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**Recognition of Professional Qualifications Issued by UK in EU
Countries After Brexit**

Bachelor Thesis

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I hereby declare that I am the sole author
of this Bachelor Thesis and it has
not been presented to any other
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List of Abbreviations

TFEU	Treaty on the Functioning of the European Union
ECJ	European Court of Justice
ECHR	European Convention of Human Rights
EFTA	European Free Trade Association
EEA	European Economic Area
AFMP	Agreement on the Free Movement of Persons
ECTS	European Credit Transfer and Accumulation System
EHEA	European Higher Education Area
FTA	Free Trade Agreement
TEU	Treaty on European Union

Introduction

This thesis will analyze the question of what happens to the recognition of professional qualification, diplomas issued by the United Kingdom citizens after UK leaves the European Union. The EU's core right has been the free movement of workers, and the recognition of professional qualifications is tightly connected to that right. The topic is accurate and important as Brexit will happen shortly and a lot of EU citizens are living in the UK and the other way around. Meaning that it will be important to find out what will happen to the rights of the UK nationals and ability to stay and reside still freely in the UK, even though it is not a Member State of the EU anymore, and can the UK citizens reside freely in the other EU Member States, without being EU citizens.

The UK has voted for the Brexit and is now preparing laws and strategies for the depart from EU. The recognition of professional qualifications in EU is a question mark for the UK citizens after the Brexit happens, as not being a Member State of the EU anymore and therefore, not being entitled to the free movement rights or the recognition of professional qualification rights. However, this thesis is looking for an answer to the question: **does the mutual recognition of professional qualifications change after Brexit** and what are the changes that will or will not happen? As recognition of professional qualifications is regulated by the EU law, the fact that UK is exiting from EU will create legal problems for UK citizens getting diplomas recognized in the other EU Member States.

This research is using mostly qualitative, empirical research methods, as the main idea is to find out a solution to the research question. In the research, it will be analyzed of what law is valid. The aim is to find out the best solution to reach the goal, which is finding out what happens to the UK citizens recognition of professional qualifications after the leave from the EU. Comparative methods are also included, as there is a comparison of situations between intra-EU cases and cases between EU and third-country nationals, which makes it possible to draw conclusions of the future situation between EU and UK.

The research is structured into three main chapters. The first chapter deals mostly with the free movement right and compares the situation between intra-EU cases and EU and third-country national cases. The recognition of professional qualifications is closely connected to the free movement rights, that needs to be understood, and it is the reason for including those to this

research. The first chapter also compares the situation between third-country nationals and EU nationals and ends to the UK situation after Brexit.

The second chapter's main idea is to analyze the main Directive related to the recognition of professional qualifications, Directive 2005/36/EC. The section presents first an introduction of the Directive and then the means and use of the Directive.

The third and last main chapter shows the differences between intra-EU situations and situations between EU and third-country nationals when it comes to the recognition of professional qualifications. The third chapter also provides the situation that is going to be with the UK citizens and their recognition of professional qualifications after Brexit and brings a solution to it.

This thesis is written based on many different sources. Mainly there are used three to seven different sources in one chapter, but there are a lot of sources that have been in the background, giving ideas and different angles to the research. The sources have been selected carefully and thought to have a common thread between them, to make the thesis coherent and follow the same thoughts and principles during the chapters.

It has been absorbing to study about the recognition of professional qualifications after Brexit, as it is a current situation and there have not been any real decisions made about it, but there are a lot of ongoing discussions that have given perspective and made it possible to get to the result. Comparing to the other European countries, which are not the EU Member States is important, as the UK will also be a third-country after Brexit. Most probably there will be some advantages for the UK, compared to the other European countries, as it has been an EU Member State for decades.

As a conclusion, the subject is fascinating as it is a current topic in the EU. The question also concerns all of the UK and EU citizens who are currently working in the UK or planning to use their profession there in the future. It is also really interesting topic, as, during the EU's history, there has not been anything like Brexit. It is also the reason for the issue being relevant, as it is an entirely new situation and creates the grounds for leaving the EU. After Brexit, if some other Member State wants to leave the EU, it will already be a bit easier as there is some knowledge about the secession process.

1. EU citizens free movement rights and the UK citizens free movement rights after Brexit

1.1 EU citizens rights

The citizenship of the EU was introduced first by the Maastricht Treaty.¹ Article 20 of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU) states that every person holding the nationality of a Member State shall be a citizen of the Union. The citizenship was created to lay down better grounds for the rights of movement, residence and equal treatment of EU citizens. The ECJ has presented that the citizenship has strengthened the prohibition of discrimination on the grounds of nationality, both in the EU Member States and the host EU Member States.²

The TFEU Article 20 lays down the rights and duties of EU citizens. Those include a right to move and reside freely within the territory of the Member State, right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in the Member State of residence, under the same conditions as the nationals of that State. It also gives a right to protection of the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that State, in situations when in a third-country there is not being representation by the country of nationality of the person. The last one is right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any language of the Treaty and to get a response with the same language. The Treaty opens up these rights in the provisions of Articles 21-25, but these rights are called the main elements of the EU citizenship.

The free movement right and right to reside freely means free movement of goods, persons, services and capital. The free movement of persons can be divided into two categories, employed persons (workers) and self-employed persons (establishment).³

¹ Craig, P., De Búrca, G. EU Law: Text, Cases, and Materials. Oxford University Press 2011, 5th Edition, p 819.

² Craig, P., De Búrca, G., *supra* nota 1, p 819.

³ Craig, P., De Búrca, G., *supra* nota 1, p 715.

1.1.1 Workers

Article 45 TFEU provides the rules for the free movement of workers. The article lays down one of the most important measures of the EU law and the single market, which is also a core factor of the EU law⁴, the prohibition of discrimination based on nationality. This is presented in the Article as a prohibition of discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.⁵

The free movement of workers covers persons, who are working under someone's directions and not as a self-employed. European Court of Justice (hereinafter referred to as ECJ) has presented in its decision in the *Hoekstra*⁶ case, that a person was still able to retain the worker title in situations where ill or had retired and was not actually working.⁷ In the *Levin*⁸ case, it became clearer that part-time workers go under the article as well, and States can not restrict EU citizens to obtaining a residence permit and to remain in the host Member State.⁹ Afterward, there has been created a Directive 2004/38 on the right of citizens of the Union and their family members.¹⁰ This was done to provide the freedom of movement to the workers family members as well. It was also created to present clearer rights to the family members and to prevent the abuse of rights.¹¹ Abuse of rights in this context means preventing migrants to entry a host Member State, that has a better system of social benefits than the country of the persons nationality, without the intention to engage in effective work.¹² Non-economically active persons are not able to benefit from the free movement right, as not presenting any ability to take care of themselves, as not engaging in efficient work nor being paid remuneration from work done.¹³ So the most important rule in the description of a worker is that the person needs to be working under someone's orders and to get remuneration from the work that has been done.

⁴ Craig, P., De Búrca, G., *supra* nota 1, p 716.

⁵ *Ibid.*

⁶ CJEU 19.03.1964 C-75/63 *Hoekstra v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten.*

⁷ White, R. C. A. Revisiting Free Movement of Workers, *Fordham International Law Journal* 2010, 33 (5), pp 1564-1588, p 1565.

⁸ CJEU 23.03.1982 C-53/81 *Levin v. Staatssecretaris van Justitie.*

⁹ White, R. C. A., (2010), *supra* nota 7, p 1566.

¹⁰ OJ L 158/77, 30.4.2004.

¹¹ Craig, P., De Búrca, G., *supra* nota 1, p 717.

¹² *Ibid.*

¹³ Craig, P., De Búrca, G., *supra* nota 1, p 834.

1.1.2 Self-employed

A self-employed person is someone who is personally performing work, without being an employee or working under someone's directions.¹⁴ EU citizens are free to self-employ themselves with the right to freedom of establishment, stated in the TFEU art 49.¹⁵ The freedom of establishment means removal of all obstacles that could violate the individuals or companies right for a permanent place of business in the host Member State.¹⁶ Establishment means an actual economic activity of an establishment in a host Member State for an indefinite period.¹⁷ It has been stated that the EU Member States should grant all the same rights to the host Member States nationals, as they grant to their nationals.¹⁸ This should provide that there would not be any discrimination based on nationality.¹⁹ TFEU Art 49 states that restrictions on the freedom of establishment of nationals of a Member State are prohibited. Those prohibitions include restrictions on the setting up agencies, branches or subsidiaries by nationals of one Member State in the territory of another Member State. The article also includes right to take up and pursue activities as a self-employed person and to start and manage new companies.

There have been cases where States have not accepted the diplomas of nationals of another Member States as equivalent to the national diplomas. In the case *Vlassopolou*²⁰, a Greek national had studied law in Greece. She had practiced German law for several years and was applying to take part of the Bar exam in Germany. She was refused, as she had not completed her studies in Germany and had not passed the relevant German exams.²¹ The ECJ ruled, that there were infringed the prohibition of discrimination rule and that the national authority needed to compare the knowledge and skills of the diploma of another Member State to the national certificate. If those are equivalent, which does not mean necessary that they need to be the same, but to cover the same skills and knowledge, the State needs to accept the diploma. If it lacks something, but the applicant has acquired that knowledge or practical training in the host Member State, it needs to be accepted.²² This had the effect that States were not able to restrict a

¹⁴ Engblom, S., Equal Treatment of Employees and Self-Employed Workers. *International Journal of Comparative Labour Law and Industrial Relations* 2001, 17 (2), pp 211-232, p 213.

¹⁵ Craig, P., De Búrca, G., *supra* nota 1, p 764.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Van Ooik, R., Freedom of Movement of Self-Employed Persons and the Europe Agreements. *European Journal of Migration and Law* 2002, 4 (3), pp 377-394, p 377.

¹⁹ *Ibid.*

²⁰ CJEU 07.05.1991 C-340/89 *Vlassopolou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*.

²¹ Craig, P., De Búrca, G., *supra* nota 1, p 772.

²² Craig, P., De Búrca, G., *supra* nota 1, p 773.

person to entry into a profession or practice trade without comparing of the diplomas. It was an important decision as the non-discrimination principle was created to protect the free movement rights and recognition of diplomas includes to the free movement rights.

