



# Recognition of foreign professional qualifications – the Federal Government's new Recognition Act

► Many members of the working population in Germany possess professional qualifications which they have gained abroad and which are urgently needed on the German labour market. In the past, these people could often not be optimally employed due to the absence of standards and procedures to assess their qualifications. The Assessment and Recognition of Foreign Professional Qualifications Act ("Recognition Act"), which entered into force on 1 April 2012, introduces a standardized national procedure and criteria for the assessment of foreign professional qualifications – at least for professions that are regulated by Federal law. It improves the opportunities for people who gained their qualifications abroad to work in their trained profession. The Act also makes Germany a more attractive workplace for international skilled staff. This article provides background information on the history of the legislation, introduces some of the most important contents and finally identifies further action required to implement the Act.

## Why the need for this Act?

The Law to improve the assessment and recognition of foreign professional qualifications, also known as the Recognition Act,<sup>1</sup> must be seen in the context of the effects of demographic change on the supply of skilled workers within Germany (cf. MAIER/RUPPRECHT 2012). The health care professions, the care sector, education occupations and the so-called MINT subjects<sup>2</sup> in particular are already showing signs of a lack of qualified personnel. According to current forecasts, the number of school leavers will shrink by about one quarter by 2025. Many training companies are already feeling the effects of the declining number of applicants for training under the dual system.

Because of this, the Federal Government and the *Länder* agreed at the Education Summit in Dresden in late 2008 to introduce targeted measures to mobilize untapped skills in Germany and to focus their attention on professional qualifications and vocational qualifications acquired abroad. The project to improve the legal framework conditions and the procedure for recognizing foreign qualifications has thus been an issue of common interest to the Federal Government and the *Länder* from the very beginning. Key data from the Microcensus indicate that Germany has considerable potential with regard to the availability of skilled labour with foreign qualifications. Population statistics for 2008 indicate there are about 16 million people with a migration background, of whom nearly 2.9 million have foreign professional qualifications. It is assumed that people will be interested in a formal assessment of their foreign qualifications, especially those people who are registered as unemployed or are working below their level of qualification. An estimate by the Federal Ministry of Education and Research (BMBF), calculated on the basis of a special analysis of the 2008 Microcensus by the Federal Statistical Office, places the number of those interested in an assessment of their foreign qualifications



**DOROTHEA FOHRBECK**

Head of Division "Integration through Education" at the Federal Ministry of Education and Research, Berlin and responsible for the Assessment and Recognition of Foreign Professional Qualifications Act

<sup>1</sup> The Job AQTIV Law of 06/12/2011, BGBl. Part I, Nr. 63, p. 2515

<sup>2</sup> Mathematics, Informatics, Natural Sciences, Technology

under the new federal law at about 285,000. This estimate is based exclusively on the number of people with a migration background and with foreign professional qualifications living in Germany, who are now entitled to an assessment procedure for the first time. The qualifications structure of this potential workforce is quite interesting because it contradicts the common assumption that people with foreign professional qualifications are mainly university graduates – calling to mind the cliché of the taxi-driving doctor. However, the majority of people with foreign professional qualifications living in Germany completed vocational training or gained other credentials qualifying them to enter a profession (246,000), followed by the group with *master craftsman (Meister)* or technical qualifications (23,000). The number of those with a degree from a university or university of applied sciences is actually quite small (16,000). This means that the greatest potential is to be found in professions that are regulated by the Vocational Training Act (BBiG) and the Crafts Code (hereafter called “training occupations”) and for which the Recognition Act for the first time grants entitlement<sup>3</sup> to a procedure to assess the equivalency of foreign qualifications with a German reference qualification.

## How and what does the Recognition Act regulate?

The Recognition Act seeks to standardize the procedure and criteria for the assessment of foreign professional qualifications for some 450 professions regulated at federal level. Specialist *Länder* laws govern the 18 professions regulated at *Länder* level – which include teachers, kindergarten and nursery school teachers, and engineers – as well as initial training and advanced qualifications. University degrees that do not certify job-specific skills and cannot be clearly associated with a German reference occupation (degrees in economics, for example) are not regulated by the Recognition Act.<sup>4</sup> Also the Act does not affect what is known as “academic recognition” – the assessment of school and university records and examinations for the purposes of continuing a course of study in Germany.

<sup>3</sup> Prior to the introduction of the Recognition Act, the right to an assessment of foreign qualifications in the training occupations was only granted to ethnic German resettlers. This was based on a ruling in the Federal Expellees Act - BVFG (Section 10 BVFG), which remains effective.

<sup>4</sup> The Central Office for Foreign Education (ZAB) is responsible for the certification of these diplomas and degrees for use in pursuing further education and for employment as stipulated by the so-called Lisbon Convention (Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 11 April 1997, Federal Law Gazette 2007 II, p. 712)

## STRUCTURE OF THE ACT

The Recognition Act is a so-called omnibus act. In addition to the new federal “Professional Qualifications Assessment Act – BQFG” in Article 1, which largely concerns the roughly 350 training occupations, its 60 additional articles contain amendments and adaptations to virtually all the specialist laws and ordinances governing nearly 40 occupations regulated at federal level. The professions affected range from those regulated by the Federal Medical Code to the Driving Instructor Act. The new Act also amends the specialized laws for 41 regulated *Meister* (master craftsmen) occupations in skilled crafts.

