

Switzerland and the European Union

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13 Valorisation addendum

This addendum covers the valorisation relating to this thesis.

13.1 Societal impact of this thesis

This study presented a wider view of relations between the EU and a third country with a high level of integration. It showed the practical difficulties that emerge when adapting internal market case law to a third country when there are no common supranational institutions. Hindrances to further integration of Switzerland were also depicted, and it was shown that this model is functioning, but is outdated.

Another aspect that was illustrated was the *mutual recognition principle*, which is taken for granted by many Swiss and EU nationals, even if there are large gaps in what the sectoral agreements cover. The mobility of students, trainees and professionals is not afforded the same level of protection as in the internal market.

These principles of automatic recognition relying on the *country of origin principle*, and driven by the evolution of an ever more progressive internal market case law, will be debated more the larger the European Union grows. Switzerland is considered to be a Member State for the purposes of Annex III to the AFMP and thus for the application of the Professional Qualifications Directive. To put it in other words, the Swiss cannot afford to have no opinion about the mutual recognition of diplomas. It affects many professions, such as teachers, lawyers and doctors.

Even if the recognition of diplomas is taken for granted for many professions, public opinion is sensitive when it comes to the health professions, but remains almost silent with regard to the free movement of the legal profession (with the exception of notaries). Language requirements for doctors and requirements for apothecaries are the result of a heated debate about patient safety. Some decisions, such as a decision of the EFTA Court, have begun a journey which intermingles concepts of the recognition and pursuit of a profession (so-called two stage view). This development stands in stark contrast to the underlying principles of *mutual trust and mutual recognition*.

This large-scale societal debate is also measured by the decisions of the Swiss courts and administrative authorities. It will be required that the courts take a stand on a case-by-case basis when assessing justification measures, such as measures to protect public health.

13.2 Target groups

Part I and II of this research are valuable for any lawyer who is delving into the area of the sectoral agreements between Switzerland and the EU, the interpretation of international agreements in general and the fundamental freedoms in the context of the *acquis suisse*. They show the relevant case law of the CJEU as well as the rich case law of the Swiss Federal Court, which (with one negligible exception), has never been cited by the CJEU.

In Part III and IV, this study also serves as a source for practitioners interested in the internal market case law of a third country with a focus on the mutual recognition of professional qualifications. Therefore, it emphasises the case law of the Swiss courts to show the practical application of the AFMP and its Annex III for the professional recognition, as the CJEU rarely delivers rulings on this subject. It is however also interesting to see for academics that the Swiss courts have adopted a very *pragmatic approach* which seems understandable when it is still disputed whether free movement restrictions are covered by the AFMP.

13.3 Translation of the research

A commercial and an electronic open access edition of this study will be published. It will be discussed with colleagues and superiors at the Swiss Federal Administrative Court. The research will also be publicly defended at Maastricht University.

13.4 Innovation

This study shows that some concepts which are considered self-evident under the *acquis communautaire* are not clear for the bilateral relationship between Switzerland and the EU. Even fundamental concepts of the recognition regimes are not clear, such as whether free movement restrictions are covered by the AFMP. This would mean that primary law was less extensive than secondary law.

The recognition of professional qualifications based on primary law must however be clear before it can be discussed whether Switzerland must follow the jurisprudence of the CJEU, as the relevant case law can only be determined when the underlying concepts have been made clear.

While the Swiss Federal Court proposes a pragmatic adaptation of recognition through primary law, it was shown that the reversed *Polydor* principle developed by the EFTA Court might offer a creative solution to this delicate problem.

For the professions of auditors and notaries, this discussion is exceptionally important because they either fall under secondary law or they at least fall under primary law, even if this has never been decided by a Swiss court.

Lastly, this problem also affects the concepts of partial access and the recognition of third country diplomas under the regime of primary law which should be considered part of the *acquis suisse*, even if there are only implicit rulings by the Swiss Federal Court and FAC in this sense.