1.1.3 Students

Students and job-seekers are not included under the worker status. That is why there are own rules for them. EU nationals pursuing educational courses in a Member State other than where they are nationals are entitled to claim certain social advantages which include educational advantages.²³ The prohibition of non-discrimination on the grounds of nationality is again in a big role, as the main idea of the European Union and the citizenship of the Union is that people are free to move to other countries for the purpose of work or study.²⁴

The *Grzelczyk*²⁵ case presented a discrimination situation that was ruled by the ECJ to be against the jurisdiction of the European Union.²⁶ A French national was studying in Belgium. He applied for a non-contributory minimum subsistence allowance, which was granted to Belgian nationals. He did not get it, and the decision was argued by stating that he was not a national of Belgium.²⁷ The ECJ ruled that this decision was “discrimination solely on the grounds of nationality”.²⁸ The ECJ reasoned that the EU citizenship is “destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for...”.²⁹ This means that students who are EU citizens should have all the same rights in a host Member State as the nationals of that Member State. But there are some conditions before the students can enjoy from these rights. The student needs to satisfy the relevant national authority³⁰, meaning that the student needs to be able to sufficiently resource studies during residency and avoiding of becoming a burden on the social assistance system of the host Member State. The student also needs to “be enrolled in a recognized educational establishment for the principal purpose of following a vocational training

²³ Craig, P., De Búrca, G., *supra* nota 1, p 836.

²⁴ Dunne, P., Education without Borders: The Freedom of Movement for Students in EU law. King's Inns Student Law Review 2012, 2, pp 1-20, p 3.

²⁵ CJEU 20.09.2001 C-184/99 *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*.

²⁶ Craig, P., De Búrca, G., *supra* nota 1, p 837.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Craig, P., De Búrca, G., *supra* nota 1, p 838.

³⁰ *Ibid.*

course there’’.³¹ The last requirement is that the student needs to have a sickness insurance, which should cover all the situations, which could happen in the host Member State.³² The *Bidar*³³ and *Föster*³⁴ cases presented the importance of integration during the studies. Those requirements differ between the Member States as what the Member States think is actual integration. But for example in the *Bidar* case, the requirements were the individual facts that convinced ECJ that Mr. Bidan had sufficient connection with the host Member State.³⁵ These limitations give the State’s the protection that students are not able to come to the State to study, without the ability to finance their studies or not being integrated into the society.³⁶ To be remembered is that, even though there are these limitations, it does not mean that students are not entitled to social security benefits in the host Member State.

1.1.4 Job-seekers

Job-seekers were not allowed to enjoy the rights of equal access to social benefits before. This means that the rights are more limited to the job-seekers than to the fully-fledged workers.³⁷ But the ECJ made a change to it in its ruling in the *Collins*³⁸ case, compared to its prior case rulings on job-seekers.³⁹ ECJ decided that the job-seeker is entitled to social benefits and tax advantages if the ‘benefit of a financial nature intended to facilitate access to employment in the labor market of a Member State’’.⁴⁰ The requirement is that the job-seeker has to have a genuine link with the employment market, meaning that there needs to be evidence of that the person has during a reasonable period, truly sought work in the host Member State.⁴¹ It also means, that not all the job-seekers can benefit from the social benefits if there are not seen any genuine link between the job-seeking and the employment market of the host Member State.⁴² Job-seekers need to be also able to show not being able to get the work position without the social benefits.⁴³

³¹ *Ibid.*

³² *Ibid.*

³³ CJEU 15.03.2005 C-209/03 *The Queen, on the application of Danny Bidar v. London Borough of Ealing and Secretary of State for Education and Skills.*

³⁴ CJEU 18.11.2008 C-158/07 *Förster v. Hoofddirectie van de Informatie Beheer Groep.*

³⁵ Dunne, P., *supra* nota 24, p 5.

³⁶ Craig, P., De Búrca, G., *supra* nota 1, p 838.

³⁷ Dougan, M., Free Movement: The Workseeker as Citizen. *Cambridge Yearbook of European Legal Studies* 2001-2002, 4, pp 93-132, p 94.

³⁸ CJEU 23.03.2004 C138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions.*

³⁹ Craig, P., De Búrca, G., *supra* nota 1, p 841.

⁴⁰ Craig, P., De Búrca, G., *supra* nota 1, p 842.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

To conclude this, the EU citizens are entitled to enjoy their rights of free movement in the EU Member States. There are also restrictions, as free movement does not mean moving to another Member State to enjoy from better social services. Being able to enjoy the free movement and to reside in the Member State's territory, the person needs to be working, studying or actively searching work. Member States often require proper health insurance when an EU citizen moves to a host Member State. But the most important rule of EU law is that there should not be discrimination based on nationality in EU. This means that there should not be any discrimination between EU nationals and all of the EU citizens should have the same possibilities and requirements within the EU.

1.2 Third-country nationals rights in EU

Third-countries are all of the other countries which are not Member States of the EU.⁴⁴ The nationals of the third-countries do not have a possibility to have the EU citizenship. The third-country nationals can have a residence permit in one of the Member States, but as they are not nationals of any EU Member State, they are not entitled to the EU citizenship and can not enjoy the rights that it provides. One of the cornerstones of EU is the prohibition of discrimination based on nationality. This means that as the EU Member States are restricted to discriminate nationals of other Member States, they are bound to give priority to the EU citizens, as they do not have the discrimination prohibition on third-country nationals,⁴⁵ there raises a question that, does the non-discrimination based on nationality rule relate to third-country nationals in any situation.⁴⁶

Third-country nationals are not entitled to the EU citizenship, as mentioned above. This means that they do not have the same free movement rights as the nationals of EU Member States. The Member States can regulate the residency matters concerning the third-country nationals by themselves⁴⁷, which creates inequalities between the Member States, as there can be huge differences in the legislations. This can also be stated that there might be direct discrimination based on nationality in some Member States.⁴⁸ But as mentioned before, the non-discrimination rule does not bind the Member States, when it is about a third-country national. There has still

⁴⁴ Doukas, I. Non-Discrimination on Grounds of Nationality: The Position of 'Third Country Nationals' Within the EU. Cambridge Student Law Review 2008, 4 (1), pp 1-10, p 1.

⁴⁵ *Ibid.*

⁴⁶ Doukas, I., *supra* nota 44, p 2.

⁴⁷ Doukas, I., *supra* nota 44, p 3.

⁴⁸ Muir, E. Enhancing the protection of third-country nationals against discrimination: Putting EU anti-discrimination law to the test. Maastricht Journal of European and Comparative Law 2011, 18 (1-2), pp 136-156, p 141.

been case law showing that the requirements may be quite positive for the third-country nationals as well.⁴⁹

*Carpenter*⁵⁰ case was about an EU citizen who married a third-country national. The couple lived in the UK, and the husband was working as an entrepreneur. The husband's company provided cross-border services. The company took a lot of the husband's time, and it was needed that the wife remained at home and took care of the husband's children. The wife's entry permit had expired, and while trying to renew it and to get a residence permit, by being married to a UK national, it was declined. The ECJ ruled that, as the wife had had such a big effect on the husband's ability to start the company, by helping with the children, ECJ decided that it was only reasonable to grant the residence permit to the wife. The ECJ also referred to the Article 8 of the European Convention on Human Rights (hereinafter referred to as ECHR) that the deportation would not be proportionate as the wife was clearly not a threat to public order or public safety. It needs to be remembered that the ECJ was able to rule in this case because the situation was concerning a family member of an EU citizen and the fact that the wife made it possible for the husband to provide cross-border services, was the reason why ECHR was possible to take into account. If the situation had been merely about third-country nationals, the ECJ or ECHR would not have been applicable.⁵¹

There are differences in requirements between third-country nationals family members and EU nationals family members. The third-country nationals need a residence card or a visa to be able to live in an EU country. Third-country nationals also have stricter rules in case the Union citizen leaves the state or dies. In this kind of situation, the third-country nationals family members need to have resided in the host Member State over one year before the death or leave, to be able to continue residency at the State.⁵²

Sufficient resources requirement is also ruled more strictly when it comes to third-country nationals than compared to EU nationals, as being presented in the *Givane*⁵³ case. The case concerned a situation, where the husband of a non-EU citizen died, and the widow was left alone with three children. The family had resided in an EU country for less than two years, and the widow was not employed at the Member State. The ECJ stated that the decision made by the

⁴⁹ Doukas, I., *supra* nota 44, p 3.

⁵⁰ CJEU 11.07.2002 C-60/00 *Mary Carpenter v. Secretary of State for the Home Department*.

⁵¹ *Ibid.*

⁵² Doukas, I., *supra* nota 44, p 4.

⁵³ CJEU 09.01.2003 C-257/00 *Nani Givane and Others v. Secretary of State for the Home Department*.

Member State's court was justified, as the family did not qualify the requirements set out in Directive 2004/38/EC, which regulates the requirements and rights to the family members of EU citizens who are either third-country nationals or EU nationals. The decision was argued so that they had not resided in the host Member State for two years, which meant that the integration to the Member States society had not happened yet.⁵⁴ There are differences in the integration rules within the EU, as the integration policy is not harmonized between the Member States.⁵⁵ The reason for this is that there are a lot of differences between the Member States, for example, differences in cultural and legal aspects, which has made it challenging to harmonize the policy.⁵⁶

There are also other reasons than cultural and legal issues. EU is subject to numerous competition pressures that put it in the position, as D. Chalmers explains in his work.⁵⁷ The EU follows "economically efficient" approach, which means that, while between EU citizens there can not be any discrimination based on nationality and the need to accept EU citizens diplomas and professional qualifications as equivalent to their own national requirements, third-country nationals diplomas can be rejected, because of the need to keep the moneys in the EU and try to provide work opportunities primarily for the EU citizens.⁵⁸ There are also different rules inside the EU, as EU has regulated that the Member States can be more restrictive to give jobs to the EU citizens, which home Member State has joined the Union only two years before.⁵⁹ In its simplicity, it means that the new Member States have been rewarded a two-year schedule to change their national legislation to be in accordance with the EU jurisdiction and for the old Member States to be ready to accept the new EU citizens. These measures have a possibility to be extended for another three years and even after that for additional two years for a reason that if it caused "serious disturbances in its labor market".⁶⁰ Meaning that for the new ten Member States that joined the EU in 2004, being able to fully enjoy the rights that joining the EU granted for them, took seven years in the worst case scenario.

