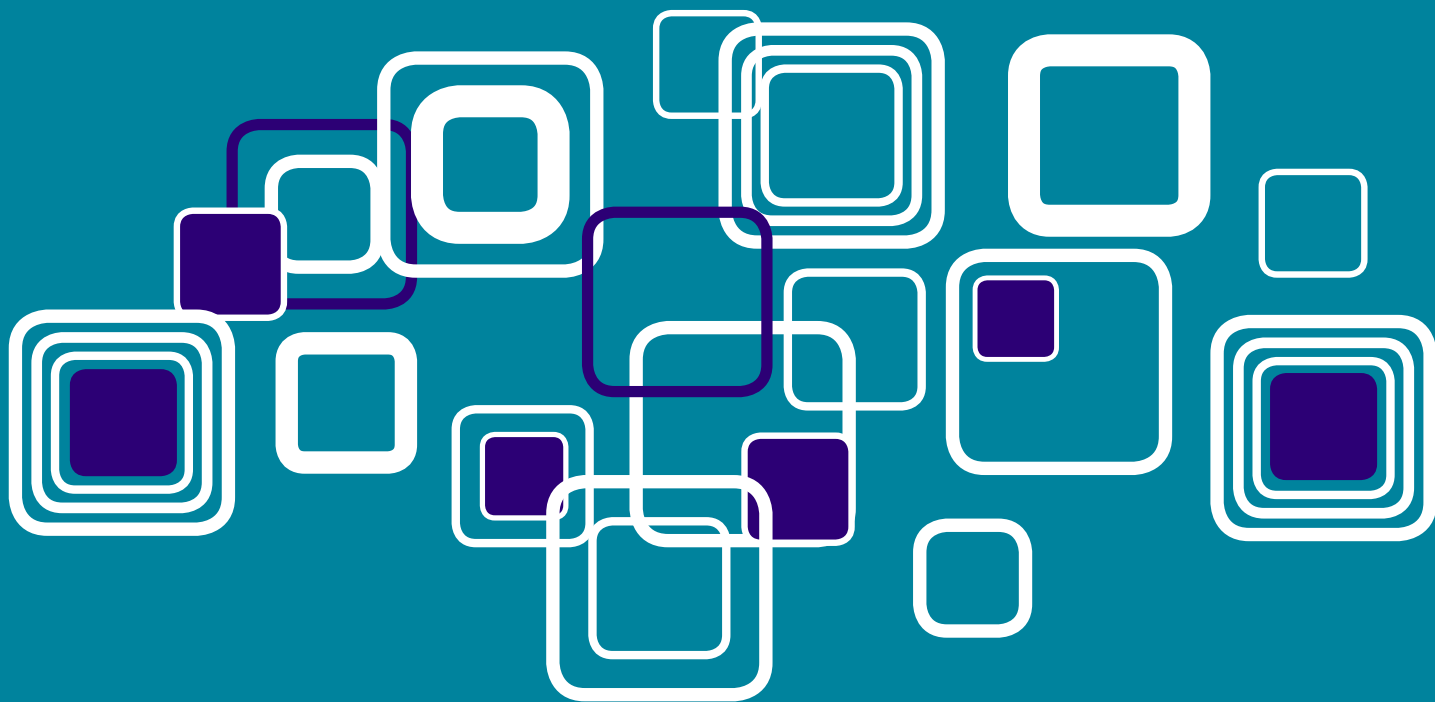


SKILLED IMMIGRANTS IN THE GLOBAL ECONOMY PROSPECTS FOR INTERNATIONAL COOPERATION ON RECOGNITION OF FOREIGN QUALIFICATIONS

By Madeleine Sumption, Demetrios G. Papademetriou, and Sarah Flamm



SKILLED IMMIGRANTS IN THE GLOBAL ECONOMY

Prospects for International Cooperation on Recognition of Foreign Qualifications

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Executive Summary

Skilled migration is an important resource for governments seeking to build their country's human-capital base and make the most of global trade and investment opportunities. Immigrants' economic contribution depends on their ability to use their skills productively in destination countries, however. In many cases, migrant professionals face barriers transferring their skills and experience across borders.

One such barrier is professional regulation. Domestic regulations to restrict entry into professional occupations and protect the public from poorly qualified practitioners were, in most cases, designed decades or even centuries ago—when policymakers could not have contemplated current levels of global mobility and economic interdependence. These systems are naturally designed with domestic candidates in mind. They are much less equipped to deal with foreign-trained practitioners, who must often undergo time-consuming and expensive assessment or training to demonstrate their competence.

To address this problem, governments and professional associations in several countries have negotiated mutual recognition agreements (MRAs) that set out clear rules for licensing practitioners who move between signatory countries. Their goal is to reduce, or even eliminate, the need for case-by-case assessments when applicants have been trained in systems conferring essentially comparable skills and knowledge. MRAs can also facilitate licensing for workers who have relatively small skills deficits that they can make up through a tailored program of training or additional work experience.

Reaching agreements on mutual recognition is no easy feat. National governments do not control all the policy levers, often relying on professional associations and subnational governments' willingness to participate in negotiations. In many cases, no single organization or government department can be empowered to negotiate an agreement, creating a formidable coordination challenge. In the United States, for example, 54 states and jurisdictions make up a complicated patchwork of licensing rules, and in some occupations it can be difficult to transfer a license from another US state, let alone from abroad. Designing an agreement that suits all parties is thus a labor-intensive task from both technical and political perspectives. Because of these challenges, MRAs concluded to date have often been limited in scope, notwithstanding some significant exceptions that include recognition policies within the European Union (EU).

*As trade in services and skilled migration increase,
the pressure to use human capital more efficiently will grow.*

Nonetheless, national governments (or European Union policymakers, in the European case) can facilitate mutual recognition in several ways. They can contribute political leadership and put pressure on professional associations and national or subnational government departments to move toward agreement; provide funding for ongoing dialogue with international partners; and create an institutional framework, such as a free trade deal, that can give MRA negotiations momentum by making them legally binding, introducing monitoring mechanisms, and setting out a timetable for action.

As trade in services and skilled migration increase, the pressure to use human capital more efficiently will grow. MRAs represent a potentially significant way to do this, if policymakers understand the strengths and limitations of this policy model. In particular, MRAs require political will and persistence, and governments must be prepared to revisit and improve upon them over time. They also require flexibility and the willingness to embrace less-than-perfect solutions in a domain replete with political and technical complexities. And finally, MRAs are likely to be most effective when concluded as part of a broader package of policy measures that facilitate skilled migrants' employment, and that use visa and work-permit policies to provide for orderly and well-managed flows of professionals between countries.



I. Introduction

Skilled migration is an integral feature of the globalized economy. Whether it is the movement of business people building trade and investment relationships, of individuals and employers seeking a better match between skills and opportunities, or of family members accompanying their relatives as they work and study abroad—the mobility of professionals has become a routine part of the business model for high-income countries.¹ Attracting skilled workers is also becoming part of the growth strategy of many middle-income countries, going beyond the oft-cited Brazil, Russia, India, China, and South Africa (BRICS) group, and including emerging destinations such as Turkey, Indonesia, Morocco, and Mexico.

The economic benefits of skilled migration are, for the most part, not disputed.² In the advanced industrialized world, even governments that are cautious in their approach to admitting foreign workers tend to recognize highly skilled immigrants' ability to broaden the pool of the economy's best trained and most productive workers. Immigrants can provide in-demand skills more quickly than domestic education systems alone are able, and can create jobs by fueling the growing trade in services (for example, through their roles as suppliers and entrepreneurs), and facilitating an exchange of knowledge and cross-border investment.

Nonetheless, skilled professionals often face a number of obstacles that can reduce the economic benefits of this mobility for destination countries, and leave their skills underutilized. These include language barriers, a lack of local labor-market knowledge or professional networks, difficulties in obtaining the right visa, and differences in the professional qualifications required to do the job. This report addresses one of the most stubbornly persistent obstacles to the circulation of skilled workers: professional regulation.

Skilled professionals often face a number of obstacles that can reduce the economic benefits of this mobility for destination countries.

Over the centuries, countries have developed their own systems for restricting the right to practice certain occupations. The restrictions have aimed to protect the public from poorly prepared practitioners and to protect existing practitioners from competition with new entrants to their profession. Several of the restrictions apply to key professions in the modern service industries, such as accounting (often known as the “language of business”), law, architecture, and engineering. The goals and outcomes of professional regulation are usually broadly similar across countries with comparable levels of economic development. However, licensing decisions made in one country are usually not recognized in another in the absence of deliberate efforts to align policies. As a result, foreign professionals may be unable to practice even if they have been licensed in a country with similar training standards.

