

MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS WITHIN THE EUROPEAN UNION AGREEMENTS WITH THIRD COUNTRIES



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Abstract

This article is devoted to the analysis of the establishment of the professional recognition systems in the European Union agreements with third countries. The issue of mutual recognition of professional qualifications is one of the key elements of the European Union economic integration with third countries. France-Quebec Agreement on Mutual Recognition of Qualifications is the

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first initiative between the European Union member state and a Canadian province. The agreement supports efforts aimed at negotiating an economic partnership between the European Union and Canada. The agreement applies to all regulated professions and trades in France and Québec, and is based on the recognition of qualifications. It sets frame for signing first Mutual recognition of professional qualifications agreements pertaining to some thirty trades and professions, and for the other regulated professions. The Canada-European Union Comprehensive Economic and Trade Agreement arrangements for the mutual recognition of qualifications grew out of the Franco – Québécois Agreement. The agreement provides a framework to facilitate the mutual recognition of qualifications in regulated professions such as architects, accountants and engineers. The relevant professional organizations in the European Union and Canada now have a framework that sets out the conditions for the negotiation of mutual recognition agreements for their respective professions. The agreement sets mechanism for professional recognition systems and procedure of its formation. It is an example of European Union cooperation with third countries and a new way of cooperation in the scope of mutual recognition. The mechanism of the European Union cooperation with third countries within the mutual recognition scope can be used by other integrational associations in particular by the Eurasian Economic Union.

Keywords

Canada-European Union Comprehensive Economic and Trade Agreement, mutual recognition of professional qualifications, agreement on the mutual recognition of professional qualifications

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I. INTRODUCTION

The issue of mutual recognition of professional qualifications is one of the key elements of the economic integration in the European Union. It also concerns the EU integration with third countries implemented by means of agreements. Such agreements are usually concluded for economic affairs in order to improve further close economic relations. Since the free movement of persons is one of the components of the EU internal market, the economic and trade agreements include provisions relating to that freedom.

Exercising the free movement of persons, in particular the freedom of establishment and rights to labor mobility is impossible without any rules concerning mutual recognition of professional qualifications. In this regards EU trade agreements with third countries providing labor migration as one of the components of economic integration have to include some provisions concerning mutual recognition of professional qualifications. They are included in Canada-European Union Comprehensive Economic and Trade Agreement.³ CETA provisions on mutual recognition of professional qualifications are the subject matter of this article.

II. FRANCE-QUEBEC AGREEMENT ON MUTUAL RECOGNITION OF QUALIFICATIONS

On October 17, 2008, France and Quebec signed an agreement on the mutual recognition of professional qualifications — France-Quebec Agreement on Mutual Recognition of Qualifications (FQA). This agreement is the first initiative between the EU member state and a

³ Comprehensive Economic and Trade Agreement (CETA). Available at: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>

Canadian province. The agreement supports efforts aimed at negotiating an economic partnership between the EU and Canada.

According to the Quebec government press release, the recognition model developed in the agreement could be easily adapted to the other territories. The agreement is not an international trade agreement, nor does it affect immigration or security rules, but it is intended to remove one impediment to gaining access to the labour market in each territory. The agreement applies to all regulated professions and trades in France and Québec, and is based on the recognition of qualifications, not on the equivalence of degrees. It sets frame for signing first Mutual recognition of professional qualifications agreements pertaining to some thirty trades and professions, and for the other regulated professions.

The Agreement covers slightly more than 100 professions and trades in France and Québec. The FQA includes a three-step process for the recognition of professional qualifications, beginning with an overall general examination of qualifications by competent authorities of Quebec and France, an assessment phase, and conditions for recognition set by the Mutual Recognition of Professional Qualifications Agreement (January 2012). The list of professions and trades in Quebec that have pledged to sign an arrangement leading to the mutual recognition of qualifications in the short term includes: architects, chartered accountants, certified general accountants; engineers; and several construction trades. Enabling legislation for the first mutual recognition of professional qualifications agreement, for professional engineers, was introduced in Quebec legislature in March 2009.⁴

The FQA addresses processes to be followed, specifying that any request for professional accreditation must be acknowledged within one month and applicants must be told what data is required to comply with the requirements. Once all the information required is provided, an applicant's dossier must be considered within three months, with a one-month extension permissible if necessary. It also sets out conditions allowing for professional accreditation even where qualifications and experience are somewhat different. For instance, a professional may be able to use experience as a substitute for training. An aptitude test

⁴ EU-Canada Comprehensive Economic and Trade Agreement. Policy Department. Workshop. Available at: [http://www.europarl.europa.eu/RegData/etudes/workshop/join/2012/457139/EXPO-INTA_AT\(2012\)457139_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/workshop/join/2012/457139/EXPO-INTA_AT(2012)457139_EN.pdf)

may be required to prove equivalency. In certain cases of public safety there may be a requirement for the job training, but these exceptions will be strictly limited.