Another reason for the restrictions in the legislation is that the States want to certainly ensure the national safety and sovereignty to the nationals and to be secure that all of the safeguards are

⁵⁴ *Ibid.*

⁵⁵ Murphy, C. Immigration, integration and citizenship in European Union Law: the position of third country nationals. *Hilberian Law Journal* 2008-2009, 8, pp 155-184, p 157.

⁵⁶ *Ibid.*

⁵⁷ Doukas, I., *supra* nota 44, p 6.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Doukas, I., *supra* nota 44, p 7.

done properly. Foreign people are often seen unfairly as a threat to national security, especially after all of the terrorist attacks that have been happening all over the world, and recently concentrated especially to the middle Europe. The attacks have made the EU countries safeguards even stricter. The politicians are also feeling pressure from the citizens when it comes to immigration policy and that is also one of the reasons for the strict rules, as politicians do not want to ‘open up the floodgates’ to the immigrants when it might cause political costs. But as there are difficulties in the immigration policy in the EU because of a united opinion, that especially now, when a lot of immigrants are coming to the Europe for safety reasons, it is needed to give them help. These are the reasons why there are all these requirements for foreign people and why to have tolls at the borders when people are entering a country.⁶¹

To conclude this, there are different and a lot stricter rules to third-country nationals than to EU nationals. But the main reason for these are to ensure the safety and security of the EU Member States and not to grant residence permits, and different rights to people, who are there only to enjoy the better social security services or other rights might be entitled to while residing in a EU Member State. It is clear, that the third-country nationals can not benefit from the same rights as the EU citizenship holders, but can deserve some rights after residing in an EU country for a certain time. The key is, showing that there is a reason for the stay and not just enjoy the social services or harassing the life of the country, but to work and to be a part of the society of that country.

1.3 UK citizens rights after Brexit

UK leaving the EU means losing all of the benefits that the EU citizenship brings. UK will not be a part of the EU anymore or will not have to respect the decisions made by the Union as well not being bound by the treaties, regulations or directives of the Union. For nationals of the UK, leaving EU means, for example losing the right to free movement within the EU. This means not being able to reside in an EU Member State as easily as before and needing to present a visa or other permit for a visit or residency. The situation is new for everyone, as there has not been a situation like this before in the EU’s history, which means that there are a lot to discuss and to decide within the EU and in the UK.

There are countries that are not EU Member States but can benefit from the free movement and the recognition of professional qualifications rights. This has been made possible with the

⁶¹ *Ibid.*

European Free Trade Association (hereinafter referred to as EFTA) agreement.⁶² EFTA agreement is conducted between the EU, Iceland, Liechtenstein and Norway.⁶³ All of the above countries are also members of the European Economic Area (hereinafter referred to as EEA), which was the predecessor of the EU.⁶⁴ One of EEA's core rights was the free movement of persons. The EFTA countries can enjoy the free movement rights and the EU Member States nationals are also entitled to enjoy the free movement rights in the EFTA countries. Switzerland is also an EFTA country, but it has signed its agreement on the free movement aspects with the EU. That agreement is called Agreement on the Free Movement of Persons (hereinafter referred to as AFMP).⁶⁵ The AFMP agreement covers free movement, mutual recognition of professional qualifications, right to buy property and coordination of social insurance systems.⁶⁶

Turkey has also concluded an agreement with the EU, the Ankara Agreement in 1963. It gives a right to Turkish nationals, to work and study in the EU Member States.⁶⁷ The agreement gives benefits to the Turkish nationals, compared to other third-country nationals wishing to work and reside in the EU. The agreement was concluded with the inspiration of creating a closer relationship between the EU and Turkey. Ankara Agreements mission was also to harmonize the trade and to reduce the disparity between the countries.⁶⁸

These agreements have made it possible for EU citizens to move and work in Norway, Iceland, Liechtenstein, Switzerland and Turkey and on the other way around. That is also the reason why nationals of those countries are not called third-country nationals when it comes to the free movement. It also makes it easier to apply for a study place in those countries and that the diplomas are recognized within the EU. The agreements enable people to have more opportunities to work and study abroad and to integrate the Europe.

There has not been any decisions made about the UK's situation of what will happen in the future to the free movement rights and recognition of professional qualifications of the UK nationals and are the EU nationals able to continue to work and study in the UK the same way as it has been, while they have been one of the EU Member States. There has been discussions on

⁶² Free Movement of Persons. The European Free Trade Association, www.efta.int/eea/policy-areas/persons (14.2.2017).

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Free Movement of Persons Switzerland – EU/EFTA. State Secretariat for Migration SEM, www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta.html (14.2.2017).

⁶⁶ *Ibid.*

⁶⁷ Düzenli, E., Free Movement of Turkish Workers in the Context of Turkey's Accession to the EU. Middle East Technical University 2010, pp 1-123, p 30.

⁶⁸ Düzenli, E., *supra* nota 68, p 31.

the aspect that there would be an ‘emergency brake’, which means that the UK and EU would create a contract that would give the UK a right to be still able to enjoy the single market and free movement rights for example for seven years, while still not being a full member of the Union.⁶⁹ UK officials have stated that there are not any decisions made yet, but it is possible that this kind of ‘emergency brake’ is one of the ideas on the table.⁷⁰ It also means that the UK would need to pay a substantial contribution the EU budget, but it would probably be a lot lower rate than before, as the UK would not have any right to a seat at the negotiations of the single market.⁷¹

The UK’s President Theresa May has stated that the UK would be a lot poorer country, without the EU immigrants and that the UK’s mission is to protect those after the Brexit.⁷² With this statement she made it clear that the idea of Brexit is not to shut all of the doors to the EU citizens and that there really needs to be negotiations about the future. As Brexit is totally a new situation for the EU, it will be a long way until there are some real answers, because there are a lot to take into consideration, while making these decisions.⁷³

Most probably, UK will conclude some kind of an agreement with the EU and the EFTA countries, as UK wants to ensure its citizens being able to enjoy from the single market and free movement and being able to work and study in the EU Member States also in the future.⁷⁴ This will mean a long way of negotiations, as the agreement needs to be attractive for both of the parties.⁷⁵ Most probably the UK will not try to get into the EFTA agreement, as they have shown in their Brexit decision, that they want to be independent and not be dependent on any other country.

As a conclusion, the UK situation will change radically when Brexit comes into force, as it will make the UK a third-country and the UK will not be entitled to enjoy the rights of the EU in the same way than before. The UK will probably try to conclude some agreement between other European states, as the UK does not want to be blocked totally away from the European markets.

⁶⁹ Helm, T., Brexit: EU considers migration ‘emergency brake’ for UK for up to seven years. The Guardian (The Guardian News and Media Limited) 2016, www.theguardian.com/world/2016/jul/24/brexit-deal-free-movement-exemption-seven-years (14.2.2017).

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Webb, S., What will happen to EU citizens in the UK after the Brexit vote, will EU nationals have to leave and what rights do they have? The Sun (News Group Newspapers Limited in England) 2017, www.thesun.co.uk/news/2822423/what-will-happen-to-eu-citizens-in-the-uk-after-the-brexit-vote-will-eu-nationals-have-to-leave-and-what-rights-do-they-have/ (14.2.2017).

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Helm. T., *supra* nota 69.

The difficulties will appear while negotiating the agreements as those should be profitable for both of the parties, and most probably compromises are needed to be done to ensure that. EU has already presented its ‘survival plan’, as the Juncker plan⁷⁶ was revealed. The White Paper presented five different options for the EU to survive after UK’s leave. The main idea is to make EU unite and strong again after the UK’s leave. The UK will have its rules for EU citizens, so it is important that the EU also creates its path and decides that what are the things EU wants to accomplish in the future. With those decisions, it will be easier to decide the rules for the UK nationals, as the main goals of EU and UK would be clear.

⁷⁶ European Commission, White Paper on the Future of Europe. 2017 www.static.rasset.ie/documents/news/white-paper-on-the-future-of-europe.pdf (3.3.2017).

2. Analysis of the Directive 2005/36/EC on recognition of professional qualifications means

2.1 Grounds for the recognition of professional qualifications Directive

The Directive 2005/36/EC on recognition of professional qualifications⁷⁷ was made to give the EU citizens the free movement right when it comes to working or studying abroad but still inside of EU. It means that the Directive makes it easier to study in one Member State and then in future to work in another Member State, as the diplomas are also recognized at the host Member State. This is easier said than done, there are a lot of differences in study programs between the Member States, which creates huge challenges for the system to work.⁷⁸ It also needs to be taken into account the fact that the mutual recognition rules have to be suitable for all of the Member States and not to harm some Member States study systems or jurisdiction.⁷⁹

During the past years, a lot of developments have made it easier to undertake short or long-term studies and work possibilities abroad because of the Directive.⁸⁰ The Council of Europe has had a huge impact on the development of higher education programs, as it has provided a platform for the discussions about it.⁸¹ The discussions have lead to the possibility to harmonize the programs, which have been earlier strongly connected to the national structures and regulations. Studying abroad has become popular between the students and the ERASMUS student exchange program⁸² has also had a big impact as it provides help and secure to the EU exchange students, while they are studying in a host Member State.

The Bologna Process was an enormous help for the harmonizing of the study programs within Europe.⁸³ It is based on the intergovernmental Sorbonne and Bologna Declarations. The Bologna Process was created with the help of the national governments to create a one “common European three-tier system of degrees”.⁸⁴ The three-tier system means the Bachelor, Master and Doctoral model. The Bologna Process has helped the degrees to be recognized within the

⁷⁷ OJ L 255/22, 30.9.2005

⁷⁸ Garben, S. On Recognition of Qualifications for Academic and Professional Purposes. *Tilburg Law Review* 2011, 16, pp 127-156, p 128.

⁷⁹ Möstl, M. Preconditions and limits of mutual recognition. *Common Market Law Review* 2010, 47 (2), pp 405-436, p 405.

⁸⁰ Garben, S., *supra* nota 78, p 128.