1 According to the United Nations, about 40 percent of migrants living in countries traditionally classified as “developed” are from other developed countries, while the remaining 60 percent are from countries traditionally classified as “developing.” United Nations Population Division, *Trends in International Migrant Stock: The 2013 Revision* (United Nations database, POP/DB/MIG/Stock/Rev.2013), <http://esa.un.org/unmigration/migrantstocks2013.htm>.

2 While the question whether immigration undermines employment opportunities or wages for members of the domestic labor force is a perennial debate in the immigration-policy world, concerns about the risk of competition for jobs are largely focused on low-skilled immigration. In the United States, several studies have found that low-skilled immigration may depress wages for the least-skilled cohort of natives and for earlier cohorts of immigrants working in similar jobs as new arrivals, but that mid- and high-skilled immigration generally does not adversely affect similarly positioned US workers. Similar results have been found in Europe. For an overview, see Pia Orrenius and Madeline Zavodny, “Does Immigration Affect Wages? A Look at Occupation-level Evidence,” *Labour Economics* 14, no. 5 (2007): 757-73.



This can make it harder for individuals to use their skills fully, reduce the economic benefits of their movement, undermine or delaying the integration of those workers who settle permanently, and potentially discourage mobility altogether.³ In Canada, for example—one of the few countries with sufficient data to assess the quantitative impacts of regulation—only one-quarter of foreign-educated immigrants in fields that would typically lead to a regulated profession were working in that profession in 2006, compared to 53 percent of Canadian-educated immigrants with local qualifications.⁴ Immigrants not working in the regulated occupation for which they had studied were much more likely to be unemployed, and those who were employed were much more likely to work in jobs for which they were overqualified.

Box I. How High Are the Barriers?

The impact of licensing barriers on migration itself are also hard to assess, although evidence suggests they may be considerable in cases where licensing is a rigid prerequisite for practicing the profession (such as medicine, law, and to a lesser extent, accounting). In the medical profession, for example, Australia saw a sharp increase in the immigration of doctors after it introduced a simpler (exam-free) pathway to licensure for doctors who were already registered in “trusted” foreign countries at the end of the 2000s; while the United Kingdom witnessed a dramatic decline (from one 1,000 or more per year to fewer than 200) in annual registrations of medical professionals from Commonwealth countries when it ended a policy of automatic recognition of qualifications for these nationals at the end of 2003.

Levels of professional regulation vary depending on the occupation, and on the country or subnational jurisdiction responsible for making and enforcing the rules. In some cases, professionals can work abroad in their field without clearing regulatory hurdles at all if they are supervised by or work on a team with other licensed professionals. For example, foreign-trained architects and engineers can often work within a team with a given employer, performing regular duties but not exercising responsibility for approving certain official documents that require a license holder’s signature. While the lack of certification may not represent a *legal* barrier to professional practice in these cases, it does reduce individuals’ ability to market skills to employers, and makes it harder for firms to employ them in fully responsible positions. Meanwhile, professionals seeking to start a small business or sell services directly to the public are more likely to face compulsory licensing.

Source: Leslyanne Hawthorne, “Immigration and the Healthcare Workforce in Australia Since the Global Economic Crisis,” and Madeleine Sumption, “Immigration and the Healthcare Workforce in the United Kingdom since the Global Economic Crisis,” both in *Health Workforce Migration and the WHO Global Code of Practice Implementation*, eds. Mario Dal Poz, Amani Siyam, and Madeleine Sumption (Geneva: World Health Organization, forthcoming); and discussions with officials from professional associations in engineering and architecture at the Migration Policy Institute’s foreign qualifications roundtable in Washington, DC on June 14, 2013 (conducted under Chatham House rules).

The Role of International Cooperation

Immigration policy and professional regulation are primarily domestic policy domains, and governments have introduced an array of policies and programs to guarantee standards and facilitate the recognition of foreign qualifications.⁵ But the past decade has seen growing interest in international cooperation to selectively reduce barriers to mobility and reap more of its potential economic benefits. The resulting initiatives are predicated on the understanding that (1) origin countries may be able to help governments regulate immigration or the recognition of professional qualifications in an efficient and orderly way (for

3 For a full discussion of barriers to the recognition of foreign qualifications, see Madeleine Sumption, *Tackling Brain Waste: Strategies to Improve the Recognition of Foreign Qualifications* (Washington, DC: Migration Policy Institute, 2013), www.migrationpolicy.org/pubs/credentialing-strategies.pdf.

4 Danielle Zietsma, “Immigrants working in regulated occupations,” *Perspectives on Labour and Income* (Ottawa: Statistics Canada, 2010), www.statcan.gc.ca/pub/75-001-x/2010102/pdf/11121-eng.pdf.

5 These are described in detail in a previous report for this project. See Sumption, *Tackling Brain Waste*.



example, by providing information on licensed individuals or committing to training professionals to common standards); and (2) cooperation may bring reciprocal benefits for that country's own citizens when they move abroad, or for domestic firms that rely on the circulation of people to support their foreign trade and investments (particularly in the services domain).

From a global perspective, these initiatives are still in their infancy. In two cases, notably within the European Union (EU) and between Australia and New Zealand—both zones with deep institutional cooperation and highly integrated economic policies—initiatives to reduce or eliminate both the barriers of professional regulation and of visa or work-permit requirements have been extremely far reaching. Most other efforts have been much smaller and less ambitious, involving bilateral or small-group agreements and covering single occupations. Some have been quite narrow (providing only limited reductions in the licensing burden), or have been negotiated but failed to reach the finish line of full implementation. Meanwhile, nascent attempts to facilitate recognition initiatives on a larger scale by attaching them to broader free-trade or investment agreements show promise but are yet to be fully tested, as discussed later.

The past decade has seen growing interest in international cooperation to selectively reduce barriers to mobility and reap more of its potential economic benefits.

This report draws on two years of research conducted at the Migration Policy Institute and a series of expert roundtables and studies investigating how governments on both sides of the Atlantic can learn from each other's experiences to improve the recognition of foreign qualifications and how they can cooperate more effectively to this end. An earlier report in this series examines good practices for reducing barriers to the recognition of qualifications through domestic policies,⁶ while this report focuses on the role of international cooperation. The report begins with an overview of the issues and the lessons that can be learned from mutual recognition initiatives to date, worldwide. It then discusses how these lessons could be applied in one particularly significant channel in the global economy—across the Atlantic—before making some broad observations on the future of the field of mutual recognition.

II. How Do Mutual Recognition Agreements Work?

Licensing systems are designed to assess locally trained candidates, who represent the vast majority of their constituents. Most were designed at a time when the global mobility of skilled workers was extremely limited. Without specific programs or policies to understand and evaluate the decisions of other countries' licensing and certification bodies, regulators in destination countries must typically assess foreign-trained candidates on a case-by-case basis. This process is often onerous, and in some cases requires foreign-trained professionals to repeat years of education or supervised work experience.⁷

To reduce this burden on applicants and help governments to identify foreign professionals who *do* have the skills a position requires, a number of formal agreements to recognize professional qualifications from other jurisdictions have been negotiated or are in process. Some have been driven by professional associations or regulatory bodies themselves, others by governments—often, but not always, as part of a larger economic cooperation agenda. The result—mutual recognition agreements (MRAs)—aims to create clear rules for licensing or certifying professionals who move between signatory countries and thus to reduce (or in a few cases, eliminate) the need for case-by-case assessment.

6 Ibid.

7 For a full discussion, see Sumption, *Tackling Brain Waste*.



MRAs come in several different forms, with major variations in the scope of the agreement and the benefits they provide to the applicant.

- **Automatic Recognition.** Regulatory bodies accept a professional licensed in a signatory jurisdiction without any additional assessment or training (though background checks or similar non-skills related criteria may apply). This form of recognition requires the highest level of trust and may require efforts to harmonize training processes themselves. As a result, it is rare outside of the European Union and the Australia-New Zealand and US-Canada blocs.
- **Partial Recognition.** Regulators give applicants credit for their home-country qualifications but require a certain amount of additional testing, training, or work experience. In some cases, regulators may accept experienced professionals on an automatic basis but require less experienced professionals to complete additional requirements.
- **Limited-Scope Recognition.** Candidates are licensed to practice but the activities they are allowed to perform are restricted; this allows them to perform work for which they are qualified while avoiding tasks for which they are not qualified. In some cases, this may be regulated with an ethics code (rather than “hard” legal restrictions) that prohibits professionals from taking on work they are underqualified to perform.
- **Temporary Access.** Candidates are licensed for a temporary period, and those who wish to practice for longer than this period must complete a more rigorous assessment process. This model is often used to facilitate trade in services for people who are not proposing to establish themselves permanently.

