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Deepening Trade and Integration through the Mutual Recognition of Professional Qualifications

» the CETA Model

Filip Deraedt
European Commission
Trade

Trade: what it is all about?



Trade is no longer just about merchandise goods and tariffs...

- **Reaching beyond the borders.....**
 - Standards
 - Licensing practices
 - Services [70% of EU GDP = services]
 - Investment
 - **Trade is not just about trade...**
 - Environment
 - Labour Rights
 - Human Rights
 - Public Services, Right to Regulate

EU Trade Policy

Trade, Growth and World Affairs

- **Reinforce EU competitiveness, tackle trade barriers**
- **Foster open markets and clear regulatory frameworks**
- **Pursue active negotiating agenda**
 - Multilateral Trade Agreements: **WTO**
 - Bilateral Trade Agreements: EU-Canada (**CETA**), EU-Japan FTA, EU-USA (**TTIP**)
 - Plurilateral Trade Agreements: **TISA** (EU+23 nations)

The importance of services

- 70 % of EU GDP
- 30 % of EU total exports
[+ sales or foreign affiliates]
- Business Services
>>> Professional Services

Regulated Professions

- Regulated for a reason...
- *But are all requirements still always justified?*
- Today's globalised world characterised by ever-increasing mobility
- Long and winding road towards more internal integration in the EU
- US: often 54 or 55 jurisdictions...
- Can we get out of our comfort zone?

Regulated Professions and Free Trade Agreements (FTAs)

*Idea: Mutual Recognition of Professional Qualifications as part of a **mobility package***

1. Market access : the basic requirement and traditional focus in Free Trade Agreements
2. Domestic regulation / Recognition of qualifications: equally essential
3. [Visa issues]

Challenges - Opportunities

- ? Does liberalisation risk undermining professional standards?
- ? Can our professionals compete?
- 😊 Enlarge markets and business opportunities
- 😊 Exchange of ideas and experiences on a larger/global scale

MRA Principles

- Needs to be industry-driven
- No lowering of standards
- Presupposes market access commitments

EU-Canada: Comprehensive Trade and Economic Agreement (CETA)

- Novel approach on Mutual Recognition of Professional Qualifications
- Dedicated chapter of the FTA
- Cater for flexibilities, different systems
 - EU as a package – CAN: sub-federal competence
 - Relevant Authorities or Professional Bodies
- Canada Agreement on Internal Trade

Negotiation dynamics

- Mutuality: recognition should be balanced, simultaneous, reciprocal [28 MS vs 11?]
- Canada Agreement on Internal Trade
 - **Permit on permit**
 - **CAN proposal to extend license portability to licensed EU service suppliers**
 - **Via granting of national treatment**
- CAN Provinces and Territories fully engaged in the negotiations
- [France-Quebec]

National Treatment under CETA (1)

- *CETA Chapter 13 – Article 4: Recognition*
- The recognition of professional qualifications provided by an MRA shall allow the beneficiary service supplier to take up and pursue professional activities in the host jurisdiction, in accordance with the terms and conditions specified in the MRA.

National Treatment under CETA (2)

- If the professional qualifications of a service supplier in a Party are recognised by the other Party pursuant to an MRA, the Relevant Authorities of the host jurisdiction shall accord to this service supplier **treatment no less favourable** than that accorded in like situations to a like service supplier whose professional qualifications have been certified or attested in the Party's own jurisdiction.

The CETA model: 2 step approach

1. Industry / professions / competent authorities
 - >>> Joint recommendations, based on Guidelines
2. Assessment by Governments
 - >>> Negotiations
 - MRA Committee, set up under CETA, decides
 - Binding upon notification of fulfilment of internal requirements
 - >>> Avoid ratification as stand-alone international agreement

Guidelines

- Modelled on WTO understanding on accounting (*Disciplines on Domestic Regulation in the Accountancy Sector – December 1998*)
- Quite detailed (but not binding)
- Recommendations prepare the ground for the negotiations

Guidelines: Scope

The MRA should set out clearly:

- i. the scope of the MRA, in terms of the specific professional titles and activities which it covers;
- ii. who is entitled to use the professional titles concerned;
- iii. whether the recognition mechanism is based on formal qualifications, a licence obtained in the home jurisdiction, or on some other requirement(s); and
- iv. whether the MRA covers temporary and/or permanent access to the profession concerned.

Guidelines: Verification of Equivalency

The Negotiating Entities should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in their respective jurisdictions.

- >> identify activities or groups of activities covered by the scope of practice rights of the regulated profession
- >> identify the qualifications required in each jurisdiction

Guidelines: Identification of the Conditions for Recognition

- i. the legal competency required to practice the regulated profession;
- ii. the qualifications for the regulated profession;
- iii. whether compensatory measures are necessary;
- iv. the extent to which professional experience may compensate for any substantial differences;
- v. a description of any compensatory measure, including the use of any adaptation periods or aptitude tests.

Full automatic recognition?

- EU: experience with 7 professions
- Internationally: full automatic recognition
 - **requires very similar systems**
 - **requires high degree of trust**
- Feasible?