⁸¹ *Ibid.*

⁸² European Commission, Erasmus+, www.ec.europa.eu/programmes/erasmus-plus/node_en (12.4.2017).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

Europe, as they follow at least the same model, even though they do still have some national initiatives, which differ from others.⁸⁵

The Directives primary purpose was to regulate only the fully qualified professionals and not to include the recently graduated without complete remunerated traineeship or supervised practice.⁸⁶ But there has been feedback from the public consultation that has stated ‘‘that there is a growing interest in developing the possibility for young graduates to pursue a remunerated traineeship abroad’’.⁸⁷ This has also been supported by a large number of stakeholders as they want to encourage the graduates for mobility.⁸⁸ It would also help the companies, as the new employees would have knowledge and experience from abroad and could present new ideas that have been seen and noted to work also elsewhere.

2.2 The Directives mission

The Directives main task is to establish rules for the acceptance of professional qualifications within the EU Member States.⁸⁹ This means that the Directive 2005/36 gives EU citizens the right to pursue their profession, that they have been granted in one Member State, to be able to pursue that same profession in another Member State.⁹⁰ There are some specific requirements for different professions, and those are presented in the Directives Annexes. The Directive requires that there needs to be ‘‘in any case minimum training conditions for certain profession’’.⁹¹ Requirements for professions covered by the general system should be presented by the Member State, but those requirements can not be awarded only by the national educational system, while the person has already been awarded those in a host Member State.⁹² This means that all of the Member States need to take into account the other Member States requirements and assess whether they can correspond to those requirements and to provide education that corresponds to the host Member States requirements. Meaning that collaboration between the Member States is extremely important. It enables EU citizens to use a profession awarded in one Member State in a host Member State as well and without discrimination based on the nationality of the person or the diploma.

⁸⁵ Garben, S., *supra* nota 78, p 129.

⁸⁶ European Commission, Evaluation of the professional qualifications Directive (Directive 2005/36/EC). 2011 www.ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf (18.2.2017) p 36.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ OJ L 255/22, 30.9.2005, p 27.

⁹⁰ *Ibid.*

⁹¹ OJ L 255/22, 30.9.2005, p 23.

⁹² *Ibid.*

2.2.1 The General System

The general system was created to present the rules for all of the other professions that do not go under the automatic recognition.⁹³ It developed through a process of developing general recognition to diplomas in all sectors.⁹⁴ The system was first presented in the Directive 89/48/EEC on mutual recognition of professional qualifications.⁹⁵ In the 1989 Directive, it was meant for higher education diplomas only, which had taken at least three years. This was extended in the newer Directives in 1992 and 1999, the extension was also to cover lower-level qualifications.⁹⁶ The main idea of the 2005 Directive was to harmonize these rules presented in the different Directives and to give better legal certainty to migrants.⁹⁷ The Directives mission was also to bring all these Directives within one single framework, to clear the recognition of professions rules. The professions that have benefitted the most from the general system have been primary and secondary school teachers, second level nurses, physiotherapists and social workers.⁹⁸

The general system works in a way that all of the applications are checked individually by competent authorities.⁹⁹ The authorities will check all the documents and compare those to the host Member State's qualifications. This has created some difficulties, as all of the cases are done at a case-by-case strategy, meaning more work to the authorities. But the result will be more beneficial to the applicant, as all of the relevant details are taken into account and compared to the host Member States requirements. There has also been criticism on that, as there is a need to have every document stating what the applicant has studied and used the profession, the document number might rise quite high.¹⁰⁰ The requirements require that all of the documents need to be also translated to the language of the host Member State in most situations, which has created a lot of work for the applicants. One problem have also been the lack of information on what documents should be delivered, which has made it a massive procedure to the applicant¹⁰¹ and creates useless stress.

⁹³ European Commission, (2011), *supra* nota 86, p 20.

⁹⁴ Van Riemsdijk, M. Obstacles to the Free Movement of Professionals: Mutual Recognition of Professional Qualifications in the European Union. *European Journal of Migration and Law* 2013, 15 (1), pp 47-68, p 53.

⁹⁵ OJ L 019, 24.01.1989.

⁹⁶ European Commission, (2011), *supra* nota 86, p 20.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ European Commission, (2011), *supra* nota 86, p 21.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

The usual time for the general system procedure is about three months if all of the needed documents are submitted to the competent authority.¹⁰² There is a deadline that within a month, the competent authority needs to inform the applicant if some of the needed documents are missing and to clarify which documents are missing. In that situation, it can take up to a maximum of four months that the authority presents a decision about the case.¹⁰³ All of these deadlines are binding in the automatic recognition process as well, with one exception, the general systems process can be extended to four months, but this is not allowed for the automatic recognition procedure.¹⁰⁴ Meaning that the automatic recognition process is a bit faster than the general system. The reason for this is already because of the differences in the processes, as the general system is more manual work and so on it will take more time to go through all of the documents.

The Directive 2005/36/EC also regulates situations when the home Member State does not regulate the profession in a same way as the host Member State.¹⁰⁵ In this kind of situation, there are two alternatives, either the applicant needs to prove two years of professional experience, which needs to be accomplished during the last ten years, or the applicant needs to demonstrate to the competent authority that the applicant has followed a regulated education.¹⁰⁶ There has been a lot of civilization based on the two-year requirement of professional experience.¹⁰⁷ Denmark and the Netherlands, for example, have stated that it can create discrimination between the EU citizens, as Denmark and the Netherlands have only a limited number of regulated professions which creates an obstacle for their nationals if they have not been practicing their profession on a full-time basis for two years for example.¹⁰⁸ But in the majority of cases, the citizens applying for recognition of their qualifications are accepted without any compensation measures.¹⁰⁹

Differences in the programs are still quite usual, and that is the reason for different compensation measures. The compensation measures are to secure the applicant's ability to practice the profession and to secure the public safety.¹¹⁰ The general system gives the competent authority

¹⁰² European Commission, (2011), *supra* nota 86, p 22.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ European Commission, (2011), *supra* nota 86, p 23.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ European Commission, (2011), *supra* nota 86, p 28.

¹¹⁰ European Commission, (2011), *supra* nota 86, p 30.

ability to impose an aptitude test or an adaptation period of up to three years on the applicant.¹¹¹ This is possible for situations where the host Member States requirements for the training are substantially different with the home Member States. The compensation measures have been under observation, as the mission is to find out that do they discourage professionals from moving to another Member State or do they help the professionals to use their profession in another Member State and to acquire their ‘missing’ competences.¹¹²

The compensation measures have also been one of the reasons that there has not been a huge urge to get qualified under the Directive. There are also other reasons, for example, the complexity of the process. Even though that the main idea was to harmonize and make it easier, the new legislation has not been as successful as would have been hoped. One of the Directives flaws is also the fact that it does not require for continued education. It would be extremely important, especially in the field of technology and science, as those change and develop rapidly. The Directive also failed to provide harmonized training standards, which creates problems to the competent authority to decide that has the applicant all of the skills that are needed in the host Member State to practice the profession.¹¹³

There are also a lot of advantages in Directive and things that have gotten easier over the years. One that has had a significant impact on it is the Bologna process. It has had an enormous effect on the comparison of qualifications under the general system. The process presented the European Credit Transfer and Accumulation System (hereinafter referred to as ECTS).¹¹⁴ ECTS credit system makes it easier to compare diplomas as if both of the diplomas present the credits completed in ECTS credits.¹¹⁵ In that case, the credit points are fully comparable as the ECTS credit system is controlled by the European Higher Education Area (hereinafter referred to as EHEA), which makes it a harmonized system presenting the study amount that has been conducted.¹¹⁶ It also helps states to compare different programs if the study credits are presented in ECTS.

In some cases, the scope of activities covered by profession differs a lot between the Member States. In these situations there is a need to use the partial access to a profession.¹¹⁷ The partial

¹¹¹ European Commission, (2011), *supra* nota 86, p 28.

¹¹² *Ibid.*

¹¹³ Van Riemsdijk, M., *supra* nota 94, p 55.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ European Higher Education Area. www.ehea.info/pid34248/history.html (4.3.2017).

¹¹⁷ European Commission, (2011), *supra* nota 86, p 37.

access to a profession was first presented in the case *Collegios de ingenieros*¹¹⁸. The partial access is granted in situations where two conditions are met, the differences between the fields of activity of the professions are so enormous that a full training and educational program would be needed to compensate the requirements and it is not possible to accomplish it with the compensation measures. The other condition is that giving partial access does not create any valid public interest reasons against such access. But the partial access principle has rarely been used by the competent authorities, as it is quite hard to decide which cases deserve the partial access rights and which do not.¹¹⁹

2.2.2 Automatic recognition

Automatic recognition of professional qualifications was first introduced in the first recognition of professional qualifications Directive in 1989.¹²⁰ It was created for health professions, which were: doctors, dental practitioners, pharmacists, nurses, midwives and veterinary surgeons.¹²¹

The new Directive did not do any substantial new changes to these professions programs or their rules, but it consolidated and harmonized the rules into one single legislative instrument. Few changes were still included. The professions are listed in the new Directive a little differently, and there came one new profession to the list.¹²² The new professions are doctors with basic training, specialized doctors, general practitioners, nurses responsible for general care, dental practitioners, specialized dental practitioners, veterinary surgeons, pharmacists, architects, and midwives.¹²³ These rules are now presented in Chapter III of the Directive.¹²⁴ The Directive has set down minimum requirements for all these professions, and if a person wants to practice one of these professions, the person needs to comply with the requirements presented in the Directive.

The minimum training requirement provisions regulate the conditions of admission to the training program and minimum duration of training, which usually is presented in years, but can also be presented in training hours.¹²⁵ There are also presented lists for each profession of what skills and knowledge are needed to be studied.¹²⁶ For doctors, there are also different lists in

¹¹⁸ CJEU 19.01.2006 C-330/03 *Colegio de Ingenieros de Caminos, Canales y Puertos v. Administración del Estado*.

¹¹⁹ *Ibid.*

¹²⁰ European Commission, (2011), *supra* nota 86, p 41.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ OJ L 255/22, 30.9.2005.

¹²⁵ European Commission, (2011), *supra* nota 86, p 41.

¹²⁶ *Ibid.*

Annex V presenting what needs to be included in their training. In the Annex, there is also a list of each Member State stating the diploma names that are automatically accepted within the EU.