Different approaches to mutual recognition may be appropriate in different circumstances. The “right” approach in a given case will depend on several factors, such as (1) the structure of the occupation and the most common source of knowledge gaps among professionals in member countries (for example, differences in the types of activities typically performed or the amount of experience or seniority required); (2) the extent to which it is sensible to rely on voluntary compliance with ethics codes rather than hard regulation; and (3) the significance of the risks associated with underperformance.

Different approaches to mutual recognition may be appropriate in different circumstances.

Regardless of these differences, all cases are likely to involve a trade-off between risk and reward. The level of benefits an MRA ultimately provides typically depends on governments’ and regulatory bodies’ level of commitment to breaking down barriers to mobility; the importance that an association and its members assign to accessing opportunities abroad versus protecting themselves from competition at home; and governments’ or professional bodies’ assessment of the demand for a recognition program, including among domestic members who wish to practice abroad. The following sections explore each level of benefits more fully.



A. Automatic Recognition

The “gold standard” of MRAs is automatic recognition. Under automatic recognition agreements, a license in one jurisdiction is directly accepted in another, with no additional assessment or training requirements. Professionals must generally apply for a license but only need to demonstrate that they hold the necessary license or qualification in their own country. For example, Australia and New Zealand operate a system of automatic recognition of qualifications that requires regulatory authorities to accept *any* professional registered in the other country, regardless of the qualifications they required for registration at home. Regulators can only reject or impose conditions on applicants if (a) they provide false or misleading information, or (b) the occupation itself is not considered to be “equivalent” (does not involve the same activities) in the two jurisdictions.⁸

Similarly, under the EU Professional Qualifications Directive, regulatory bodies in EU Member States have no discretion to reject access to seven regulated occupations (architects, dentists, doctors, midwives, nurses, pharmacists, and veterinary surgeons) if the applicant holds a qualification that appears on a list of approved credentials.

In other cases, regulators may have discretion to assess applicants’ training case by case and reject applications under certain circumstances. For example, EU Member States have the right to assess whether an applicant’s training in occupations other than the seven “automatic system” professions is sufficiently similar to their own, and have discretion to impose additional testing or periods of supervised practice if the scope or duration of training and experience differ substantially. Even in these cases, however, most applications are granted automatically and do not require testing or work experience (see Box 2).

Box 2. How Automatic Is the Recognition of Qualifications in the European Union?

More than four out of five European Economic Area (EEA) nationals who were approved to work in regulated professions under the European Union’s “general system” (which allows case-by-case assessment) were automatically accepted without an aptitude test or adaptation period, according to our analysis of eight countries that fully reported data on applications under the EU Professional Qualifications Directive between 2008 and 2011.

The rate at which applicants had to meet additional requirements, known as “compensatory measures,” before their applications were approved varied widely by country: 33 percent in Germany, 22 percent in Norway, 20 percent in France, and 8 percent in the United Kingdom. This rate also varied by occupation. Almost all EEA lawyers took aptitude tests (an exception is Irish lawyers moving to the United Kingdom), compared to one in five physiotherapists and one in 14 secondary-school teachers. The same professions in different countries operated very different policies. For example, EU-licensed secondary-school teachers in the United Kingdom are all accepted automatically, while more than 30 percent of ultimately successful applicants in Germany, Finland, and Italy had to undergo compensatory measures.

All told, however, fully automatic recognition takes place on a significant scale in the European Union: EU Member States approved almost 36,000 applications for recognition without additional tests or work experience in 2011.

Note: Data from Germany, Denmark, Spain, Finland, France, Italy, Norway, and the United Kingdom are analyzed here. Countries that reported zero cases in which compensatory measures were applied were excluded from the analysis due to the risk that this resulted from incomplete reporting rather than the absence of compensatory measures. This choice of countries is thus likely to overstate the average use of compensatory measures across the EEA.

Source: The statistics presented above are MPI calculations from European Commission, “Regulated Professions Database,” accessed November 15, 2013, http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm.

8 For details, see Council of Australian Governments Committee on Regulatory Reform, *A User’s Guide to the Trans-Tasman Mutual Recognition Agreement (TTMRA)* (Canberra: Commonwealth of Australia, 1998), www.dfat.gov.au/geo/new_zealand/ttmra_users_guide.pdf.



Because automatic recognition involves relatively little case-by-case scrutiny of other countries' training standards, it requires considerable confidence that standards are comparable across participating countries. In the European Union, the automatic recognition system was accompanied by a long process of harmonizing training procedures and—at least as far as is practical—standards. The Professional Qualifications Directive lays out specific criteria for training systems—for example, that courses must coordinate theoretical and practical learning, provide a specified number of hours of instruction, and cover a specific curriculum of topics. Meeting these requirements—which still leave ample room for differences in quality depending on the rigor of teaching and assessment—is not simple. In Croatia, for example, preparations for EU accession in 2013 required a few fundamental changes to training and practice in regulated employment.⁹

The political will required to harmonize training to this extent would be hard to achieve outside of a demanding, hands-on process like EU accession. Unless training standards are already extremely similar for historical reasons—as has been the case, for example, for medical doctors in the United States and Canada which share the same accreditation body—lesser forms of recognition are likely more achievable, especially in the short term.

B. Partial Recognition

Many MRAs do not immediately grant full rights to practice the profession. Instead, they give applicants credit for their home-country qualifications but require additional testing, training, or supervised work experience (the latter is often known as an adaptation period). In other words, these MRAs reduce, but do not eliminate, the steps required to qualify for licensure.

*Many MRAs do not immediately grant full rights
to practice the profession.*

These more limited recognition agreements come in various forms. One of the best known is the Washington Accord (WA) in engineering. Regulatory bodies from 15 member countries (and six provisional members) agreed to accept applicants' educational credentials if they trained at accredited engineering programs in other signatory countries. However, since registration as a professional engineer often requires practical experience, this may not be enough to receive a license. WA signatories are free to set their own professional experience requirements and assessment processes, some of which are more arduous than others. For example, the United Kingdom's Institute of Civil Engineers has professional experience requirements that take about three to six years to complete,¹⁰ and can be completed in or outside of the United Kingdom.¹¹ Canada, by contrast, requires at least one year of Canadian engineering

9 The deepest changes were required in the midwifery profession. Croatian midwives prior to accession practiced under constant supervision from doctors, exercising less autonomy than the Professional Qualifications Directive requires. To address this difference it was necessary to revise not only educational requirements but—since clinical experience is an important component of training—to change the ways in which hospitals organized their workforces, creating a more independent role for midwives. Authors' interview with European Union official responsible for accession monitoring in Croatia, June 21, 2012. The authors conducted this and other interviews with government officials and officials from professional associations; as well as discussions with officials at the Migration Policy Institute's foreign qualifications roundtable in Washington, DC on June 14, 2013; under Chatham House rules.

10 David Lloyd-Roach, *UK's Chartered Civil Engineers and their recognition in Europe and beyond* (London: Institute of Civil Engineers, undated), www.eceengineers.eu/news/2011/Presentation4_EED_Lloyd-Roach.pdf.

11 Note that individuals who train in the United Kingdom may find it easier to meet training requirements because they can take a dedicated course of training with approved employers, most of whom are in the United Kingdom or Hong Kong. However, another route to registration exists which allows foreign experience to be assessed more easily. Author's correspondence with Institute for Civil Engineers representative, September 4, 2013.



experience,¹² creating additional barriers for the foreign trained.

Other MRAs provide a specific process for taking tests or gaining work experience that is designed to be less time-consuming than repeating regular domestic internships or exams. For example, the United States' accountancy profession operates MRAs with Australia, Canada, Hong Kong, Ireland, Mexico, and New Zealand. The agreements do not offer immediate licensing, but substantially reduce the exam-taking load for applicants coming from these countries, requiring them to take a single exam on US-specific business law and taxation. (Individual US states may then assess any work experience requirements on a case-by-case basis).¹³ Similarly, the United Kingdom's association for actuaries has MRAs with various actuarial associations in the United States, South Africa, Australia, and Europe. Under such agreements, applicants recognized in a signatory country can be registered automatically for membership in another signatory country subject to work experience requirements that vary bilaterally.

