



Compliance with EU Qualifications Directive

David Hubert
david@hubertconsulting.com
@hubertconsult

- Who am I?
- Tools for compliance
- Consequences of non-compliance

David Hubert

- Politics and Law degrees
- Nursing and Midwifery Council UK
- Hubert Consulting
- EU Monitr



Tools for compliance

Collaboration regulator/government

- Government responsible for transposition into national law
- Designation of Competent Authority
- Give authorities the powers to comply (political negotiation)

Text of the law

- http://ec.europa.eu/growth/single-market/services/free-movement-professionals/policy/legislation/index_en.htm

Legislation

Legislation

- Text of the Directive
- Implementation of the Directive
- Consolidated versions of the annexes of the Directive
- Amendments

EU Commission

- European Commission website
http://ec.europa.eu/growth/single-market/services/free-movement-professionals/qualifications-recognition/index_en.htm
- Competent Authority Code of Conduct
http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf
- 66 Questions and Answers (2005/36/EC)
http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf

Court of Justice rulings

- In Case C-365/13, the Court ruled that a host MS cannot impose the requirement of a work placement on an incoming professional who is duly qualified according to the provisions of the amended Directive.
- In cases C-58/13 and C-59/13, the Court ruled that it is in the spirit and letter of the amended Directive for MS nationals to travel to a host MS, to acquire a professional qualification and to return to the home MS to practise. The Italian Bar Council was wrong to regard such mobility as an abuse of the right of establishment.

Support groups

- European Federation of Nurses
- European Network of Nursing Regulators
- Health Professionals Crossing Borders (HPCB)
- FEPI



Petitions Committee

- The Petitions Committee is the bridge between the EU citizens and the EU institutions.
- Citizen write to the European Parliament on the various types of problems they encounter in their everyday lives.

SOLVIT

- Online service provided by the national administration in each EU country
- find solutions within 10 weeks
- EU rights as a citizen or as a business are breached by public authorities in another EU country

What happens next?

Infringement procedure

- Commission attempts to quickly resolve the underlying problem with the Member State concerned by means of a structured dialogue
- Member States can provide further factual or legal information – find a quick solution in compliance with EU law and avoid the need for formal infringement procedure.

EU Pilot

- online platform which Member States and Commission's services use to communicate and clarify the factual and legal background of problems arising in relation to the conformity of national law with EU law or the correct application of EU law.
- EU Pilot is used as a first step to try to resolve problems, so that, if possible, formal infringement proceedings are avoided. Currently all 28 Member States are participating in EU Pilot.

Formal procedure

Letter of formal notice

- Commission requests national government to comment on non compliance problem within 2 months or less.

Reasoned opinion

- No reply? Unsatisfactory reply? Commission states reasons why it believes the Member State has breached EU law.
- National government has 2 months or less to comply.

Referral to Court of Justice

- No reply? Unsatisfactory reply? Commission asks Court to open litigation procedure.
- Things rarely go this far. The last few years, > 85% of cases were resolved before litigation stage.
- If a Member State fails to notify measures to implement a directive, Commission may at this stage ask Court of Justice to impose lump sum and/or penalty payment.

Judgment of Court of Justice

- After an average of 2 years, Court decides whether the Member State has breached EU law.
- National Government is responsible to adapt its laws or practices and to resolve initial dispute as soon as possible.