There can be a case that is about a third-country migrant having a diploma which satisfies all of the training conditions set out in the Directive for the profession but the Member State is not forced to accept the migrant's diploma.¹²⁷ But this does not mean that a Member State can refuse a third-country diploma without reasoning the decision. It is required that the Member State needs to give a reasoned decision within three months.¹²⁸ The applicant needs to have also a possibility to appeal against the decision to the national court.¹²⁹ The idea of these requirements is to secure the applicant's rights and that a Member State is not able to refuse an application without concrete reasons.

The automatic recognition of health professionals makes it the most mobile profession field in the EU.¹³⁰ As it is easy to recognize the diplomas, it makes it easy to move and use the professions in another Member States. Between 2007 and 2010, there was granted automatic recognition to diplomas to about 26 600 doctors, 15 200 nurses, 6600 dentists, 3400 pharmacists, 1700 midwives and 3700 veterinary surgeons in the EU.¹³¹ For example, the UK is one the most receiving countries of doctors and nurses in EU. In the UK there are working more than one of three doctors, who had their training in a different country.¹³²

The competent authorities who check the qualifications for professions have stated that the automatic recognition actually works very well in practice and is seen as efficient and cost-effective.¹³³ The Directive has also been able to easier the recognition rules, as there has been created a committee that will manage the Directive and will keep it updated, which is needed, as the medical science develops all the time.¹³⁴ However, there are still some problems in the automatic recognition and the new Directive. For example, the programs provided for nurses and midwives seem to have some differences, and the professionals can be required to do some tasks that have not been trained for them, which creates a discrimination between the programs and it

¹²⁷ Peeters, M., Free Movement of Medical Doctors: The New Directive 2005/36/EC on the Recognition of Professional Qualifications. *European Journal of Health Law* 2005, 12 (4), pp 373-396, p 377.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ European Commission, (2011), *supra* nota 86, p 42.

¹³¹ *Ibid.*

¹³² European Commission, (2011), *supra* nota 86, p 43.

¹³³ European Commission, (2011), *supra* nota 86, p 44.

¹³⁴ Peeters, M., Free Movement of Medical Doctors in the EU. *Medicine and Law* 2007, 26 (2), pp 231-244, p 239.

might be difficult to get employed in the other Member States.¹³⁵ Another problem has been the Directive's requirement for continuing professional development. This depends on a lot on the Member State that is it compulsory or not.¹³⁶ That is why it has been said that it might create in the future a risk of becoming an unreasonable barrier to the mobility of professionals.¹³⁷ The competent authorities have also stated that it is extremely important to improve the transparency between the Member States when it comes to the contents of training programs.¹³⁸ This is because of the reason that it would make the programs more harmonized, as it creates problems when the programs are teaching different things, and the professionals do not have the same knowledge because of the training differences. The new Directive left still the telemedicine away from the Directives scope of application.¹³⁹ It would have been important to include to the Directive, as nowadays technology develops quickly and its use increases all the time. Now there are regulated only the physical movement of a doctor for example, but not a situation if a doctor is communicating through some technological device.

Problems usually arise, when a new program is started. The Directive demands that the Member States need to notify the Commission about any new programs and diplomas that they start and would need the automatic recognition. After notifying, the Commission makes a decision whether to grant the automatic recognition right to the new diploma. The problem arises as this procedure will take time and there can be a situation that a young graduate would like to enjoy the automatic recognition right but is not entitled to it, as there have not been any decision published yet about the right to automatic recognition with the new diploma. That is why there has been suggestions that the Member State should inform the Commission about the new diploma after it has been approved at the national level and already before it has even started actually.¹⁴⁰

2.2.3 Third-country qualifications

The Directive was created to apply to EU citizens holding professional qualifications obtained in an EU Member State.¹⁴¹ The recognition of third-country nationals is left totally to the Member States and their national rules. But there are some rules to the Member States, which the

¹³⁵ European Commission, (2011), *supra* nota 86, p 44.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ European Commission, (2011), *supra* nota 86, p 45.

¹³⁹ Peeters, M., (2007), *supra* nota 134, p 240.

¹⁴⁰ European Commission, (2011), *supra* nota 86, p 45.

¹⁴¹ European Commission, (2011), *supra* nota 86, p 73.

Directive has presented.¹⁴² As mentioned before the Member States are still not able to just refuse the diploma without justifying the decision. The earlier mentioned *Vlassopoulou*¹⁴³ case presented an obligation to the Member States when it comes to the other countries diplomas.¹⁴⁴ The case presented that the Member State needs to take into account the experience and training, completed in another Member State. This makes the application process fairer as the decision is not just based on the papers, but there are taken into account the practical experience as well. It also puts the applicants into an equal position, as most probably the applicants have studied as long as others who are directly accepted, so it is just reasonable to take into account their experience and professional qualification before making the decision.

There are different Directives that are for the third country nationals. Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment is for example for third-country nationals who wish to use their profession in one of the EU Member States.¹⁴⁵ This Directive is also called the EU Blue Card Directive. It was created to attract the third-country nationals who have a knowledge of specific skills and to make EU as attractive as the favorite migration countries like Australia, Canada, and the USA.¹⁴⁶ It was the first Directive to be adopted in the sense of economic migration.¹⁴⁷ This Directive applies only to the highly qualified workers from third-countries.¹⁴⁸ The total migration has been in a downward course before the new Directive; this has been because of the jurisdiction between the countries have differed so much.¹⁴⁹ The Directive does not apply to two important categories: entrepreneurs or service providers.¹⁵⁰ The entrepreneurs would be important to add to the Directive. It would provide the ability to create new companies to the EU, which would create new markets and provide more job possibilities. But this is not yet regulated in the EU, which creates a fear of losing good economic possibilities.¹⁵¹

¹⁴² *Ibid.*

¹⁴³ CJEU 07.05.1991 C-340/89 *Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg.*

¹⁴⁴ Peeters, M., (2005), *supra* nota 127, p 378.

¹⁴⁵ OJ L 155/17, 18.6.2009.

¹⁴⁶ European Commission, Review of Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (“EU Blue Card” Directive). 2015, www.ec.europa.eu/smart-regulation/roadmaps/docs/2016_home_025_review_eu_blue_card_directive_en.pdf (26.2.2017) p 1.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Peixoto, J. Migration and Policies in the European Union: Highly Skilled Mobility, Free Movement of Labour and Recognition of Diplomas. *International Migration* 2001, 39 (1), pp 33-61, p 37.

¹⁵⁰ European Commission, (2015), *supra* nota 146, p 1.

¹⁵¹ *Ibid.*

Highly skilled third-country nationals are important to the EU Member States, as EU's population, is getting older and the working class is getting smaller during the next decades.¹⁵² Without the positive net of migration, EU would suffer from a huge loss of working-age population and it would create a lot of problems with the Member States ability to provide services in the same way. The EU would suffer from losing a one million health professionals by 2020, because of the aging population, which means that the highly skilled professionals coming from third-countries are extremely important, to ensure that there will not be this disappearance in the health field.¹⁵³ There are also different fields of employment which are growing, and the EU is not able to keep up on those by themselves.¹⁵⁴ For example the number of ‘‘digital jobs’’ is growing quickly every year, and there is a need for about 100 000 skilled IT professionals every year and the number of skilled IT graduates is not at the same level, so there is a need for skilled IT migrants within the EU.¹⁵⁵ This presents the fact that highly skilled migrants are needed in the EU, and it is important that their residency and recognition of professional qualification issues need to be clearly regulated in the EU jurisdiction.

2.2.4. Language knowledge

The Directive 2005/36/EC requires that the EU citizens moving to another Member State for the meaning of pursuing their profession, are required to know the language that will be necessary for their work.¹⁵⁶ This is stated in the Article 53 of the Directive, ‘‘persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State.’’¹⁵⁷ But the recognition of qualifications can not be declined because of the language knowledge.¹⁵⁸ This means that the language knowledge should be tested after the recognition of qualifications is already decided.¹⁵⁹ Which means that in that situation it has not affected to the decision process at all and has not been the reason for the application to be declined. With this rule, it has been intended to safeguard the interest of consumers and patients, but at the same time in principal to avoid language testing to be used as an easy way to prevent nationals of other states to practice their profession in the another state.¹⁶⁰ As the language testing is to be avoided, there need to be strict rules when it is accepted and

¹⁵² European Commission, (2015), *supra* nota 146, p 2.

¹⁵³ Van Riemsdijk, M., *supra* nota 94, p 47.

¹⁵⁴ European Commission, (2015), *supra* nota 146, p 2.

¹⁵⁵ *Ibid.*

¹⁵⁶ European Commission, (2011), *supra* nota 86, p 70.

¹⁵⁷ OJ L 255/22, 30.9.2005.

¹⁵⁸ European Commission, (2011), *supra* nota 86, p 70.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

what are the language requirements for the professions that the foreign professional is going to exercise.

Language knowledge has stated to be the most problematic in the health sector.¹⁶¹ This is because most of the health sectors jobs go under automatic recognition. Meaning that those cases are not checked individually in the same way than in the general system, and there is no need to present the language knowledge in the automatic recognition. That is the reason why there has been provided statements that the professional has had insufficient language knowledge.¹⁶² This also creates an extremely high risk for misunderstandings and health risk, for example, if the doctor and the patient do not have a common language and the doctor does not understand what the patient says or other way around. Professions going under the general system has not been stated to present problems with language knowledge of the professional, because of the general systems case-by-case recognition, which means individual recognition of every applicant. The competent authority which checks the applicant's applicability to the profession may ask for a sufficient diploma stating their language knowledge.¹⁶³

To conclude this, the harmonized Directive presented two extremely important systems providing the recognition of professional qualifications. Those were the general system and the automatic recognition. The Directive also applies only to the EU citizens which make it, unfortunately, impossible for the third-country nationals to enjoy from these rights. But there is an own Directive for the highly skilled third country nationals, which presents the conditions for practicing their profession in the Member States. The language knowledge also has a huge impact to practicing the profession, as it is impossible without a common language and that is something that needs to be taken into account.

¹⁶¹ European Commission, (2011), *supra* nota 86, p 71.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

3. Differences in recognition of professional qualifications in intra-EU situations compared to situations between EU and third-country nationals

3.1 Intra-EU situations

The general idea of recognition of professional qualifications was to easier the EU citizens ability to enjoy the free movement rights and the internal market. It was the reason for creating the Directive 2005/36/EC on recognition of professional qualifications¹⁶⁴. The directive also made it easier for the EU citizens to study abroad for a short or long-term studies. Which has increased its popularity among the students, after creating the Erasmus exchange study program.¹⁶⁵ The Erasmus program was created already in 1987¹⁶⁶ to give students the opportunity to study abroad and to get familiar with a new culture. Joining the program and getting the courses recognized in the home Member State, became much easier by the creation of the Directive 2005/36/EC and after the Bologna process, which presented the ECTS's and took those into use as a harmonized study credit program within the EU.