Finally, regulators can agree to admit other countries' nationals to their professions automatically, but only if they have substantial experience. For example the Architects' Council of Europe has conducted several negotiations with foreign counterparts on MRAs that would require several years of professional experience *after* licensure in the home country.¹⁴ This approach allows regulators to compensate for cross-country differences in initial professional development without relying on potentially burdensome tests or supervised work experience.¹⁵ While this model excludes early-career professionals, it has the advantage of providing a relatively simple way to ensure competence in occupations in which knowledge gaps arise more from lack of experience than from differences in the substantive academic knowledge required in different countries.

Other MRAs provide a specific process for taking tests or gaining work experience that is designed to be less time-consuming than repeating regular domestic internships or exams.

C. Limited-Scope Recognition

Another approach to mutual recognition without harmonized training requirements is to limit the activities that a regulated professional can perform, allowing individuals to practice the parts of the occupation for which their home-country training qualifies them, but not the parts for which it does not. This approach can be used where knowledge gaps arise from differences in the scope of the occupation. For example, teachers licensed to teach children between the ages of 2 and 6 may face licensing barriers in a country that organizes schooling into different age ranges and licenses primary-school teachers to instruct children ages 4 to 12;¹⁶ the same may apply to civil engineers who move from a country that encourages early specialization to a country in which engineers are expected to have a broad knowledge

12 EngineersCanada, "Licensing in Canada," accessed November 15, 2013, <http://newcomers.engineerscanada.ca/licensing-canada>.

13 See further details and full texts at National Association of State Boards of Accountancy (NASBA), "Mutual Recognition Agreements," accessed November 15, 2013, <http://nasba.org/international/mra/>.

14 As described in the next section, some of these agreements have stalled and only the Canadian dialogue is still active.

15 In architecture, for example, most countries require a combination of theoretical and practical training before licensing, often totaling up to seven years. EU professional qualifications rules require only four years of study and no professional experience, in order to accommodate the EU countries whose systems require fewer years of training to obtain a license. By requiring several years of post-license experience, however, a mutual recognition agreement (MRA) can alleviate concerns about these differences.

16 An example cited in European Commission, *Evaluation of the Professional Qualifications Directive* (Brussels: European Commission, 2011): 37-8, http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf.



of all aspects of civil engineering.¹⁷ Limiting the right to practice to areas in which the professional has sufficient expertise addresses this problem.

Perhaps the most common example of limited-scope recognition is found in the legal profession. Although legal knowledge can be highly jurisdiction-specific, several countries allow lawyers to practice without host-country registration if they only advise clients on their own country's law and only use their home-country title. For example, a majority of US states have provisions for foreign legal consultants,¹⁸ and under the free trade agreement (FTA) with South Korea that entered into force in 2012, US-trained lawyers can gain the right to advise clients in South Korea on US and international law. South Korea also accords similar rights to nationals of the European Union, which also has an FTA with the country).

In other occupations, partial-recognition policies are not always popular among regulators, who may prefer to issue a single license for all professionals rather than creating lesser forms of registration for some individuals.¹⁹ Some MRA proponents in fact argue that in many cases tailored licenses are not necessary. Many professions rely on ethics codes that prohibit practitioners from offering services that they are not fully qualified to perform. (For example, architects without knowledge of technical implications of local conditions such as earthquakes or extreme weather conditions should not offer services that require this knowledge, and lawyers only experienced in corporate law should not take on complex family-law cases). Foreign professionals can simply be required to comply with local ethics rules and not offer services in areas for which their domestic training did not prepare them. This self-regulation approach is, of course, more palatable in some occupations than others, and may not be appropriate in occupations (such as medicine) where public risk tolerance is very low.

Partial-recognition policies are not always popular among regulators, who may prefer to issue a single license for all professionals.

D. Temporary Access

Finally, some MRAs provide relatively open access to practice but only for a limited period. Many US state boards offer this option for professional engineers moving from other states—for example, Texas provides temporary licenses for engineers from Canada, Mexico, and Australia. Canadian provinces offer temporary licenses for architects,²⁰ and the European Union's Professional Qualifications Directive allows citizens to provide "temporary or occasional" services as long as they notify the host-country regulator of their presence. These temporary permits, lasting anywhere from a few weeks to a few years, have two principal purposes: (1) to facilitate trade in services by allowing individuals to practice on specific projects but not to establish themselves indefinitely in the local labor market; and (2) to provide a stop-gap for professionals who have applied for a full license but are waiting for a decision or still completing the requirements.

17 For a discussion, see Janne Sylvest, Karin Gros Pederson, and Martha Bird, *Recognition of professional qualifications* (Brussels: European Parliament, 2010): 35, www.europarl.europa.eu/document/activities/cont/201010/20101025ATT89911/20101025ATT89911EN.pdf.

18 American Bar Association, "Foreign Legal Consultant Rules," updated October 28, 2013, www.americanbar.org/content/dam/aba/administrative/professional_responsibility/foreign_legal_consultants.authcheckdam.pdf.

19 This is the conclusion reached by European Union evaluators in European Commission, *Evaluation of the Professional Qualifications Directive*.

20 See, for example, Ontario Association of Architects, *Guidelines for Completion of an Application for Temporary Licence under Section 24 of the Architects Act R.S.O. 1990* (Toronto: Ontario Association of Architects, 2012), www.oaa.on.ca/images/docs/1332167192_TemporaryLicenceapplandguidelines-March2012.pdf.



III. Challenges in Reaching and Implementing Mutual Recognition Agreements

At their core, MRAs between governments or between regulatory authorities in different countries require confidence that the outcomes of regulation will be similar even if they are achieved through different processes. In other words, once participating countries have established trust in one another's standards, there is less need to assess individual qualifications case by case. Essentially, this is a way of instituting quality control up front, while freeing individuals who are licensed within an approved training system to requalify abroad more quickly and at lower cost, both to themselves and to their employers.

Despite this simple premise, reaching agreements is labor intensive and can be difficult even among countries with relatively similar professional qualifications requirements. MRAs require substantial technical legwork, including detailed occupation-by-occupation analysis of differences in training systems and professional practice. Even within broad occupations (for example, engineering), several subfields may exist with different standards and training systems that must be considered separately. At the same time, the level and type of regulation may vary by country, creating natural asymmetries that can be hard to bridge.²¹

This section describes three major challenges that governments seeking to facilitate MRAs may face:

- **Bringing the right people to the table.** MRAs need buy-in from an array of organizations, and coordinating these different players presents both technical and political challenges.
- **Creating momentum.** MRAs require persistence and political will, giving national (or supranational) policymakers a significant role in facilitating ongoing discussion as well as monitoring and revising agreements over time.
- **Ensuring effective implementation.** In some cases, especially where governments (rather than professional associations themselves) drive the agreements, ongoing monitoring and dispute resolution may be required to ensure that the measures are properly implemented.

A. Bringing the Right People to the Table: Who Negotiates?

Because of these intricate technical and institutional differences, simply signing an accord between governments is not enough. Trade officials negotiating deals with foreign counterparts are generally not qualified to discuss practical details within specific occupations. National governments can create a framework for how agreements should be constructed and can recommend what they should contain, but they must generally delegate the details to regulatory bodies and professional associations.

The level of control that governments exercise over these organizations varies. While many regulatory bodies are part of the government apparatus, others are independent professional associations that may resist granting recognition to foreign qualifications. Moreover, occupations are often regulated at the subnational level, with constitutional constraints on national governments' ability to impose

21 A particularly difficult situation arises when one jurisdiction regulates an activity but others do not. For example, a 2003 analysis found that Spain reserved eight out of nine general services performed by architects exclusively for members of its professional association, while Germany and the United Kingdom only reserved one out of nine. In engineering, the United Kingdom did not place restrictions on any of ten general activities, while Portugal restricted them all. Outside of a government-imposed program like the EU Professional Qualifications Directive, there may be little incentive for regulators to cooperate voluntarily in these cases. Iain Paterson, Marcel Fink, Anthony Ogus, et al., *Economic impact of regulation in the field of liberal professions in different Member States* (Vienna: Institute for Advanced Studies, 2003), http://ec.europa.eu/competition/sectors/professional_services/studies/prof_services_ihs_part_1.pdf.



requirements from above. In Canada and the United States, for example, primary responsibility for professional regulation lies with provinces and states, respectively, even though each federal government takes the lead on international negotiations. In Europe, EU institutions lead trade negotiations while Member States are responsible for implementing professional regulations. This multiplies the number of entities that have a role in intergovernmental MRA negotiations and creates complex divisions of labor among them.