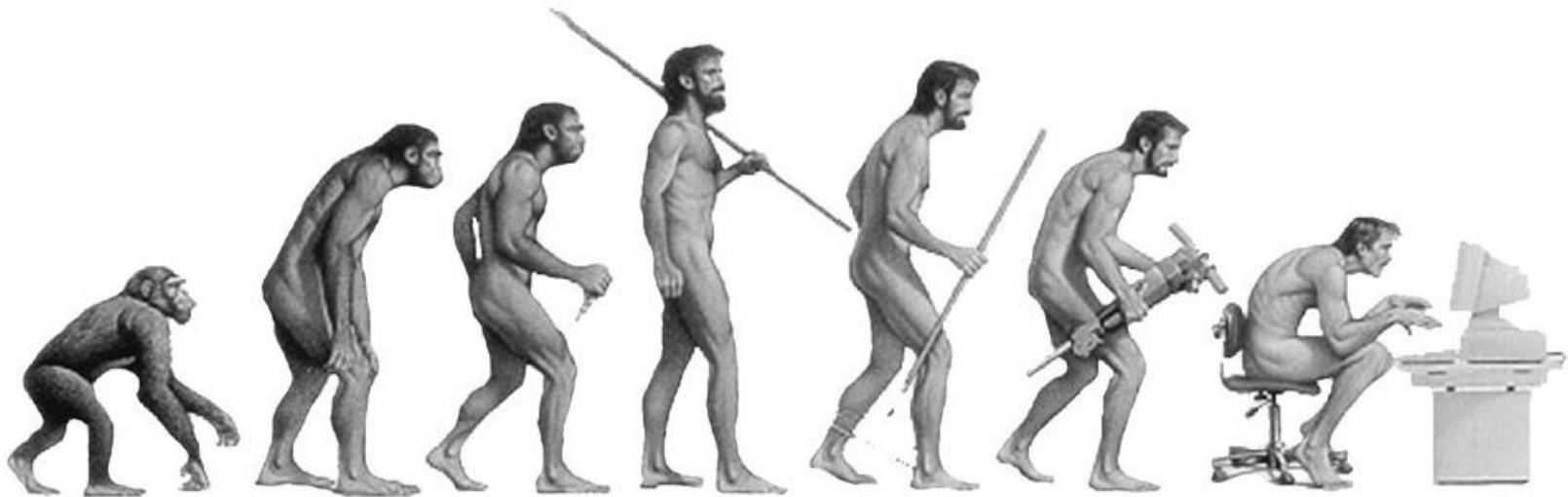
Full automatic recognition?

- Go for the least trade distortive
 - **Focus on assessment of systems**
 - **Not individual professionals**
- Compensatory mechanism:
{EDUCATION + TRAINING + EXPERIENCE} ≥ X YEARS
 - **Reflects complexity**
 - 😊 : "easy" to administer
 - ☹️ : favours the more experienced...

Economic value?

- One of the considerations
- Depends on the profession
- But: also changes mindset
- Temporary vs permanent
- Mobility
- Future

Work in progress...



Canada: Comprehensive Trade and Economic Agreement (CETA)

- Negotiations concluded September 2014
- Legal scrubbing on-going (6-9 months)
»» but draft text already published
http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf
- Formal adoption process to run until end 2016 / early 2017, or later – but provisional application possible
- MRA adoption by decision taken by body set up under CETA EU-CAN MRA would be the first ever EU MRA on professional services!



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CETA: Architects as pioneers

- ACE – CALA
 - **The first joint recommendations for a MRA to be presented to the CETA MRA Committee?**
- CALA – NCARB
 - **Entry into force when 51% on either side has codified**
- ACE – NCARB
 - **2005 attempt failed...**
 - **Now new effort under TTIP**

EU-USA: Transatlantic Trade and Investment Partnership (TTIP)

- <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/>
- all EU negotiation texts and factsheets at:
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>
- Objective to create transatlantic market place, allow for movement of professionals, including Mutual Recognition of Professional Qualifications
- interest from ACE and NCARB on a MRA for architects

EU-USA: Transatlantic Trade and Investment Partnership (TTIP)

- Sub-federal competence on US side
- Consider a critical-mass approach?
- Large internal differences
- MRA as a vector for change and domestic reform or alignment
 - **Architects?**
 - **Auditors?**
 - **Lawyers?**
 - **Engineers??**
 - **Health professions???**



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Imagine...



Imagine a MRA that allows transatlantic mobility...

- It's easy if you try?
- Once in a generation opportunity
- Give it a chance

Additional background information

EU Trade and Investment Policy

How we consult and negotiate – and who decides

Civil Society and Public Consultations

The Commission negotiates

- On behalf of the 28 Member States
- Regular reporting to the Council and the European Parliament

The Council co-decides

- Directives for negotiations
- Follows the negotiation process
- Council approves the results of the negotiation (generally by qualified majority)

The Parliament co-decides

- EP co-decides with the Council on trade legislations (except negotiating directives)
- EP gives consent on agreements

Canada: Comprehensive Trade and Economic Agreement (CETA)

- Negotiations concluded September 2014
- Legal scrubbing on-going (6-9 months)
»» but draft already published (exceptional)
- [Initialling]
- Translation in all EU languages
- Council authorisation to sign and decide on provisional application
If mixed competence, all MS sign
- EP plenary vote on consent
- *If mixed competence: all MS ratify*
- Council adopts final Decision to conclude + publication in the OJ

Trade in Services Agreement (TiSA)

- Core text + specific sector provisions, including for professional services
- Market access component: try to advance openness for professional services – including for temporary cross-border assignments
- Best endeavour on mutual recognition (24 partners)

WTO GATS: General Agreement on Trade in Services

- A legal framework for liberalisation
- The structure and principles
 - **Transparency**
 - **The “most favoured nation” principle**
 - **National treatment**
 - **The 4 modes of supply**
- Flexibility is a key feature of the GATS