The Directive 2005/36/EC started the harmonization process by creating rules and law, which made it able for the EU citizens to work in another EU Member State. For over sixty years the Council of the Europe had been creating harmonization by providing discussions and ideas to easier the mobility of people for professional qualifications means.¹⁶⁷ This has been extremely important for the development of the citizen's mobility. All the discussions and presented ideas have made it possible, that the Directive was created and the harmonization between different programs has been happening within EU. Without the discussions, the situation might still be that studying in one state would not provide an ability to work in another state. Nevertheless there have been these developments, the situation is still quite unfinished and in need of work and harmonization between the different study programs.¹⁶⁸ All of the work that has been done, to reach the harmonized study program goal, have led to disorganized and sometimes inefficient policy in this area, as there is a huge urge to reach the wanted totally harmonized situation.¹⁶⁹

The amount of EU citizens utilizing intra-EU migration is hard to present, as there are very few data available that concerns internal movements of the EU citizens. It is a lot easier to know the

¹⁶⁴ OJ L 255/22, 30.9.2005.

¹⁶⁵ Garben, S., *supra* nota 78, p 128.

¹⁶⁶ European Commission, Erasmus+, www.ec.europa.eu/programmes/erasmus-plus/node_en (12.4.2017)

¹⁶⁷ Garben, S., *supra* nota 78, p 128.

¹⁶⁸ Garben, S., *supra* nota 78, p 129.

¹⁶⁹ Garben, S., *supra* nota 78, p 130.

amount of third-country nationals coming to work in one EU Member State, as that data is collected already when the third-country nationals come to the state.¹⁷⁰ It is hard to collect data about the intra-EU movements, as those are not listed as regularly as the third-country nationals, who have stricter conditions when coming to one of EU Member States. It is the reason, why data about third-country nationals movements are easier to present.

As this research has presented earlier, the recognition of professional qualifications in intra EU situations is regulated by the Directive 2005/36/EC. The Directive has created two different systems that are used for the recognition process. There is the general system and then the automatic system. The automatic system works only for certain professions, meaning that it is a lot more limited system than the general system. The systems differ a lot from each other as the processing methods are mainly different.

The previous chapter presented the methods in more detail, but the main thing in automatic recognition is that the programs for certain professions are harmonized totally within the EU. This has made it possible to accept those qualifications more easily as there are limits for the programs and the Member States have made a contract to follow those requirements.¹⁷¹ For example, programs teaching doctors and nurses are professions that go under the automatic recognition.

This has enabled that the health professionals are the most mobile profession in the EU¹⁷², as the programs are harmonized through out the union, which enables the recognition process to be as simple as it can get. The recognition regulations have deserved most of the citizen's trust, the trust has been earned with good harmonized EU standards, satisfying study programs and teaching abilities.¹⁷³ Trusting that the programs are on a satisfying level in every EU Member state shows as well, that there is trust to the EU, as an institution to be in charge of the quality of the programs.

The general system has been transforming over the years, and the Directive 2005/36/EC created a common platform for it.¹⁷⁴ The system has been changing through the years, and that has been a good basis for the now unified and harmonized general system. The general systems have

¹⁷⁰ Peixoto, J. *supra nota* 149, p 38.

¹⁷¹ European Commission, (2011) *supra nota* 86, p 41.

¹⁷² European Commission, (2011), *supra nota* 86, p 42.

¹⁷³ European Commission, (2011), *supra nota* 86, p 43.

¹⁷⁴ European Commission, (2011), *supra nota* 86, p 20.

become a uniform system for all other professions, which do not go under the automatic recognition system but still go under the Directive (lower-level and higher-level education).

The general system works as a case-by-case evaluation way. Meaning that all of the applications are handled one by one, and there is always a competent authority going through the papers and making the decision that is the studied program comparable to the national programs.¹⁷⁵ The general system takes a lot more time, but there is always an authority going through the papers, which makes it better as the authority can ask for more information and can compare for example some courses that have the same content but a totally different name.

In the case *Brouillard*¹⁷⁶ was stated that the Member States could not discriminate an applicant that does not contain a diploma awarded by that Member State, but does have a diploma from another Member State and does have the needed experience that would be necessary to the job. Even though that the diplomas are not the same, there needs to be taken into account all of the other qualifications as well, which might compensate the missing diploma qualifications. The case showed that it is not just black and white while doing the decision about a work applicability. There are a lot to take into account, as in this case there was the practical experience that in the end gave the applicant the right to the job.

As the idea of the recognition of professional qualifications was to easier the EU citizens ability to move and work freely within the EU, it has not been a simple process. There are still difficulties in harmonizing the different study programs and comparing those to the others, taught in the other Member States. But the way is forward all the time, and the programs are being more harmonized and comparable to each other. The Directive has had a big impact on the harmonization and recognition process, as it has been facilitating the Member States, which want to harmonize the programs even more.

¹⁷⁵ European Commission, (2011), *supra* nota 86, p 21.

¹⁷⁶ CJEU 6.10.2016, C-298/14, *Alain Brouillard v Jury du concours de recrutement de referendaires pres la Cour de cassation*.

3.2 Situations between EU and third-country nationals

Third-country nationals problems in the EU started a long time ago. The EU citizens and third-country nationals face a separate treatment¹⁷⁷ even though that the EU has had important decisions stating that the EU should allow everyone freedom, security, and justice. The Tampere Conclusions in 1999 stated that EU should “offer guarantees for those who seek protection in, but also for those seeking access to the European Union”¹⁷⁸. But this justice to all principle had been concluded to mean the legal disputes in civil and criminal law and not the free movement rights.¹⁷⁹ Mutual recognition and internal markets between EU and third-countries have been discussed and considered that should those be accomplished, but there are still many disagreements between countries, that the harmonization has not been an option.¹⁸⁰ Even though that the harmonization would enhance easier work possibilities in other countries, it has not been possible, because of differences in opinions and education programs in EU and other countries.

The ‘EU Blue Card Directive’, Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment¹⁸¹, was made to provide legislative rules for the third-country nationals coming to work in the EU Member States. The Directive was introduced by the Juncker Committee, which the main objective was creating the EU to be as attractive for the highly qualified migrants to the countries like Australia or Canada, but still keeping the main right about a number of educated migrants accepted, to be decided by the Member States.¹⁸² Before the EU Blue Card Directive, the situations were covered only by the national law, meaning that the requirements varied a lot between the Member States. The new Directive harmonized the migration decisions, as the requirements were the same, but still kept the last word at the state level.

Leaving the last word to the Member States to be decided by themselves, means that the states were able to use the Directive as a primary or secondary legislation. This means that in the end there is no harmonization in the decisions, as the states still have the opportunity to do as their national legislation is stating. Which has created discussions in the EU, should the policy be

¹⁷⁷ Petrov, R. A. Rights of Third Country/Newly Independent States’ Nationals to Pursue Economic Activity in the EU. *European Foreign Affairs Review* 1999, 4, pp 235-251, p 237.

¹⁷⁸ Brouwer, E. Effective Remedies for Third Country Nationals in EU Law: Justice Accessible to All? *European Journal of Migration and Law* 2005, 7, pp 219-236, p 219.

¹⁷⁹ Brouwer, E. *supra nota* 178, p 220.

¹⁸⁰ Slot, P. J., Bulterman, M. Harmonization of legislation on migrating EU citizens and third country nationals: toward a uniform evaluation framework? *Fordham International Law Journal* 2006, 29 (4), pp 747-789, p 781.

¹⁸¹ OJ L 155/17, 18.6.2009.

¹⁸² European Commission, (2015), *supra nota* 146, p 1.

changed.¹⁸³ But as there has not been any changes made, the 2009 Directive, without implementations, is the one that is legally valid.

Situations where the Member State has decided to use the Directive 2009/50/EC as a primary legislation when highly educated third-country national is looking for a job in EU, follows the Directives requirements. The third-country national needs to fulfill requirements which are for example that the applicant shall, have a valid work contract, fulfill the requirements of the profession, have a valid travel document, to have a valid sickness insurance and not to pose a threat to public policy, security or health.¹⁸⁴ After fulfilling the requirements, the third-country national will be awarded an EU Blue Card. The EU Blue Card gives the third-country national a right to ‘enjoy equal treatment with nationals of the Member State issuing the Blue Card’¹⁸⁵. Those include for example working conditions, freedom of association, educational and vocational training and recognition of diplomas accordance with the relevant national procedures.¹⁸⁶ These rights are important, as they provide something back to the third-country national and show what EU can offer for third-country nationals.

There are quite much these different requirements for the third-country nationals, but those are presented only to provide safety to the EU citizens and to make sure that the third-country nationals coming to the Member State are not just going to be a burden to the Member State. Because of this, the third-country nationals can only enter the EU as a spouse of a migrant worker, as an employee or under the provisions of immigration of that specific Member State.¹⁸⁷ These requirements are important, as the employer is not responsible for the third-country national coming as an employee, but the EU Directive has provided these requirements and the Member State where the employee is moving, is in charge to check that all of the requirements are fulfilled. This gives a peace of mind to the employer and makes it easier for them to hire skilled people outside the EU. The creation of the Directive 2009/50/EC also helps EU to get more skilled workers and to create innovations and research, which was the point of the Directive in the first place.

¹⁸³ European Commission, (2015), *supra* nota 146, p 2.

¹⁸⁴ OJ L 155/17, 18.6.2009, Art. 5.

¹⁸⁵ OJ L 155/17, 18.6.2009, Art. 14 (1).

¹⁸⁶ *Ibid.*

¹⁸⁷ Petrov, R. A. *supra* nota 177, p 241.

In the case *Nakhla*¹⁸⁸, the situation was that Nakhla was a surgeon, trained in Egypt and practiced in the United Kingdom since 2006. He had specialized to the orthopedic surgeon and applied for registration as a specialized ortho surgeon, but the application was rejected because of missing qualifications. The situation was again that the General Medical Council had looked at the situation too narrowly and not taken into account all of the other licenses and qualifications that the applicant had been awarded. The court stated that the applicant had all of the needed requirements for applying for that registration and accepted the application.