*There may not be a single body empowered to negotiate MRAs
on behalf of a cluster of jurisdictions.*

This fragmented responsibility has two major implications. First, a country's own citizens may not enjoy full internal mobility. In the United States, for example, internal mobility varies by occupation and some occupations (such as accounting)²² have much more standardized procedures than others (such as law). By contrast, subnational jurisdictions in Australia and more recently, in Canada have agreements that allow professionals to move between jurisdictions. Full internal reciprocity within the country may encourage subnational regulators to come to the table in any *international* negotiation in which other jurisdictions are participating, since foreign professionals licensed by one state or province may automatically gain the right to practice their profession in others. In Canada, for example, French professionals who have been certified in Quebec under the France-Quebec accord can then move to other provinces or territories under Canada's Agreement on Internal Trade, subject only to the limited number of restrictions that other provinces are permitted to apply to professionals licensed in Quebec.²³ Conversely, if professionals' right to practice in other parts of their own country is restricted, the opportunities for establishing international recognition agreements are more limited.

A second implication of fragmented responsibilities for qualifications recognition is that there may not be a single body empowered to negotiate MRAs on behalf of a cluster of jurisdictions. In the United States, for example, umbrella organizations representing state licensing boards (such as the National Council of Architectural Registration Boards or the National Association of State Boards for Accountancy) are the natural negotiating counterparts for an international agreement, but they cannot force subnational regulators to participate in MRAs. These organizations may be able to assist in bringing all the individual regulators to the negotiating table, but foreign counterparts must also accept that the deal they negotiate will not necessarily cover all jurisdictions.²⁴ At the same time, the fact that the delegation of responsibility for licensing varies by country means that occupational representatives sitting across the negotiating table at the national or supranational level may have different degrees of control over the jurisdictions responsible for regulation. This can mean that some negotiating partners are able to promise more than others, creating an asymmetrical relationship that may reduce trust in the negotiating process.

22 For example, a majority of state boards of accountancy in the United States have mobility legislation which permits a licensed CPA from a substantially equivalent state, as defined by NASBA, to practice outside of his or her principal place of business without obtaining another license.

23 In some cases, provinces may impose language requirements, background checks, or mandatory insurance; in specific, agreed cases they may refuse licensing where the scope of the occupation differs (for example, dental hygienists moving to a jurisdiction that requires practitioners to administer anesthetics from one that does not).

24 In the recently negotiated MRA for professional architects between the National Council of Architectural Registration Boards (NCARB) and the Canadian Architectural Licensing Authorities (CALA), for example, implementation of the MRA in January 2014 is contingent on 51 percent of state licensing boards and 51 percent of Canadian licensing authorities becoming formal signatories to the Agreement. NCARB and CALA, "Mutual Recognition Agreement between the National Council of Architectural Registration Boards and the Canadian Architectural Licensing Authorities," June 17, 2013, accessed November 15, 2013, <http://aibcnews.files.wordpress.com/2013/07/inter-recognition-agreement-can-us-jan-2014.pdf>.



B. *Creating Momentum*

Against this backdrop, national policymakers face a formidable coordination challenge. Even when occupational specialists agree in principle that their regulatory regimes are compatible, taking a formal agreement to ratification and implementation requires energy and persistence. The process can easily lose momentum. A case in point is the US architectural profession, whose successful negotiations on the principles of two MRAs in the mid-2000s (with the European Union and Australia) petered out once it came to the concrete details of implementation. In other cases, potential MRAs may never be negotiated because of inertia and a lack of channels for regular communication among regulatory bodies in different countries.

National (or, in the EU case, supranational) policymakers thus have an important role in driving the MRA process forward, in three major ways: providing political leadership and pressure, making funding available, and creating a broader institutional framework for negotiations.

Active political leadership provided significant momentum for regulatory bodies in dozens of other occupations to negotiate agreements.

First, policymakers can put pressure on both professional associations and the array of national ministries or subnational governments whose cooperation is required. The 2008 mutual recognition accord between Quebec and France is a notable example of a case in which strong direction from the top appears to have been instrumental in creating and maintaining pressure for professional associations to participate. Unlike the European Union’s Professional Qualifications Directive, which compels Member States to comply, professional associations in Quebec and France could not be coerced into participation. Nor was a high-level political agreement legally or technically *necessary* for occupation-by-occupation agreements, since some bodies had already concluded agreements for their own occupations before the intergovernmental agreement was in place, including in engineering and accounting. But according to officials involved in the process, active political leadership provided significant momentum for regulatory bodies in dozens of other occupations to negotiate agreements shortly thereafter.²⁵

A second tool policymakers can use to encourage cooperation is funding. Professional associations and regulatory bodies naturally prioritize domestic issues of importance to their members, and do not necessarily have resources for ongoing conversations with international counterparts. Specific funding streams to help them conduct negotiations—an approach used in the Quebec-France case and recommended by the US Chamber of Commerce to improve regulatory cooperation across the Atlantic²⁶—could help to nudge regulators into action.

Finally, governments can provide a broader institutional framework to underpin negotiations and give them legal force. EU institutions provided a natural venue for ongoing dialogue over the many years of negotiation that led to the agreements now known as the Professional Qualifications Directive. On a smaller scale, international trade and investment agreements can provide an anchor for occupational MRAs, creating an impetus to conduct negotiations, a clear timetable, and institutions to monitor implementation and resolve disputes. While some free trade agreements—such as the EU-South Korea

25 Authors’ interviews with official from Immigration et Communautés culturelles Québec (Québec’s immigration ministry), February 23, 2012; and with official from Quebec’s Ministry of International Relations, June 14, 2013. For more information on the agreement and its implementation, see Ministry of International Relations, La Francophonie and External Trade, “Québec-France Agreement on the Mutual Recognition of Professional Qualifications,” accessed November 15, 2013, www.mri.gouv.qc.ca/en/grands-dossiers/reconnaissance-qualifications/entente-quebec-france.

26 As cited in Raymond J. Ahern, *Transatlantic Regulatory Cooperation: Background and Analysis* (Washington, DC: Congressional Research Service, 2009), www.fas.org/sgp/crs/row/RL34717.pdf.



Free Trade Agreement and the EU-Chile Association Agreement—contain language encouraging future cooperation on the recognition of qualifications,²⁷ the Comprehensive Economic and Trade Agreement (CETA) that is currently being finalized between the European Union and Canada is perhaps the best example of this approach because of the level of detail and specificity it is expected to provide. Specifically, the agreement establishes a monitoring committee to facilitate the exchange of information on professional regulation, prohibit citizenship or residency requirements in the licensing process (as well as any requirements that experience should be acquired in the host country), and establish a template for negotiating MRAs occupation by occupation (covering questions such as when to impose tests and work experience requirements, timelines for processing applications, and various other implementation details).²⁸ The first MRA would likely be among architects, the only group for whom negotiations are well advanced, but according to the Canadian government, associations representing accountants, engineers, and foresters have also expressed interest.²⁹

MRAs do not *require* trade or cooperation agreements—after all, many MRAs have been concluded in their absence. But some practitioners argue that free trade agreements can give MRAs a legal basis that would make the rules enforceable, especially in cases where some regulators participate more enthusiastically than others. Furthermore, attaching an MRA to the timetable for implementing a free trade agreement, with its own monitoring processes and institutions, reduces the risk that political declarations fail to lead to concrete actions.

C. Ensuring Effective Implementation

A final challenge for MRAs is implementation. Far-reaching and ambitious initiatives encompassing a diverse range of countries face the inevitable risk that competent authorities will implement agreements inconsistently. This is especially the case when agreements are “imposed” upon regulatory bodies or professional associations by national governments rather than adopted through their own initiative, and where a web of new rules introduces complexity into the system.

Governments can provide a broader institutional framework to underpin negotiations and give them legal force.

Despite the impressive achievements in mutual recognition within the European Union and the institutions available to support it, inconsistent application of Professional Qualification Directive rules is a commonly cited concern. A 2011 EU evaluation of the Directive includes several such examples. In some cases, three-month deadlines for responding to applications are not met, and government officials responsible for assessing foreign qualifications are in some cases insufficiently familiar with the complex new rules, rejecting applications that should have been accepted. In others, foreign-trained professionals who in theory have the right to an adaptation period or an aptitude test under EU law were in practice

27 The EU-Chile free trade agreement states that the signatories should “consult periodically” to determine the feasibility of removing citizenship restrictions for professional licensing, and that the signatories should encourage their regulatory bodies to conduct occupational MRAs. The EU-Korea agreement provides for a working group to be established to facilitate new MRAs. See Articles 102 and 103 of European Union, “Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part,” *Official Journal of the European Union*, December 30, 2002, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:352:0003:1439:EN:PDF>; and Article 7.21 of European Union, “Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part,” *Official Journal of the European Union*, May 14, 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:0006:1343:EN:PDF>.

