1. Introduction

States have the general power to regulate the professional activities on their territory. They are free to regulate or not to regulate a certain professional activity. But in both options, as a result they effectively define the conditions for the access to and the exercise of a certain activity. In the health care branch, for obvious reasons many activities generally are regulated. Professional organisations usually lend a helping hand by providing know-how. They may also regulate additional professional codes of conduct and organise education.

1.1 Private harmonisation

As far as professional organisations are involved on a national level, they may for similar purposes also cooperate internationally. Consequently, private forms of harmonisation of national vocational requirements exist, for instance those that have been initiated by the International Federation of Denturists (IFD). This organisation in principle is world-wide. Thus denturism, the professional activity of a qualified denturist, can be taken as an example of private harmonisation in the health care branch. It specifically created mechanisms that subject all the national education systems of their members, the national professional organisations, to the same standard.

1.2 Public harmonisation in the EC: the problem

Within the states that are members of the European Union, the application of national professional rules to nationals of another Member State is influenced by the EC Treaty. Union citizens, defined as nationals of a Member State (Article 8 EC Treaty), possess the fundamental economic right to exercise their professional activities in any other Member State. Still Community law
generally recognises that “the practice of such professions remains governed by the law of the various Member States”\(^3\). At the same time however, the Court specifies that this situation might change as far as the EC exercises its power to decide on the harmonisation of national rules on professional qualifications in the future.

In other terms, if freedom of establishment is indeed one of the objectives of the EC Treaty, “in the absence of any directive issued under Article 57 for the purpose of harmonising the national provisions relating to” (the regulated professions), it is generally “freedom of establishment subject to observance of professional rules justified by the general good”\(^4\) according to the national legislations. Consequently, the application of the national rules on vocational requirements to Union citizens may be influenced by a decision of the EC (a harmonisation directive). As far as such EC decisions exist, the problem is for health professions that they established different regimes for different activities. The level of the harmonisation may effectively be more or less intensive for one specific activity compared to another.

Especially for health activities, EC law principally recognises the broad discretion that Member States possess for the purpose of regulating professional activities. That includes their general power to evaluate the possible equivalence of foreign qualifications with their own requirements and to recognise equivalence or not. Even if a national obtained a foreign Member States’ qualification for a certain health activity, he cannot generally claim for that reason to be allowed to exercise that activity in his Member State of origin, where other qualifications are required for the exercise of this activity. A professional of any nationality generally could only claim such a right if the receiving state itself

1. has unilaterally decided that the foreign qualification is equivalent to the national professional requirements;
2. if it has concluded an international agreement with other states to that effect; or
3. if, in the case of Union citizens, a Community harmonisation-directive exists on the mutual recognition of foreign qualifications that are lawfully obtained in another Member State.

Public EC law thus obviously concerns the third one of these three conditions, but in recent years it appeared that it also influences the first.\(^3\) The EC Court of Justice made it clear that, in the absence of an EC directive, also the Treaty itself effectively restricts the power of any Member State, to evade the evaluation or in some cases even to refuse the recognition of the equivalence of a professional qualification obtained in another Member State.

The problem is a complex one. On the one hand the general relationship exists between EC law (Treaty and directives) and the application of national rules