III. THE CANADA-EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

The Canada-European Union Comprehensive Economic and Trade Agreement arrangements for the mutual recognition of qualifications grew out of the Franco – Québécois Agreement mentioned earlier. The CETA is a progressive trade agreement that upholds and promotes the values that Canada shares with the EU. Canada looks forward to implementing this landmark agreement with its European partners in 2017.

The negotiations were concluded in August 2014. The ministers of foreign affairs of all 28 European Union member states approved the CETA, with Belgium being the final country whose ministers approved it⁵. Justin Trudeau, Prime Minister of Canada traveled to Brussels on October 30, 2016 to sign on behalf of Canada.⁶

Given the position taken by Ireland and other Member States, the Commission submitted the CETA to the Council for decision as a mixed agreement. That is one requiring both EU and individual Member States ratification. If ratified by the European Parliament, most of the Agreement will take effect on a provisional basis. The remaining parts of the Agreement are subject to ratification by national legislatures. The full entering into force of the agreement will be subject, firstly, to a decision made by the EU by means of a Council decision with the consent of the European Parliament, and, secondly, by the approval of all Member States by means of the relevant national ratification procedures.⁷

⁵ Belgium green lights unchanged Ceta. Available at: <https://euobserver.com/economic/135717>

⁶ Trudeau Brussels-bound to sign CETA on Sunday. Available at: <http://www.yorkregion.com>

⁷ EU—Canada Comprehensive Economic and Trade Agreement Information Note. Available at: <https://www.djei.ie/en/Publications/Publication-files/EU-Canada-Comprehensive-Economic-Trade-Agreement-Information-Note.pdf>

The agreement provides a framework to facilitate the mutual recognition of qualifications in regulated professions such as architects, accountants and engineers. The relevant professional organizations in the EU and Canada now have a framework that sets out the conditions for the negotiation of mutual recognition agreements for their respective professions. These will then have to be negotiated and agreed by the EU and Canada.

The CETA makes it easier for firms to move staff temporarily between the EU and Canada. This will facilitate European companies' operations in Canada. It will be also easier for other professionals to temporarily supply legal, accounting, architectural or similar services.⁸

As an example of the EU cooperation with third countries this agreement sets framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and sets out the general conditions for the negotiation of an agreement on the mutual recognition of professional qualifications (hereinafter – the MRA). The framework applies to professions that are regulated in each States Parties to an agreement, including in all or some Member States of the EU and in all or some provinces and territories of Canada.

Thus, the CETA sets a procedure establishing the formation order of the legal basis on the grounds of which the recognition performs. This legal basis contains some conditions for the recognition, in particular, of regulated professions underlying the recognition.

The procedure establishing a contractual legal framework for the recognition between EU and Canada starts with the procedure of Negotiations of the MRA. This procedure as a legal relationship includes subjects, an object and the content (rights and obligations).

In this context it should be noted that since the EU-Canada relations are regulated by means of an international treaty, it is possible to speak not only about the recognition relationship subjects and their rights and obligations but about the CETA Parties as well. CETA notes that term Parties means, on the one hand, the European Union or its Member States or the European Union and its Member States within

⁸ EU–Canada Comprehensive Economic and Trade greement Information Note.

their respective areas of competence as derived from the Treaty on European Union⁹ and the Treaty on the Functioning of the European Union¹⁰ (hereinafter — the EU Party), and, on the other hand, Canada. The rights and obligations of Parties define the procedure of the MRA Negotiation and content of the legal basis for the recognition established by this procedure.

Thus, a Party shall not accord recognition in a manner that would constitute a means of discrimination in the application of its criteria for the authorization, licensing or certification of a service supplier, or that would constitute a disguised restriction on trade in services. So, there are two groups of subjects involved into the MRA Negotiation:

A relevant authority means an authority or body, designated pursuant to legislative, regulatory or administrative provisions to recognize qualifications and authorize the practice of a profession in a jurisdiction. Each Party shall encourage its relevant authorities or professional bodies, as appropriate, to develop and provide to the Joint Committee on Mutual Recognition of Professional Qualifications (hereinafter — the MRA Committee) joint recommendations on proposed MRAs.