28 Based on leaked 2011 version of the Comprehensive Economic and Trade Agreement (CETA) text, “Canada-EU CETA Draft Consolidated Text – Post Round VI,” January 2011, 141-53. Accessed from La Quadrature Du Net, November 15, 2013, www.laquadrature.net/wiki/images/6/69/CETA_draft_jan_2011.pdf.

29 Government of Canada, *Opening New Markets in Europe: Creating Jobs and Opportunities for Canadians* (Ottawa: Public Works and Government Services Canada, 2013), <http://actionplan.gc.ca/sites/default/files/pdfs/overview.pdf>.



unable to find appropriate placements or experienced long delays because no appropriately qualified expert was available to assess their potential knowledge deficits.³⁰

The level and intrusiveness with which MRAs are monitored varies widely. Some involve periodic reviews and exchanges of information. The International Engineering Alliance, for example, which oversees the Washington Accord, holds formal meetings every two years to review progress and monitor participating countries' compliance.³¹ The proposed EU-Canada MRA for architects would have a governance committee or similar body to monitor implementation. And at the most developed end of the spectrum, the European Union relies on a range of measures to facilitate implementation, including an electronic system for exchanging information among regulators in different countries, points of contact in each country to assist applicants, data reporting requirements, and the option for the European Commission to bring infringement proceedings against countries that do not comply with the rules.

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is a commonly cited concern.*

IV. Recognizing Qualifications Across the Atlantic: Prospects for EU-US Cooperation

With the exception of the European Union's Professional Qualifications Directive, mutual recognition agreements are generally narrow in scope, covering either a single occupation or a single bilateral relationship. Outside of the European Union and the Australia-New Zealand corridor, only the France-Quebec agreement offers a broad set of measures spanning multiple occupations, with implementation well underway. The EU-Canada cooperation agreement could potentially create another such corridor, although its success in encouraging MRAs remains to be tested and will not be clear for some years.

One significant prospective channel for mutual recognition on a much larger scale is the European Union and the United States. Together, the United States and the European Union account for almost half of global GDP and one-third of global trade, making this the largest bilateral trade and investment relationship in the world.³² Services sectors make up a majority of GDP on both sides of the Atlantic and have been described as the "sleeping giant of transatlantic economic relations."³³

Bilateral flows of people between the European Union and the United States are already significant, with much of the movement driven by the private sector (and, particularly, multinational firms operating across the Atlantic). US citizens were the largest recipients of residence permits in Europe in 2010.³⁴ EU citizens' dominance in the US immigration statistics has declined somewhat in recent decades, although

30 European Commission, *Evaluation of the Professional Qualifications Directive*; and Bettina Englmann and Martina Müller-Wacker, *Analyse der bundesweiten Anerkennungsberatung im Modellprojekt Global Competences* (Augsburg, Germany: Migranet and Integration durch Qualifizierung, 2010), www.migranet.org/images/stories/pdf/20101208_analyse_GC.pdf.

31 See International Engineering Alliance, "International Engineering Meetings," accessed November 15, 2013, www.washingtonaccord.org/IEM.cfm.

32 Eurostat, "The EU in the World - economy and finance," updated October 23, 2013, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/The_EU_in_the_world_-_economy_and_finance; and Eurostat, "The EU in the World - international trade," updated February 26, 2013, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/The_EU_in_the_world_-_international_trade.

33 German Marshall Fund, *A New Era for Transatlantic Trade Leadership: A Report from the Transatlantic Task Force on Trade and Investment* (Washington, DC: German Marshall Fund, 2012): 17, www.gmfus.org/wp-content/blogs.dir/1/files_mf/tatf_report_2012.pdf.

34 Eurostat, "Residence Permits Statistics," updated June 3, 2013, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Residence_permits_statistics.



they are very well represented among work-permit recipients in the United States, receiving 28 percent of intracompany transfer visas and 9 percent of regular (H-1B) work permits in 2012.³⁵ Mutual recognition across the Atlantic, if successful, thus has the potential to bring a much larger number of people into its reach than any other agreement to date.³⁶

In July 2013, the European Union and the United States initiated negotiations for a Transatlantic Trade and Investment Partnership (TTIP), which if successful, will be the largest trade agreement ever concluded and is expected to further deepen the economic relationship between the two entities. An initial memo on the EU negotiation objectives includes recognition of qualifications, although talks are still in the early stages and few specifics have been discussed.³⁷ It is possible that the negotiations will also cover the complementary issue of visas and work permits, on the basis that reducing regulatory barriers to practice a profession will not support professional mobility if citizens cannot get the visas they need to move. These developments raise the question of how mutual recognition could be negotiated between the European Union and the United States—whether it ought to be a part of the TTIP or part of an “inbuilt agenda” for future cooperation that would follow the partnership³⁸—and what concessions and compromises it would entail.

Mutual recognition across the Atlantic, if successful, thus has the potential to bring a much larger number of people into its reach than any other agreement to date.

As this section describes, three major considerations are worth noting when assessing the feasibility of EU-US agreements on mutual recognition:

- **Fragmentation.** A framework for EU-US MRAs could draw on the EU-Canada precedent, although the US context brings some specific challenges. These include the lack of mobility among US states in many occupations, and the larger number of jurisdictions.
- **Coverage.** EU citizens moving to the United States are concentrated in just a few major destinations, and vice versa. In light of the significant coordination challenge that an EU-US MRA framework would impose, it may be worth experimenting with policies that do not initially cover practitioners from all jurisdictions, but that remain open for others to join over time.
- **Market Access.** Because of the specific challenges associated with work-based visa policies in the United States, EU policymakers seeking to make the most of skilled mobility across the Atlantic may also push for visa provisions that have been included in previous US free trade agreements.

35 MPI analysis of US Department of State, “Nonimmigrant Visa Statistics,” accessed November 15, 2013, http://travel.state.gov/visa/statistics/nivstats/nivstats_4582.html; for a longer discussion, see Xiaochu Hu and Madeleine Sumption, *Scientists, Managers, and Tourists: The Changing Shape of European Mobility to the United States* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/EuropeanMigration.pdf.

36 Excluding, of course, the European Union’s internal professional qualifications measures.

37 European Commission, “Member States endorse EU-US trade and investment negotiations” (news release, June 14, 2013), http://europa.eu/rapid/press-release_MEMO-13-564_en.htm.

38 European Commission, *Trade Cross-cutting disciplines and Institutional provisions* (initial EU position paper for the EU-US Transatlantic Trade and Investment Partnership, July 2013), http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151622.pdf.



A. *Mutual Recognition Across the Atlantic: Can It Happen?*

In Europe, policies on the recognition of qualifications for EU citizens are quite advanced, but to date no MRAs with third parties have been implemented. In some professions, MRAs with the United States do exist, but these have been concluded with individual Member States (notably the United Kingdom) rather than the European Union as a whole. Additionally, EU and US negotiators for the architectural profession did sign an in-principle agreement for mutual recognition as early as 2005, although discussions over the necessary implementation measures never got underway following some disagreements over the scope of the proposed program. The agreement between the Architects' Council of Europe (ACE) and the US National Council of Architectural Registration Boards would have permitted automatic licensing for architects with at least seven years of experience as a fully licensed architect (and at least 14 years of total education, training, and practice), with no additional language, citizenship, or residence requirements. However, European negotiators were hesitant to move forward with an accord that might not bind all 54 US jurisdictions, and their US counterparts felt that ACE did not have the authority to create a legally binding agreement without a formal international treaty or trade deal. This case suggests that the will to enter MRAs may exist among professional organizations on both sides of the Atlantic, but the process can easily lose momentum and may benefit from a formal cooperation framework such as a free trade agreement.

In Europe, policies on the recognition of qualifications for EU citizens are quite advanced, but to date no MRAs with third parties have been implemented.

