in question, must be issued within three months from the moment of submitting the application. In cases of denial, appeals can be made to the National Board of Legal Counsellors within 30 days of obtaining the decision in question and further to the Main Court of Administration (Article 31).

Foreign nationals wishing to exercise the profession of legal counsel must at present have completed legal studies that are recognized in Poland, be in a satisfactory command of the Polish language, have completed the practice period required and passed the final examination. However, according to Article 25, paragraph 3, the National Board of Legal Counsellors may lift the practice requirement towards Community citizens, provided they are registered with a Bar in one of the Member States and have practiced there. Due to the lack of provisions in this area, legal counsels being Community nationals are considered to be free to exercise their profession in the fields of the law of their original country, Community and international law and Polish law.[168]

Poland will further conform to Community law by adopting a law comprehensively regulating the forms and conditions of the exercise of legal activities in Poland by foreign nationals, obviously including lawyers from EU Member States. A project of such a law[169] was submitted to Parliament at the end of March this year and is currently being thoroughly examined. Amendments will also be made to the Act on the Bar, the Act on Legal

[168] Swoboda Swiadczenia Uslug i Wykonywania Wolnych Zawodow w Prawie Unii Europejskiej, Biuro Doradztwa Prawnego, Kancelaria Prezesa Rady Ministrow, Warszawa, 1999, p. 104.

[169] Rzadowy Projekt ustawy o swiadczeniu przez prawnikow zagranicznych pomocy prawnej w Rzeczypospolitej Polskiej (submitted to Parliament on March 29th, 2002).

Counsellors, the Code of Criminal Procedure and the Code of Civil Procedure.

These changes will allow lawyers from EU Member States to provide services in accordance with Directive 77/249/EEC; making also establishment and permanent practice of Community lawyers in Poland under their professional home title possible, in accordance with Directive 98/5/EC. The legislative changes will in particular consist of a broadening of the group entitled to represent others in court proceedings (Article 1118 of the Code of Civil Procedure and Article 82 of the Code of Criminal Procedure) and of a general liberalization of the conditions of enrolment of lawyers from EU Member States in the official registers of advocates and legal counsels, all in accordance with Directives 98/5 EC and 89/48/EEC.[170]

The Polish government finds it also necessary, in the light of the specificity of its legal professions, to supplement the lists of legal professions in the EU Member States to which Directives 98/5/EC and Directive 77/249/EEC apply (to be found in Article 1 (2) in each of the Directives), with the Polish professional titles of *adwokat* (lawyer) and *radca prawny* (legal counsel).

[170] Zrozumiec Negocjacje. Stanowisko Negocjacyjne RP w obszarze Swobodny Przeplyw Osob. Kancelaria Prezesa Rady Ministrow, Warszawa, 2000, p. 33.

7 Final Remarks

As we have seen, Poland has made substantial legislative efforts in order to achieve conformity with the *acquis communautaire* in the area of mutual recognition of qualifications. However, quite a lot remains to be done, both in respect of adopting the necessary legal acts and in strengthening the administrative ability of the governmental organs and other authorities. The Polish judicial system must become more efficient. It will be hard to safeguard the rights of the citizens if the sole waiting period for the judicial proceedings to start will exceed a year (which is more or less the situation seen in Polish courts today).

There is also a need of a broad information campaign directed towards ordinary citizens, to make them aware of the rights that they may avail themselves of after enlargement (and the obligations flowing from accession). Such a campaign should provide down-to-earth, realistic information. The information given in Poland today is either very negative or over-positive. The Prime Minister has, however, due to the coming plebiscite (to be carried through at the end of 2003), recently appointed a Government Plenipotentiary to launch such an information campaign. Although support for the European Union is still prevailing in Poland, the large number of empoverished is very susceptible to populist propaganda, provided mainly by right-wing religious fundamentalists and peasants´ organizations, and it is by no means a certainty that the fraction in favour of membership will remain in majority.

Poland has so far been one of the slowest negotiating coutries, much due to strong domestic pressure to obtain satisfactory solutions of the two main problems so far, namely the free movement of workers and the free movement of capital (fears of massive purchase of Polish land, primarily by Germans, resulted in a claim of a transition period of 18 years (sic!) in this respect). In the area of free movement of persons, Poland finally decided to agree to the seven-year transition period, as it was a flexible solution enabling those of the ”old” Member States who wished it, to immediately

give Poles access to their labour market (Sweden has declared itself to be such a country).

At present, Poland has provisionally closed 23 negotiation areas (of the 29 currently discussed), and is still negotiating in the areas of competition policy, fisheries, transport policy, judicial and internal affairs, regional policy and coordination of structural instruments, finance policy and agriculture. The unofficial timetable of the EU negotiators is said to envisage accession on January 1st, 2004. Provided nothing unexpected will occur which could slow the negotiation process, it is my personal hope and belief that Poland will fulfil the necessary criteria and shortly be accepted into the European Community.

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