

ANNEX SERVIN-6: GUIDELINES FOR ARRANGEMENTS ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS

SECTION A: General Provisions

Introduction

1. This Annex contains guidelines for arrangements on the conditions for the recognition of professional qualifications (“arrangements”), as foreseen by Article SERVIN.5.13 [Professional qualifications].
2. Pursuant to that Article, these guidelines shall be taken into account in the development of joint recommendations by professional bodies or authorities of the Parties (“joint recommendations”).
3. The guidelines are non-binding, non-exhaustive and do not modify or affect the rights and obligations of the Parties under this Agreement. They set out the typical content of arrangements, and provide general indications as to the economic value of an arrangement and the compatibility of the respective professional qualifications regimes.
4. Not all elements of these guidelines may be relevant in all cases and professional bodies and authorities are free to include in their joint recommendations any other element that they consider pertinent for the arrangements of the profession and the professional activities concerned, consistent with this Agreement.
5. The guidelines should be taken into account by the Partnership Council when deciding whether to develop and adopt arrangements. They are without prejudice to its review of the consistency of joint recommendations with Title II [Services and Investment] of Heading One [Trade] of Part Two [Trade, transport and fisheries] and its discretion to take into account the elements it deems relevant, including those contained in joint recommendations.

SECTION B: Form and Content of an Arrangement

6. This section sets out the typical content of an arrangement, some of which is not within the remit of the professional bodies or authorities preparing joint recommendations. These aspects constitute, nonetheless, useful information to be taken into account in the preparation of joint recommendations, so that they are better adapted to the possible scope of an arrangement.
7. Matters addressed specifically in this Agreement which apply to arrangements (such as the geographical scope of an arrangement, its interaction with scheduled non-conforming measures, the system of dispute resolution, appeal mechanisms, monitoring and review mechanisms of the arrangement) should not be addressed by joint recommendations.
8. An arrangement may specify different mechanisms for the recognition of professional qualifications within a Party. It may also be limited, but not necessarily so, to setting the scope of the arrangement, the procedural provisions, the effects of recognition and additional requirements, and the administrative arrangements.
9. An arrangement which is adopted by the Partnership Council should reflect the degree of discretion that is intended to be preserved for competent authorities deciding on recognition.

Scope of an Arrangement

10. The arrangement should set out:
- (a) the specific regulated profession(s), relevant professional title(s) and the activity or group of activities covered by the scope of practice of the regulated profession in both Parties (“scope of practice”); and
 - (b) whether it covers the recognition of professional qualifications for the purpose of access to professional activities on a fixed-term or an indefinite basis.

Conditions for recognition

11. The arrangement may specify in particular:
- (a) the professional qualifications necessary for recognition under the arrangement (for example, evidence of formal qualification, professional experience, or other attestation of competence);
 - (b) the degree of discretion preserved by recognition authorities when assessing requests for recognition of these qualifications; and
 - (c) the procedures to deal with variations and gaps between professional qualifications and means to bridge the differences, including the possibility for imposing any compensatory measures or any other relevant conditions and limitations.

Procedural provisions

12. The arrangement may set out:
- (a) the documents required and the form in which they should be presented (for example, by electronic or other means, whether they should be supported by translations or certifications of authenticity, etc.);
 - (b) the steps and procedures in the recognition process, including those relating to possible compensatory measures, corresponding obligations and timelines; and
 - (c) the availability of information relevant to all aspects of the recognition processes and requirements.

Effects of recognition and additional requirements

13. The arrangement may set out provisions on the effects of recognition (if relevant, also in respect of different modes of supply);

14. The arrangement may describe any additional requirements for the effective exercise of the regulated profession in the host Party. Such requirements may include:

- (a) registration requirements with local authorities;
- (b) appropriate language skills;
- (c) proof of good character;
- (d) compliance with the requirements of the host Party for use of trade or firm names;

- (e) compliance with the rules of ethics, independence and professional conduct requirements of the host Party;
- (f) need to obtain professional indemnity insurance;
- (g) rules on disciplinary action, financial responsibility and professional liability; and
- (h) requirements for continuous professional development.

Administration of the arrangement

15. The arrangement should set out the terms under which it can be reviewed or revoked, and the effects of any revision or revocation. Consideration may also be given to the inclusion of provisions concerning the effects of any recognition previously accorded.