The EU-Canada MRA framework provides some room for optimism, although its value as a precedent remains theoretical rather than practical since it remains some distance from implementation. Indeed, EU architects' representatives, who have been at the vanguard of attempts to conclude an EU-wide MRA, have pinned their hopes on the trade agreement between the European Union and Canada to provide a useful precedent for future negotiations—and to test whether it is worth revisiting negotiations with the United States (as well as to pursue them with other countries with which the United States has free trade deals, notably South Korea and Mexico).³⁹

B. *Challenges for EU-US MRA Negotiations*

MRA negotiations with professions in the United States would need to overcome some specific obstacles. First, the number of US jurisdictions, at 54, is significantly larger than in Canada or even the European Union.⁴⁰ Entry requirements for many professions are not harmonized among these jurisdictions, and arrangements for interstate mutual recognition are highly incomplete. Some occupations do have a uniform national exam, facilitating relicensing in new states, including architecture, accounting, medicine, nursing, and engineering. But depending on the profession, states may also impose varying requirements for work experience, residency or citizenship (accounting), or otherwise require state-specific tests (architecture). Some states recognize other states' applicants quasi-automatically if they meet specific criteria (for example, about half of architectural licensing boards recognize applicants who hold a certificate from the national umbrella body for state boards), while others rely on a mix of unilateral recognition decisions and a web of bilateral reciprocity-based agreements (e.g. in law).

US states' licensing boards in many occupations have national umbrella organizations that exchange information between members (the state boards), and in some cases encourage mutual recognition or convergence of licensing standards among them. These organizations may negotiate MRAs on behalf

³⁹ Author's interview with official from the Architects' Council of Europe, February 22, 2013.

⁴⁰ This includes the 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, and Guam.



of states, but cannot compel the states to participate. For US-EU MRAs to be successful, therefore, negotiators will likely need to embrace less-than-perfect deals, accepting that not all US states will ultimately join an agreement and instead focusing on securing buy-in from a critical mass of the most significant states for professional mobility. Indeed, in 2008, just eight states hosted two-thirds of all US residents born in the EU-27 (New York, California, Illinois, Florida, New Jersey, Massachusetts, Texas, and Pennsylvania),⁴¹ and just seven states represent a 52 percent majority of the professional, scientific, and technical services sector in which many regulated professionals operate (California, New York, Texas, Virginia, Illinois, Florida, and Massachusetts).⁴² As a result, a limited agreement that grants reciprocal access to practice to individuals licensed in participating US states could well bring much of the benefit of a US-wide initiative.

Negotiators will likely need to embrace less-than-perfect deals, accepting that not all US states will ultimately join an agreement.

A more difficult (but plausible) scenario would arise if US negotiators are unwilling to include all EU Member States in an MRA. By way of example, talks between the accounting professions in England and the United States have been held up due to the latter's unwillingness to accept all England-registered accountants—preferring instead to accept just those who qualified through routes that require a college degree. Adding a further 27 countries would certainly multiply such disagreements.

Like EU citizens in the United States, US citizens in the European Union are concentrated in a few Member States. Since 85 percent of work permits issued to Americans in 2011 were for eight countries—the United Kingdom, Germany, France, Italy, the Netherlands, Belgium, Spain, and the Czech Republic⁴³—some US professions may prefer smaller agreements among “coalitions of the willing” that bring in a few key Member States with the most similar training systems and standards. The EU Professional Qualifications Directive harmonizes mutual recognition procedures among Member States, but leaves the recognition of qualifications from outside of Europe to the discretion of national regulators. This opens the door to MRAs that do not involve all Member States, even if EU policymakers might resist this option in the framework of an EU trade deal. Faced with this scenario, it is worth bearing two considerations in mind.

First, well-structured MRAs might exclude certain jurisdictions at first, but remain open for these to join the agreement over time. Negotiators should not expect all MRAs to take the same format as the ones negotiated by the architectural professions, in which case-by-case assessment of applicants' qualifications are largely eliminated if they have a certain amount of experience. As described earlier in this report, most occupations are not likely to accept this model. Other common MRA models have provisions

41 Hu and Sumption, *Scientists, Managers and Tourists*.

42 According to the US Census Bureau, “The Professional, Scientific, and Technical Services NAICS sector comprises establishments that specialize in performing professional, scientific, and technical activities for others. These activities require a high degree of expertise and training [...] Activities performed include: legal advice and representation; accounting, bookkeeping, and payroll services; architectural, engineering, and specialized design services; computer services; consulting services; research services; advertising services; photographic services; translation and interpretation services; veterinary services; and other professional, scientific, and technical services.” US Census Bureau, “NAICS Sector 54: Professional, Scientific, and Technical Services,” www.census.gov/epcd/ec97/def/54.HTM. Percentage calculated from “GDP and Personal Income Regional Data,” US Department of Commerce Bureau of Economic Analysis, updated June 2013, www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=1#reqid=70&step=1&isuri=1&7036=-1&7007=2012&7093=Levels&7090=70&7006=0000&7001=1200&7002=1&7003=200&7004=NAICS&7005=-1&7035=-1.

43 This data is for EU countries, plus Norway and excluding Denmark. For United Kingdom statistics, see UK Home Office, “Immigration Statistics January-March 2013, before entry tables,” www.gov.uk/government/uploads/system/uploads/attachment_data/file/200382/before-entry2-q1-2013-tabs.ods. Other data is from Eurostat, “All valid permits by reason, length of validity and citizenship on 31 December of each year [migr_resvalid],” http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resvalid&lang=en.



for rejecting applicants (or imposing additional training or experience requirements on them) when differences between destination and origin training systems are significant—the most notable example being the EU Professional Qualification Directive’s general system. If adopted in the EU-US context, this model would implicitly allow US professions to exclude professionals from EU Member States whose training systems differ significantly from their US counterparts. However, it would leave open the option for new Member States to become eligible for more automatic recognition of qualifications over time, if and when they begin to meet the criteria.

Well-structured MRAs might exclude certain jurisdictions at first, but remain open for these to join the agreement over time.

Second, smaller agreements—perhaps even involving single EU Member States or US states—could help to pilot MRA models that could later be extended more broadly. In a field with comparatively few good precedents for action, an experimental approach of this kind could be more useful in the long run than insisting up front on an all-or-nothing deal involving over 80 combined US and EU jurisdictions. Negotiators’ willingness to support MRA talks among a more limited number of jurisdictions would also help in cases where no natural umbrella body exists that is well positioned to conduct talks on behalf of EU Member States or all US states. In other words, EU and US officials seeking to facilitate MRAs may find it useful to keep an open mind as to MRA participation, focusing first and foremost on (1) encouraging dialogue where professional associations are willing to move ahead with it; and (2) creating frameworks or timetables for cooperation that are explicitly designed to allow additional member jurisdictions to join over time.

C. Mobility and the EU-US Trade Deal

The US work-visa system for high-skilled professionals is particularly dysfunctional by international standards, with tight numerical limits that often run out within weeks or even days, making access to the US market rather unpredictable.⁴⁴ As a result, countries negotiating free trade agreements with their American counterparts are often particularly interested in visa and work-permit related measures. From a trade perspective, these measures might be considered complementary to mutual recognition of qualifications, since predictable access to visas may reinforce the value of smoother licensing requirements.

Chile and Singapore, for example, received special allocations of skilled work visas (known as H-1Bs) as part of free trade agreement negotiations in 2003; and the 1994 North American Free Trade Agreement (NAFTA) created special visas for Canadian and Mexican nationals wishing to work in the United States (though the program is less generous for Mexicans than Canadians). Politically, this process is never entirely smooth, in large part because of strong opposition from organized labor and its allies in the US Congress. After the Chile and Singapore FTAs, the US Senate passed a nonbinding resolution stating that trade agreements are “not the appropriate vehicle” for immigration-related laws and that future trade agreements should not contain them.⁴⁵ A subsequent FTA with Australia in 2004 did lead to new visa commitments, but only indirectly—immigration provisions were not included in the text of the FTA itself but introduced separately as part of a 2005 defense appropriations bill, and in a visa category that had not previously been used for such purposes. More recently, the immigration bill that passed the US Senate

44 For an overview, see Demetrios G. Papademetriou and Madeleine Sumption, *The Role of Immigration in Fostering Competitiveness in the United States* (Washington, DC: Migration Policy Institute, 2011), www.migrationpolicy.org/pubs/competitiveness-us.pdf.

45 *Resolution expressing the sense of the Senate regarding the temporary entry provisions in the Chile and Singapore Free Trade Agreements*, S.Res.211, 108th Cong., 1st Sess., (2003), www.gpo.gov/fdsys/pkg/BILLS-108sres211ats/html/BILLS-108sres211ats.htm.



in June 2013 contained provisions that would expand the potential for such agreements, authorizing similar visa categories for countries with which the United States may conclude FTAs in future.