The MRA Committee is a body reviewing the draft MRA to ensure its consistency with the CETA. the Joint Committee on Mutual Recognition of Professional Qualifications shall be established under and report to the Committee on Services and Investment. The Committee on Services and Investment addresses matters concerning cross-border trade in services, investment, temporary entry, electronic commerce, and intellectual property rights related to services. The Committee on Services and Investment may also address matters arising in the area of financial services or government procurement if this facilitates the resolution of a matter that cannot otherwise be resolved by the relevant specialized committee.

A negotiating entity is a person or body of a Party entitled or empowered to negotiate an agreement on the mutual recognition of professional qualifications. Negotiating entities shall thereafter pursue negotiations and submit a draft MRA text to the MRA Committee.

⁹ Treaty on European Union // OJ C 202 (2016).

¹⁰ Treaty on the Functioning of the European Union // OJ C 202 (2016).

Thus, bodies can be classified into:

- ✓ authorities establishing recognition rules;
- ✓ authorities carrying out the recognition procedure.

However, this classification is conditional because relevant authorities are also involved in the Negotiation of an MRA. Relevant authorities or professional bodies, as appropriate, develop and provide to the MRA Committee joint recommendations on proposed MRAs. A recommendation shall provide an assessment of the potential value of an MRA on the basis of criteria such as the existing level of market openness, industry needs, and business opportunities — for example, the number of professionals likely to benefit from the MRA — the existence of other MRAs in the sector, and expected gains in terms of economic and business development. In addition, it shall provide an assessment as to the compatibility of the licensing or qualification regimes of the Parties and the intended approach for the negotiation of an MRA.

The MRA Committee shall, within a reasonable period of time, review the recommendation with a view to ensuring its consistency with CETA requirements. If these requirements are satisfied, the MRA Committee shall establish the necessary steps to negotiate and each Party shall inform its respective relevant authorities of these steps. The negotiating entities shall thereafter pursue the negotiation and submit a draft MRA text to the MRA Committee.

The MRA Committee will thereafter review the draft MRA to ensure its consistency with the CETA. If, in the view of the MRA Committee, the MRA is consistent with this Agreement, the MRA Committee shall adopt the MRA by means of a decision, which is conditional upon subsequent notification to the MRA Committee by each Party of the fulfillment of its respective internal requirements. The decision becomes binding on the Parties upon that notification to the MRA Committee filed by each Party.

IV. THE AGREEMENT ON THE MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS (MRA)

The MRA can be defined as the basis for the recognition established by a negotiating entity in the procedure of Negotiation. It is also the

basis for the recognition, a guideline for the relevant authority. The MRA sets mutual rights and obligations for the recognition relationship.

The recognition of professional qualifications provided by an MRA shall allow the service supplier to practice professional activities in the host jurisdiction, in accordance with the terms and conditions specified in the MRA.

If the professional qualifications of a service supplier of a Party are recognized by the other Party pursuant to an MRA, the relevant authorities of the host jurisdiction shall accord to this service supplier treatment no less favorable than that accorded in similar situations to a similar service supplier whose professional qualifications have been certified or attested in the Party's own jurisdiction.

Article 10.8 of the CETA limits entry for independent professionals and contractual service suppliers to university graduates or equivalent. Independent professionals must have six years of relevant prior experience and persons working for contractual service suppliers must have three. Many EU Member States apply economic needs tests before granting access.

A number of EU reservations require the proof that a professional has relevant special knowledge. The need for this would be obviated by an MRA. Chapter 11 of the CETA provides the greatest detail — much more than in EU-Korea and EU-Singapore. Its provisions allow relevant regulatory or professional bodies in both jurisdictions to present draft MRAs to the Joint Committee on Mutual Recognition. An MRA becomes binding once the Committee is satisfied that it is consistent with the provisions of the CETA. Professional service providers in the host jurisdiction then enjoy no less favorable treatment than home providers, irrespective of nationality, citizenship and the location of the training institution.¹¹

Non-binding guidelines on the negotiation of MRAs are set out in the CETA Annex 11-A. Beyond the requirement to specify the participants, the purpose, and scope of an MRA, the guidelines envisage a sequence of four steps:

¹¹ EUA Special Update on EU Trade Agreements and on the Recognition of Professional Qualifications. Available at: <http://www.enaee.eu/wp-assets-enaee/uploads/2012/01/EU-Trade-Agreements-and-Mutual-Recognition-Agreements-1.pdf>

1) “verification of equivalency”: this step looks at the scope of professional qualification and practice;

2) “evaluation of substantial differences”: these may exist in “essential knowledge”, in the content or duration of basic training, and in the lack of congruence in the component disciplines of a particular professional practice;

3) “compensatory measures” taking the form of adaptation periods or aptitude tests: these mirror the provisions informing the General System in the EU Directive;

4) “identification of the conditions for recognition”: this consists of a summary of the above steps, setting out in precise terms what they represent for the specific profession featured in the MRA.