SECTION C: Economic value of an envisaged arrangement

16. Pursuant to Article SERVIN 5.13(2) [Professional qualifications], joint recommendations shall be supported by an evidence-based assessment of the economic value of an envisaged arrangement. This may consist of an evaluation of the economic benefits that an arrangement is expected to bring to the economies of both Parties. Such an assessment may assist the Partnership Council when developing and adopting an arrangement.

17. Aspects such as the existing level of market openness, industry needs, market trends and developments, client expectations and requirements and business opportunities would constitute useful elements.

18. The evaluation is not required to be a full and detailed economic analysis, but should provide an explanation of the interest of the profession in, and the expected benefits for the Parties ensuing from, the adoption of an arrangement.

SECTION D: Compatibility of respective professional qualification regimes

19. Pursuant to Article SERVIN 5.13(2) [Professional qualifications], joint recommendations shall be supported by an evidence-based assessment of the compatibility of the respective professional qualification regimes. This assessment may assist the Partnership Council when developing and adopting an arrangement.

20. The following process aims at guiding professional bodies and authorities when assessing the compatibility of the respective professional qualifications and activities with a view to simplifying and facilitating the recognition of professional qualifications.

Step One: Assessment of the scope of practice and the professional qualifications required to practise the regulated profession in each Party.

21. The assessment of the scope of practice and of the professional qualifications required to practise a regulated profession in each of the Parties should be based on all relevant information.

22. The following elements should be identified:

- (a) activities or groups of activities covered by the scope of practice of the regulated profession in each Party; and

- (b) the professional qualifications required in each Party to practise the regulated profession, which may include any of the following elements:
 - (i) the minimum education required, for example, entry requirements, level of education, length of study and contents of study;
 - (ii) the minimum professional experience required, for example, location, length and conditions of practical training or supervised professional practice prior to registration, licensing or equivalent;
 - (iii) examinations passed, especially examinations of professional competency; and
 - (iv) obtention the acquisition of a licence, or equivalent, certifying, inter alia, the fulfilment of the necessary professional qualification requirements for the pursuit of the profession.

Step Two: Evaluation of the divergence between the scope of practice of, or the professional qualifications required to practise, the regulated profession in each Party.

23. The evaluation of the divergence in the scope of practice of, or in the professional qualifications required to practise, the regulated profession, in each Party, should in particular identify divergence that is substantial.

24. Substantial divergence in the scope of practice may exist if all of the following conditions are met:

- (a) one or more activities covered by a regulated profession in the host Party are not covered by the corresponding profession in the Party of origin;
- (b) such activities are subject to specific training in the host Party;
- (c) the training for such activities in the host Party covers matters substantially diverging from those covered by the applicant's qualification.

25. Substantial divergence in the professional qualifications required to practise a regulated profession may exist if there are divergences in the Parties' requirements with regard to the level, duration or content of the training that is required for the pursuit of activities covered by the regulated profession.

Step Three: Recognition mechanisms

26. There may be different mechanisms for the recognition of professional qualifications, depending on the circumstances. There may be different mechanisms within a Party.

27. If there is no substantial divergence in the scope of practice and in the professional qualifications required to practise a regulated profession, an arrangement may provide for a simpler, more streamlined recognition process than would be the case where substantial divergence exists.

28. If there is substantial divergence, the arrangement may provide for compensatory measures which are sufficient to remedy such divergence.

29. Where compensatory measures are used to reduce substantial divergence, they should be proportionate to the divergence that they seek to address. Any practical professional experience or

formally validated training could be taken into account to assess the extent of the compensatory measures needed.

30. Whether or not the divergence is substantial, the arrangement may take account of the degree of discretion that is intended to be preserved for competent authorities deciding on recognition requests.

31. Compensatory measures may take different forms, including:

- (a) a period of supervised practice of a regulated profession in the host Party, possibly accompanied by further training, under the responsibility of a qualified person and subject to a regulated assessment;
- (b) a test made or recognised by the relevant authorities of the host Party to assess the applicant's ability to practice a regulated profession in that Party; or
- (c) a temporary limitation of the scope of practice; or a combination of those.

32. The arrangement could envisage that a choice be given to applicants between different compensatory measures where this could limit the administrative burden for applicants and such measures are equivalent.