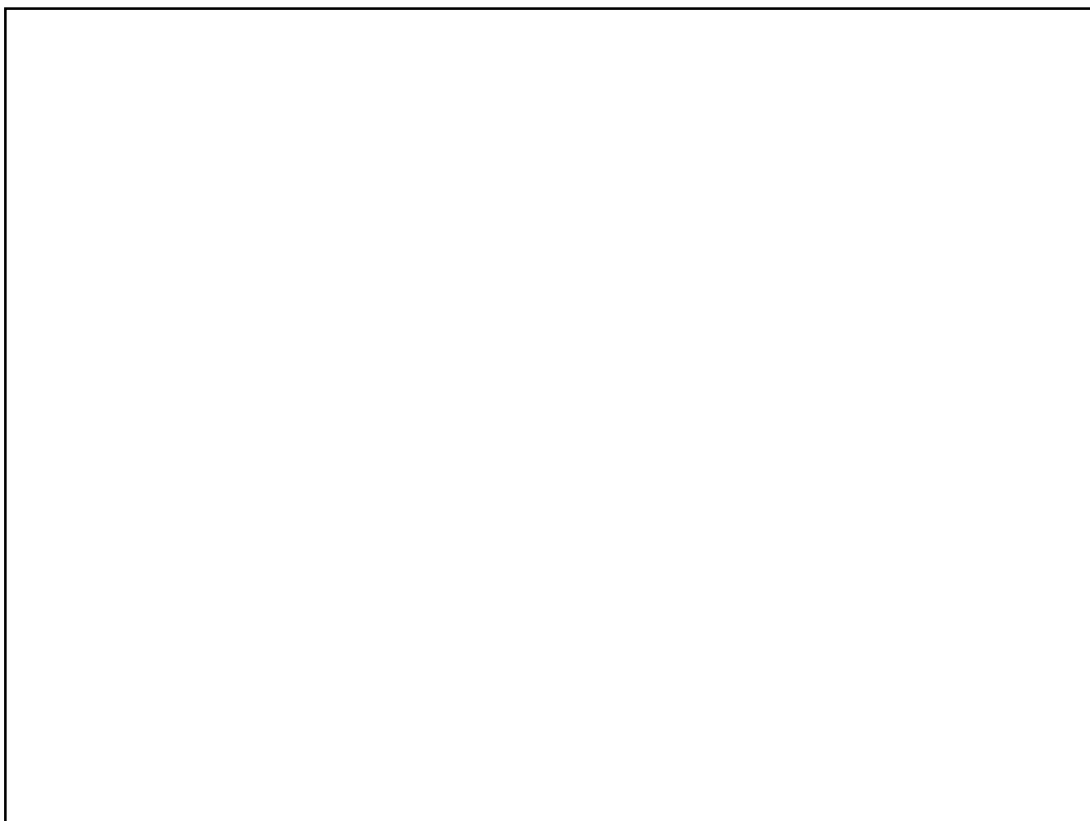
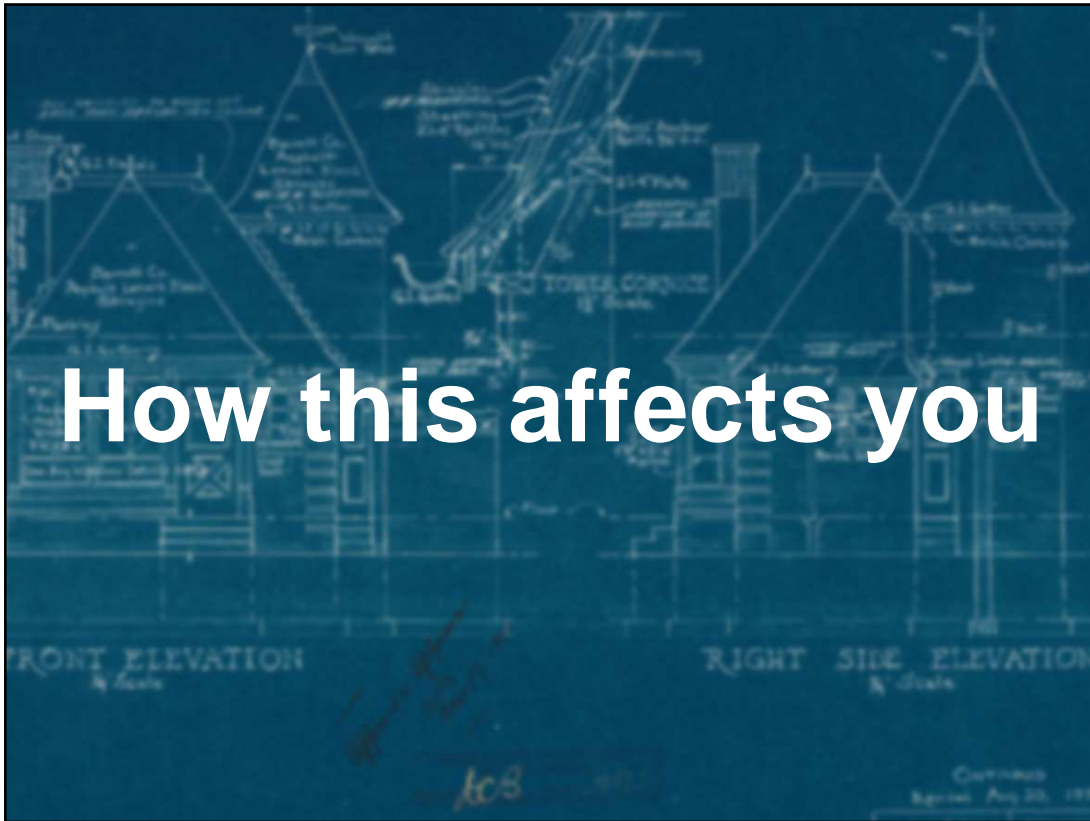
C-193/05

Luxembourg – establishment of lawyers

- 2007 -the Commission sent Luxembourg a letter of formal notice for failing to comply with the judgment of the Court of Justice of the EC of 19 September 2006 (Case C-193/05).
- Luxembourg had not taken the steps necessary to bring its legislation on the establishment of lawyers into line with the Community rules.

Recent cases

- Infringements, or at least actions taken by the Commission, have become more rare while the Directive has been in review. Recent incidences are:
- Latvia has been referred to the European Court of Justice (ECJ) for retaining a nationality requirement for notaries;
- Poland has received a Reasoned Opinion (the stage prior to referral) for failing to consider experience gained with non-Polish legal firms when assessing lawyers' eligibility for exemption from the state examination;
- Cyprus, Ireland, Italy, Luxembourg and Romania have been requested to adapt their relevant legislation to the accession of Croatia;
- Commission has been obliged to ask Austria to respect EU rules on the cross-border mobility of ski instructors.





David Hubert

david@hubertconsulting.com

@hubertconsult

www.eumonitor.com