In past deals, negotiating counterparts have received access to US visas without having to make changes to their own visa systems, which already provided equivalent benefits to American citizens. This may also be the case for EU Member States, most of which provide relatively open access for highly skilled workers sponsored by destination-country employers or multinational companies. Work permits for the highly skilled are quota free in the vast majority of EU countries (and in all of the major destinations).⁴⁶ Instead, salary requirements are the European Union's main mechanism for controlling skilled-worker flows—a mechanism that also exists in the United States and that is set to become more stringent if proposed US immigration reform measures are successful.⁴⁷

Work permits for the highly skilled are quota free in the vast majority of EU countries.... Instead, salary requirements are the European Union's main mechanism for controlling skilled-worker flows.

Beyond work permits, TTIP also provides an opportunity to open the conversation about closer cooperation on other visa-related issues that would help to facilitate transatlantic business. This includes rules for short-stay visas for business travel (over which the European Union does have jurisdiction)—for example, clarifying eligibility for visa-free travel and rules on the types of work business travelers can undertake while abroad. More ambitious cooperation would include initiatives to facilitate intracompany transfers—a policy that is at the core of international business and investment activity—by clarifying or coordinating eligibility rules and perhaps even mutually recognizing other countries' decisions to issue intracompany transfer permits.⁴⁸ Indeed, in a recent letter to EU Home Affairs Commissioner Cecilia Malmström, the Transatlantic Business Council, an organization that promotes lower barriers to transatlantic trade, argued that the TTIP should include measures allowing intracompany transferees to begin work after a simple notification procedure (rather than a full work-permit application). It also proposed a menu of other options such as fast-track processing for visa and work-permit applications, facilitated travel for low-risk travelers for all EU and US nationals moving across the Atlantic, and more liberal family unification and work authorization for spouses, among other measures.⁴⁹

46 Numerical limits are used in a handful of smaller countries, such as Greece, Estonia, and Latvia although there are often exceptions and the limits are not necessarily binding (and Estonia exempts US and Japanese citizens from these limits). The most significant country relying on numerical limits is the United Kingdom, but the limit has so far been more than enough to accommodate demand. For country-specific policies, see country studies available at European Commission, "Economic migration," updated September 13, 2013, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/economic-migration/index_en.htm.

47 Both the bill that passed the US Senate in June 2013 and the legislation on legal visas that is currently under consideration in the House of Representatives would raise required salary thresholds for skilled foreign workers.

48 The latter option may become more feasible if and when Europe is able to finalize its own proposed measures to do this within the European Union.

49 Letter from Tim Bennett, Director-General of the Transatlantic Business Council, to European Commission Commissioner Cecilia Malmström, June 11, 2013, accessed November 15, 2013, <http://static.squarespace.com/static/50a3f5e4e4b072e097b3426f/t/51b884e0e4b097248e9134b1/1371047136910/Letter%20to%20Commissioner%20Malmstrom%20Calling%20for%20the%20Inclusion%20of%20Skills%20and%20Labour%20Mobility%20Issues%20in%20the%20TTIP%20-%20Transatlantic%20Business%20Council%202013%20June%202011.pdf>.



V. Conclusions and Outlook

As economies become more interconnected, the premium on human capital continues to grow, and the mobility of skilled professionals increases, the pressure to resolve barriers to qualifications recognition will rise. Labor markets in highly skilled occupations have become more international and modern economies have come to rely increasingly on highly integrated global supply chains. At the micro level, there is a thriving trade in virtual services—delivered entirely online between individuals who will never meet. These developments make it difficult for national regulators to maintain traditional territorial systems of professional regulation, as if mobility did not exist. Limiting the right to practice professions to single jurisdictions multiplies inefficiencies when the economies in which regulated professionals operate have become global.

The potential for smoother movement of professionals among jurisdictions with essentially equivalent requirements remains largely untapped. While existing agreements are promising, they have generally been narrow in scope, covering only small geographic corridors or limited benefits for applicants. This report has discussed the detailed Comprehensive Economic and Trade Agreement (CETA) framework for mutual recognition agreements (MRAs) and early indications of French and Quebecois regulators' willingness to participate in dialogue as possible examples of how to expand MRAs between countries and jurisdictions. That said, CETA also has limitations as a model for cooperation on qualification recognition in other regions, since it does not have clear timetables for action and it is not clear to what extent political pressure or government support to negotiate occupational MRAs will remain after the trade deal itself has been signed.

Limiting the right to practice professions to single jurisdictions multiplies inefficiencies when the economies in which regulated professionals operate have become global.

Overall, the challenge for policymakers is to determine how governments can get more out of MRAs than they have done to date. The experiences described in this report point to several broad factors that will likely contribute to successful MRAs. First and foremost, governments can contribute both funding and political leverage to get professional bodies around the table for negotiations. Even where constitutions allow national governments to “coerce” their regulators into action, they need to rely on them to produce the necessary technical groundwork and to assess what type of agreement fits the needs of the occupation in question. Second, governments can seek economies of scale by creating an overarching political agreement (or even a formal treaty, such as an FTA) that provides a forum for negotiations, a common template for professional bodies to follow, and political oversight for the implementation process. Third, governments can help keep up momentum by setting out ambitious timetables for negotiating agreements at the occupational level, even if they have to revisit them over time—perhaps as part of a broader economic cooperation agenda between countries.

As they do this, policymakers should bear in mind a number of caveats.

First, creating MRAs is not an event but a process—and often a rather long one. Policymakers must be prepared to revisit agreements and gradually update them over time; otherwise the MRAs they support may join the list of cooperative initiatives on mobility that never progressed far beyond the initial political announcement.



Second, MRAs vary enormously, and the jury is still out on which approaches most effectively facilitate mobility and the productive use of skills. The “right” response will not be the same in all cases, putting a premium on the ability to remain flexible and embrace less-than-perfect solutions (for example, accepting an agreement that keeps some licensing requirements in place, rather than holding out for one that offers fully automatic recognition for all practitioners).

*MRAs are likely to be most beneficial when combined...
with measures to ensure an orderly flow of skilled professionals.*

Third, MRAs have limitations and are best seen as part of a package rather than a standalone measure to improve the productive use of skills or facilitate the circulation of people. From an *integration* perspective, regulatory barriers are just one of several barriers to immigrants’ full participation in the destination economy. Many foreign-trained workers also face obstacles such as language barriers or a lack of local connections and work experience. Moreover, MRAs generally only benefit nationals of countries participating in an agreement and thus have a relatively narrow reach. For these reasons, MRAs to improve the recognition of qualifications must be combined with a comprehensive integration strategy that will support both immigrants who are unlikely to qualify for MRAs, at least in the short run, and those whose barriers to employment stem from factors other than licensing requirements. From an *immigration* perspective, meanwhile, MRAs are likely to be most beneficial when combined, where necessary, with measures to ensure an orderly flow of skilled professionals; after all, the ability to practice a profession abroad is contingent not just on professional regulation but also on the work or travel authorization required to move.

Finally, any movement toward more extensive use of MRAs will face the longer-term challenge of how to reduce the complexity these agreements can introduce into licensing systems. In particular, two questions arise: (1) can governments extend MRAs to a broader set of participants, beyond just the “usual-suspect” countries with very similar training systems and perhaps also the same language of business; and (2) to what extent might international standards converge in key occupations, making participation more feasible? One of the major questions in contemporary trade policy is equally relevant when it comes to the mutual recognition of qualifications: how to permit select countries to move ahead with liberalization while creating a coherent system that will become broader and more inclusive over time.⁵⁰

⁵⁰ Note that the World Trade Organization’s General Agreement on Trade in Services permits bilateral MRAs, despite the fact that they might appear to discriminate against nonparticipants, so long as they “afford adequate opportunity” for other countries to accede to an agreement or enter similar negotiations. World Trade Organization, *General Agreement on Trade in Services* (1995): Article VII, no. 2, www.wto.org/english/res_e/booksp_e/analytic_index_e/gats_02_e.htm#article7.



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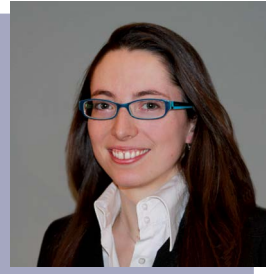
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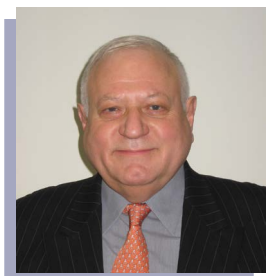
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