The case showed again that things could not be looked too narrowly and accept only those who are the same as usually seen or expected in that Member State. As in the *Brouillard* case presented before in this research, it is extremely important to take into account that there are also other possibilities to comply with the requirements, than just the commonly known option. Particularly in cases where are nationals from other countries as applicants, it needs to be looked closely, that does their diplomas and experience comply with the national requirements and is there something that could be done for them to comply if the situation is that there is something important missing in the experience or diplomas.

People should be treated equally in every situation, regardless of nationality, sex, race or religion. In the question of professional qualifications, the authority, employer or who ever is evaluating the applicant's qualification and experience diplomas, needs to remember always that those can be different, but it does not mean right away that the other is wrong or not according to the requirements. The evaluator needs to compare the qualifications and after that, make the decision. But the decision should be based only on the qualification matters and the evaluator should be able to see all of the applicants in the same light.

3.3 Situations between EU and UK after Brexit

UK is still one of the EU countries but has started their resignation process, and the situation is now a big challenge for the EU and the UK. The UK's Prime Minister Theresa May has just told about wanting to have parliamentary elections already in June, which was a big surprise. First, it was published that as the UK would want to stop Brexit after all. But even though the elections will happen, it is not thought to have any effect on the Brexit, as the resignation letter has been

¹⁸⁸ England and Wales Court of Appeal Civil Division 28.11.2014 *General Medical Council v Amgad Nakhla* (2014) EWCA Civ 1522.

given to the EU. The only difference that it may cause is a different way of looking into the terms and objectives of it, as Finnish Prime Minister Juha Sipilä has stated¹⁸⁹.

Until the resignation is legally binding, it will take time. In the meantime, the UK nationals will be able to enjoy the EU rights and freedoms as they have before and also other Member States nationals will be able to move and reside freely within the territory of UK. But when Brexit becomes legally binding, the same rights are not applicable anymore. The UK will become a third-country, as it will not be an EU country anymore. The UK will be in a position in Europe as Switzerland and Norway for example, meaning that those countries are not EU Member States and are not bound by the EU legislation. However, both of the above-mentioned countries have made different agreements with the EU, to do co-operation together¹⁹⁰. The countries have concluded agreements stating that there is mutual recognition of diplomas between the countries, which makes it much easier for the nationals of the EU countries and the nationals of the other party's country to study and work inside of other countries.

The UK has already started to discuss different Free Trade Agreements (hereinafter referred as FTAs) with non-EU countries. This has created discussions is it against the EU jurisdiction, but the Art 50 of Treaty on European Union (hereinafter referred as TEU) states that a country leaving EU should have a right to discuss the FTAs already before the leave, to be able to set up arrangements for future. The Art. 8 TEU also states that EU should have a good relationship and co-operation with its neighbor countries, meaning that after the leave, EU should have a good relationship with the UK and because of that, should allow the UK to discuss their FTAs with the non-EU countries already before the leave.¹⁹¹

This all can be mirrored to the recognition of qualifications, as the Art. 8 TEU requires EU to keep good connections to the UK, even after the Brexit, they will do an FTA and try to keep the EU citizens and UK nationals live as same and simple as those have been before. Joining the EFTA countries, the UK would be able to enjoy from FTAs and have bilateral agreements with the EU, which ‘would provide better protection to the British sovereignty, without speaking a loss of influence’¹⁹². There is also an option that UK will follow the ‘Norwegian option’, meaning that UK would become a part of the EEA, and so on be able to enjoy some of the single

¹⁸⁹ Sutinen, T., Pääministeri Sipilä: Brexit-prosessi ei tästä muutu, eroanomus on EU:ssä jo sisällä. HS 18.4.2017, www.hs.fi/ulkomaat/art-2000005175035.html (19.4.2017).

¹⁹⁰ Maican, O-H. Legal Aspects of Brexit. *Juridical Tribune* 2016, 6 (2), pp 252-258, p 255.

¹⁹¹ Mukwiri, J. Negotiating Brexit Free Trade Agreements. *European Company Law* 2017, 14 (1), pp 5-5, p 5.

¹⁹² Maican, O-H. *supra nota* 190, p 256.

market benefits, for example, educations and vocational training, and it would enable that the professional qualifications could be recognized as easily as before. Or the UK can join the “Swiss model”. The Swiss model means being a part of the EFTA and maybe Schengen, but not the EEA. Switzerland has conducted over hundred agreements with the EU, about the market access, which includes the recognition of professional qualifications. This way, UK could easily secure advantageous terms in trade deals, as Switzerland has been doing and so on secure the ability to control different agreements with the other countries.¹⁹³

Still, it is not clear that what will happen in the future for sure. There have been a lot of discussions about it, but as the process is just getting started and there are not made any real decisions yet. The UK has a lot of different options of which direction to go, but the decision will take time. The most probable decision will be to follow the “Swiss model”. This is because the reason for UKs Brexit decision was made, as they did not want to be part of a union, that would be regulating jurisdiction, without a real possibility to influence the decisions made. That is why the “Swiss model” is the most suitable for the UK, as the UK needs to have control all the time and is not going to lose it anymore to EU or any other association or institution. The “Swiss model” gives the UK the needed control and still makes sure to be integrated to the other countries in the world, by creating own contracts between those countries. This conclusion can be derived from the reason why the UK in the first place joined the European Economic Community, which was the predecessor of EU. The reason was to provide free movement of persons and the right to move for the economically active persons.¹⁹⁴ This presents that it is truly important for the UK to provide these rights to their nationals, and as previously mentioned in this research, UK has a lot of economically active migrants working there, and would not want to lose or difficult the lives of the migrants.

¹⁹³ *ibid*

¹⁹⁴ White, R. C. A. Citizen’s Right to Free Movement. *European Business Law Review* 2005, 16 (3), pp 547-558, p 547.

Conclusion

Globalization and harmonization of jurisdictions and different programs, as education programs have given a possibility to a more mobile world.¹⁹⁵ This has created a lot of wondering as such things like capital, services, and people should be able to move and reside freely within the EU, according to EU legislation, but still, there are these restrictions, which are making it hard for people to enjoy from these new globalized worlds benefits.

This thesis has presented that one of the EU's main goal is to help the mobility of EU citizens. It is done with the free movement rights and different Directives giving right to freely reside and work in another Member State. This is still done with the important rule, that even the EU citizens can not just move to one Member State to enjoy from their social security services or other priorities of a host Member State. It is the reason why there are listed own rules for workers, students, job-seekers and self-employed persons, to protect the rights of the people and to protect the safety and well-being of the Member States.

The prohibition of discrimination is one of EU's cornerstones, and it should be taken into account in every situation. Meaning that discrimination based on nationality is not allowed in any situation and should be remembered by the employers all the time. Unfortunately, this does not concern the third-country nationals, as the EU rules protect only the EU citizens. Meaning that third-country nationals seeking for a job in EU are not protected by the non-discrimination rule. This might lead to that the third-country nationals might be suffering from a difficulty to get a job in the EU.

The biggest reason for the difficulties of a third-country national to be granted with employment might be however the recognition of professional qualifications, which was the subject of this research. EU has presented a Directive that provides the frameworks for the recognition of professional qualifications. That Directives most important things were the general system and automatic recognition. The automatic recognition is granted only to few professions and those concern mainly the health sector. In automatic recognition, the main idea was that all of the Member States have committed to provide study programs and training programs according to the requirements presented in the Directive, which makes it easy to compare the diplomas and to give the same rights to all of the applicants. Then again the general system is totally different. In

¹⁹⁵ Conaghan, J., Fischl, R. M., Klare, K., Labour Law in an Era of Globalization, Transformative Practices & Possibilities. Oxford University Press 2004 p 25.

the general system, the idea is in the individual case-by-case checking, and there are not any common frames for the recognition as in the automatic recognition. But the problem arises to the third-country nationals, as the Directive is effective only to the EU citizens. It means that third-country nationals are not entitled to the automatic or general system.

This brings to the point that the Directive which is meant particularly for the highly skilled third-country nationals. It was presented in 2009, so a few years later than the harmonized Directive concerning the EU citizens. The reason for providing the own Directive to the third-country nationals was simple. EU needs highly skilled professionals to immigrate to the Member States, as the EU citizens are getting older and the working-age class is getting smaller. However, one big thing is still missing in the EU jurisdiction. The third-country nationals wishing to establish a new business in the EU was not included in the 2009 Directive and it is a big minus to EU. As the EU's cornerstones were the prohibition of discrimination, helping the mobility of EU citizens and to create a more efficient and well-being Union. The self-employed third-country nationals might bring new economic developments and create new markets which would help the EU and its citizens. It has also been introduced that should the EU citizenship be expanded, and third-country nationals are able to gain a right to the EU citizenship, by living in one Member State for a needed time or in other ways. It would broaden the citizenship and might bring good new advantages to the Union.¹⁹⁶

Expanding citizenship and the population benefiting from the EU rights would still not solve the problems with the different education systems and programs. It would be hard to recognize programs that have been covering totally different things than others, even though that it might morally be the right decision. The harmonization process needs to continue, and as the Bologna process has already made some big modifications to the education programs, it still needs a lot of time until the programs are comparable. It was already a big leap forward when the Directive 2009/50/EC was created, and it brought rights to the third-country nationals. But it is still a long way until the education programs are harmonized in a way, that no matter where a person would study, it would be possible to work in any country in the world without problems. This kind of harmonization would also need the help of the big countries like USA, Canada, China and India for example. As there are a lot of different schools and education programs in all of the world's countries, that there would be needed to create together one program, that would suit all of the countries. But as it already sounds a crazy thought, the fulfillment of it would be even more

¹⁹⁶ Becker, M. A. *Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals*. *Yale Human Rights & Development Law Journal* 2004, 7, pp 132-183, p 182.

crazy, as all of the countries in the world would need to accept the one program and then follow that one. So it does not seem quite realistic to think about harmonizing the education programs within the world. But within the EU it is possible, already because of the size of the Europea and EU.