This mechanism is a kind of extension of the FQA on a more ambitious scope. So FQA is not an international agreement while the CETA is. CETA Annex 11-A also contains guidelines dealing with individual applications, appeals, contact points, etc.

The recognition based on the MRA includes the concept of qualification within the regulated professions frameworks. A regulated profession is a service, the practice of which, including the use of a title or designation, is subject to the possession of specific qualifications by virtue of legislative, regulatory or administrative provisions.

The CETA defines professional qualifications as the qualifications attested by evidence of formal qualification and/or professional experience. The latter is defined as the effective and lawful practice of a service. Qualification, being an object of the relationship, is the latest element of the relationship composition.

The qualification within the regulated professions frameworks is the basis for the recognition of an object of a recognition relationship following from the MRA. The recognition relationship as a legal relationship also includes subjects and the content. The content contains the applicant’s right to be recognized based on MRA and corresponding authority obligations to recognize if applicant’s qualification meets requirements. These requirements are the recognition conditions set by the MRA. Thus, the recognition outcome depends on the qualification and its compliance with the conditions.

Specifying the qualifications meet the conditions stipulated for the regulated professions is similar to the automatic recognition of the system established in the EU for the regulated professions. However, there is a general recognition system in the EU legislation. Nevertheless, The CETA Annex doesn't contain any requirements concerning a general recognition system. Although CETA Annex contains concepts like:

adaptation period means a period of supervised practice, possibly accompanied by further training, of a regulated profession in the host jurisdiction under the responsibility of a qualified person. This period of supervised practice shall be subject to an assessment. The detailed rules governing the adaptation period, its assessment and the professional status of the person under supervision shall be set out, as appropriate, in the host jurisdiction's law;

aptitude test means a test limited to the professional knowledge of applicants, made by relevant authorities of the host jurisdiction with the aim to assess the ability of applicants to pursue a regulated profession in that jurisdiction; and

the scope of practice means an activity or group of activities covered by a regulated profession.

These concepts are established in the EU legislation. That indicates an acceptability of the majority of the EU legislation provisions. So it can be concluded about a projection of EU law on Canada through a system of specific agreements concluded on the CETA basis.

V. EUROPEAN UNION LEGISLATION IN THE SCOPE OF MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

The CETA, like all trade agreements, must be consistent with EU law. It cannot stand above EU legislation with regard to the recognition of professional qualifications. MRAs will, therefore, be obliged to meet the EU legislation.

The automatic recognition system in the EU is set by the Directive 2005/36/EC of the European Parliament and of the Council dated

September 7, 2005, On the recognition of professional qualifications¹² amended by the Directive 2013/55/EU of the European Parliament and of the Council dated November 20, 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System.¹³ But there is not only automatic recognition system in this Directive. It sets the general recognition system as well.

This system is based on the mutual trust principle that is does not require coordination of preparatory educational programs. According to the Directive, the general recognition system extends to the cases not fully covered by the specific systems in particular by the automatic recognition system. In the alternative it applies to all cases that may not be automatically recognized on the basis of professional experience or coordination of minimum probation conditions. The general system is the non-automatic recognition system.

The legal basis of recognition between the EU and Canada is established in the MRA. Nevertheless it should be noted that MRA content is not determined in the CETA. Thus, the MRA may provide different recognition systems including a system similar to the general one.

It has already been mentioned about the relevant authority role in the recognition procedure. Concerning the other, the applicant should be noted, as an individual or person. The individual is a person applying for the recognition of his qualification. A person means a natural person. A national means a natural person who is a citizen of a CETA Party.

¹² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications // OJ L 255, 30.9.2005. P. 22–142.

¹³ Directive 2013/55/EU of the European Parliament and of the Council of November 20, 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') // OJ L 354, 28.12.2013. P. 132–170.

VI. CONCLUSION

Thus, the Canada-European Union Comprehensive Economic and Trade Agreement is an example of EU cooperation with third countries. Since the agreement was signed recently it is impossible to accurately assess the success of its implementation. Nevertheless, the CETA sets a new type of procedure – the procedure of Negotiation of the MRA. The procedure result is adoption of an act – the MRA establishing the conditions for the recognition. The CETA mechanism is a new way of cooperation in the field of mutual recognition. It creates a new legal recognition system – a system established by the MRA negotiated by the Parties authority. Nevertheless, the MRA may contain professional recognition systems similar to the recognition system established by EU legislation.

An analyzed mechanism of the EU cooperation with third countries within the scope of mutual recognition can be used by other integration associations, in particular by the Eurasian Economic Union.

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