This brings us to the point that what happens to the UK nationals recognition of qualifications after Brexit, which was the research question in the first place. The UK citizens life will probably change a bit after the Brexit. The mutual recognition of diplomas is not as simple as it was before, as there are not any contracts about it between the UK and other European countries. But for sure, they will conclude those agreements with other countries. It will be even easier than for some other third-country, as UK has been a member of the EU and the programs that are taught in the UK have been comparable to the other EU programs before, so those should be as easily comparable and similar to the other programs after the Brexit as well.

The UK will conclude a contract with the EU countries and with other European countries as well. Most probably the UK will do contracts with other countries outside of Europe too, to give more possibilities to its nationals and to be able to enjoy from the economically active migrants in the same way as before. The most suitable solution for the UK would be to follow the ‘‘Swiss model’’, by meaning that UK would not be part of the EEA, but do all of the contracts between the countries, without any organization or other institution. UK has shown in the resignation process wanting to have the power back and be the one making the decisions concerning the UK. The ‘‘Swiss model’’ would provide the best possibilities to conclude these requirements. It would bring the UK the feel of a power back again and would still enable it to be part of the European markets and enjoy from the free movement rights.

There is always also the possibility that the UK wants to go to some other direction. That for example does not want to be part of EFTA or EEA, being totally different from the other countries, but that the UK would then conclude agreements between different European countries, providing them at least some of the free movement rights and access to the internal markets. This would mean a lot of work for the UK, as needing to do the agreements with every country about every right, but it would mean at the same time that would be able to negotiate the terms individually with every country and have some different agreements with different countries.

But as stated before, the most rational and likely result will be to follow the ‘‘Swiss model’’ and join at least the EFTA, but after that do the own agreements with different states and organizations to provide access to the markets and not being totally left away. So probably the mutual recognition of professional qualifications changes a bit after the Brexit will happen, as there is the need for the UK to conclude agreements with different states about the future of the mutual recognition of professional qualifications for the UK citizens and for the EU citizens wanting to work in the UK. As there is now the recognition between the countries, the agreement will be easier to conclude, than with some other third-country, as the programs are already quite similar and comparable.

Bibliography

Science books:

1. Conaghan, J., Fischl, R. M., Klare, K., *Labour Law in an Era of Globalization, Transformative Practices & Possibilities*. Oxford University Press 2004.
2. Craig, P., De Búrca, G. *EU Law: Text, Cases, and Materials*. Oxford University Press 2011, 5th Edition.

Science articles:

3. Becker, M. A. *Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals*. *Yale Human Rights & Development Law Journal* 2004, 7, pp 132-183.
4. Brouwer, E. *Effective Remedies for Third Country Nationals in EU Law: Justice Accessible to All?* *European Journal of Migration and Law* 2005, 7, pp 219-236.
5. Dougan, M., *Free Movement: The Workseeker as Citizen*. *Cambridge Yearbook of European Legal Studies* 2001-2002, 4, pp 93-132.
6. Doukas, I. *Non-Discrimination on Grounds of Nationality: The Position of ‘Third Country Nationals’ Within the EU*. *Cambridge Student Law Review* 2008, 4 (1), pp 1-10.
7. Dunne, P., *Education without Borders: The Freedom of Movement for Students in EU law*. *King’s Inns Student Law Review* 2012, 2, pp 1-20
8. Düzenli, E., *Free Movement of Turkish Workers in the Context of Turkey’s Accession to the EU*. *Middle East Technical University* 2010, pp 1-123.
9. Engblom, S., *Equal Treatment of Employees and Self-Employed Workers*. *International Journal of Comparative Labour Law and Industrial Relations* 2001, 17 (2), pp 211-232.
10. Garben, S. *On Recognition of Qualifications for Academic and Professional Purposes*. *Tilburg Law Review* 2011, 16, pp 127-156.
11. Maican, O-H. *Legal Aspects of Brexit*. *Juridical Tribune* 2016, 6 (2), pp 252-258
12. Muir, E. *Enhancing the protection of third-country nationals against discrimination: Putting EU anti-discrimination law to the test*. *Maastricht Journal of European and Comparative Law* 2011, 18 (1-2), pp 136-156.
13. Mukwiri, J. *Negotiating Brexit Free Trade Agreements*. *European Company Law* 2017, 14 (1), pp 5-5.

14. Murphy, C. Immigration, integration and citizenship in European Union Law: the position of third country nationals. *Hibernian Law Journal* 2008-2009, 8, pp 155-184.
15. Möstl, M. Preconditions and limits of mutual recognition. *Common Market Law Review* 2010, 47 (2), pp 405-436.
16. Peeters, M., Free Movement of Medical Doctors in the EU. *Medicine and Law* 2007, 26 (2), pp 231-244.
17. Peeters, M., Free Movement of Medical Doctors: The New Directive 2005/36/EC on the Recognition of Professional Qualifications. *European Journal of Health Law* 2005, 12 (4), pp 373-396.
18. Peixoto, J. Migration and Policies in the European Union: Highly Skilled Mobility, Free Movement of Labour and Recognition of Diplomas. *International Migration* 2001, 39 (1), pp 33-61.
19. Petrov, R. A. Rights of Third Country/Newly Independent States' Nationals to Pursue Economic Activity in the EU. *European Foreign Affairs Review* 1999, 4, pp 235-251.
20. Slot, P. J., Bulterman, M. Harmonization of legislation on migrating EU citizens and third country nationals: toward a uniform evaluation framework? *Fordham International Law Journal* 2006, 29 (4), pp 747-789.
21. Van Ooik, R., Freedom of Movement of Self-Employed Persons and the Europe Agreements. *European Journal of Migration and Law* 2002, 4 (3), pp 377-394.
22. Van Riemsdijk, M. Obstacles to the Free Movement of Professionals: Mutual Recognition of Professional Qualifications in the European Union. *European Journal of Migration and Law* 2013, 15 (1), pp 47-68.
23. White, R. C. A. Citizen's Right to Free Movement. *European Business Law Review* 2005, 16 (3), pp 547-558.
24. White, R. C. A. Revisiting Free Movement of Workers. *Fordham International Law Journal* 2010, 33 (5), pp 1564-1588.

EU legal acts and international conventions:

25. Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. OJ L 019, 24.01.1989
26. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives

64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365 EEC and 93/96/EEC, OJ L 158/77, 30.4.2004

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

28. Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. OJ L 155/17, 18.6.2009

Case law:

29. EKo 19.03.1964 C-75/63 *Hoekstra v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten*

30. EKo 23.03.1982 C-53/81 *Levin v. Staatssecretaris van Justitie*

31. EKo 07.05.1991 C-340/89 *Vlassopolou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*

32. EKo 21.03.1993, C-19/92, *Dieter Kraus v. Land Baden-Württemberg*

33. EKo 20.09.2001 C-184/99 *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

34. EKo 16.04.2002, C-142/01, *Commission of the European Communities v. Italian Republic*

35. EKo 11.07.2002 C-60/00 *Mary Carpenter v. Secretary of State for the Home Department*

36. EKo 09.01.2003 C-257/00 *Nani Givane and Others v. Secretary of State for the Home Department*

37. EKo 23.03.2004 C138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions*

38. EKo 15.03.2005 C-209/03 *The Queen, on the application of Danny Bidar v. London Borough of Ealing and Secretary of State for Education and Skills*

39. EKo 19.01.2006 C-330/03 *Colegio de Ingenieros de Caminos, Canales y Puertos v. Administración del Estado*

40. EKo 08.05.2008, C-39/07, *Commission of the European Communities v. Spain*

41. EKo 18.11.2008 C-158/07 *Förster v. Hoofddirectie van de Informatie Beheer Groep*

42. England and Wales Court of Appeal Civil Division 28.11.2014 *General Medical Council v Amgad Nakhla* (2014) EWCA Civ 1522

43. EKo 06.10.2015 C-298/14 *Alain Brouillard v Jury du concours de recrutement de référendaires pres la Cour de cassation*

E-materials:

44. European Commission, Erasmus+, www.ec.europa.eu/programmes/erasmus-plus/node_en (12.4.2017)
45. European Commission, Evaluation of the professional qualifications Directive (Directive 2005/36/EC). 2011 www.ec.europa.eu/DocsRoom/documents/15384/attachments/1/translations (16.4.2017)
46. European Commission, Review of Directive 2009/50/EC of May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ('EU Blue Card' Directive). 2015, www.ec.europa.eu/smart-regulation/roadmaps/docs/2016_home_025_review_eu_blue_card_directive_en.pdf (26.2.2017)
47. European Commission, White Paper on the Future of Europe. 2017 www.static.rasset.ie/documents/news/white-paper-on-the-future-of-europe.pdf (3.3.2017)
48. European Higher Education Area, www.ehea.info/pid34248/history.html (4.3.2017)
49. Free Movement of Persons. The European Free Trade Association, www.efta.int/eea/policy-areas/persons (14.2.2017)
50. Free Movement of Persons Switzerland – EU/EFTA. State Secretariat for Migration SEM, www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta.html (14.2.2017)
51. Helm, T., Brexit: EU considers migration 'emergency brake' for UK for up to seven years. The Guardian (The Guardian News and Media Limited) 2016, www.theguardian.com/world/2016/jul/24/brexit-deal-free-movement-exemption-seven-years (14.2.2017)
52. Karakamisheva-Jovanovska, T., ANALYSIS OF THE DIRECTIVE 2005/36/EC AND ITS IMPLICATIONS TO THE EU MEMBER-STATES, 2009-2010, www.academia.edu/10296625/ANALYSIS_OF_THE_DIRECTIVE_2005_36_EC_AND_ITS_I_MPLICATION_TO_THE_EU_MEMBER-STATES (17.2.2017)
53. Sutinen, T., Pääministeri Sipilä: Brexit-prosessi ei tästä muutu, eroanomus on EU:ssä jo sisällä. HS 18.4.2017, www.hs.fi/ulkomaat/art-2000005175035.html (19.4.2017)
54. Webb, S., What will happen to EU citizens in the UK after the Brexit vote, will EU nationals have to leave and what rights do they have? The Sun (News Group Newspapers Limited in England) 2017, www.thesun.co.uk/news/2822423/what-will-happen-to-eu-citizens-in-the-uk-after-the-brexit-vote-will-eu-nationals-have-to-leave-and-what-rights-do-they-have/ (14.2.2017)