Any provisions of the specialized laws take priority over the BQFG, although many of these provisions are actually based on, or refer to, the BQFG. Among other things, European legislation, in particular the EU Directive on the Recognition of Professional Qualifications, grants priority to the regulations in these specialist laws.<sup>5</sup> The EU Directive regulates the procedures for EU citizens to gain access to or pursue a regulated profession in another Member State, and is binding, at least as concerns national regulations on the recognition of EU/EEA qualifications. The regulatory concept in the adaptations to specialized laws in the Recognition Act also largely applies to third-country nationals or to qualifications gained in third countries.

## DIFFERENCE BETWEEN REGULATED AND NON-REGULATED PROFESSIONS

An equivalency review is always a standard part of the licensing procedure for the regulated professions. Determination of the equivalence of a foreign qualification is one of the prerequisites for working in the given profession in Germany at all. In the spirit of the free movement of persons and services, the EU Directive seeks to enable nationals of the Member States to pursue a profession, in a self-employed or employed capacity, anywhere within the EU. In cases where significant differences in training and skills are determined which cannot be offset by professional experience, there are provisions for compensation measures in the form of aptitude tests or adaptation periods. The Recognition Act also extends the rights to these formalized compensation measures to third-country nationals or persons who gained qualifications in third countries.<sup>6</sup>

<sup>5</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L of 30.09.2005, p. 22; L 271 of 16.10.2007, p. 18; L 93 of 04.04.2008, p. 28; L 33 of 03.02.2009, p. 49, last amended by Directive (EC) Nr. 279/2009, OJ. L 93 of 07.04.2009, p. 11.

<sup>6</sup> A special provision applies to the skilled trades by which the determination of equivalency may be restricted to one or more main activities if the applicant intends to become self-employed in a trade which requires a licence (Annex A of the Craft Trades Law). In these cases, only a partial equivalency review is possible.

In contrast, the non-regulated training occupations do not need to be recognized for someone to pursue employment in such occupations. Certification of recognition is instead a means of providing transparency for employers and job centres to better assess a foreign qualification and thus more easily employ and place applicants in jobs commensurate with their qualifications. Under the new law, however, a certified equivalent foreign qualification bears the same legal consequences as the completion of a (further) training examination under the Vocational Training Act (BBiG) or a journeyman's examination.

### EQUIVALENCY REVIEW

The review under BQFG is always based on the corresponding German qualification. Equivalence is established if the foreign qualification certifies skills and abilities similar to those in the corresponding German vocational qualification and provided there are no significant differences between the professional qualification gained abroad and the German reference occupation.

The BQFG adopted the regulatory concept of the EU Directive and stipulates that cases of significant differences between the foreign qualification and the German equivalent must be reviewed with a view to whether these differences can be offset by relevant work experience, continuing education and training or other additional qualifications. This scenario is especially relevant when periods of practical training are lacking as they play only a subordinate role in many of the training programmes abroad.

The BQFG did not adopt the regulation on the formalized compensation for skills deficits through measures. This is because it is possible to pursue employment in the non-regulated professions without certification of equivalence and because a legal entitlement to obtain qualifications would discriminate against people who gained their qualifications in Germany. The BQFG instead makes provisions for recording the existing qualifications and deficits in the notification that declines recognition when significant differences in the non-regulated professions are determined. This document provides the greatest possible transparency for people with foreign qualifications and for employers. The notifications are also useful as orientation for in-company or other continuing education and training.

### What remains to be done?

Regardless of what future regulations on labour migration to Germany may look like, the increasing mobility of international professionals will definitely call for procedures and institutions that are capable of making a competent assess-

#### Who is entitled to an equivalency review?

The BQFG grants any person who has the intention to work in Germany and has gained a foreign professional qualification the right to an equivalency review. Strictly informal qualifications – gained, say, through work experience only – are not sufficient for recognition. Unskilled or semi-skilled workers without a formal vocational qualification are therefore not entitled to a review.

Under the Act applications for an equivalency review can be made either within Germany or from abroad and regardless of nationality or residence status. In this regard the law applies both to people who have already migrated to Germany and to qualified persons living abroad. In the area of the regulated professions, the law has done away with the so-called 'nationality proviso' which still applied to some professions and amounted to making German citizenship a precondition for practising these professions. A Turkish doctor can now be licensed to practice medicine in Germany.

ment of foreign professional qualifications. The issue of qualification features as one if not *the* decisive factor in all models of immigration control and management. It is now up to all the responsible players to ensure the effective implementation of the law and to initiate the necessary supportive regulations and measures. Essentially, this calls for four key measures.

#### FURTHER STANDARDIZATION OF LEGAL BASES

The Federal Government and the *Länder* agreed under the Qualification Initiative for Germany to standardize the legal bases for the assessment of foreign professional qualifications. It is now the task of the *Länder* to create regulations modelled on those at Federal level for the recognition of qualifications in occupations for which they are responsible. In December 2010, the Minister-Presidents of the *Länder* already spoke out in favour of the "accelerated establishment of standard and non-bureaucratic regulations for a recognition procedure of the Federal Government and the *Länder*". The model law, which the *Länder* have already put to the vote, represents a first step in this direction. The adjustments to the specialized laws that are necessary will take place in the course of 2012 in some *Länder* and by mid-2013 at the latest in the others.

It would in the interest of the Federal Government and the *Länder* to extend the recognition procedure to third-country nationals with appropriate qualifications – especially as concerns occupations where there is high demand for skilled labour such as in nursing, teaching and engineering. In an increasingly international market for skilled staff, neither the particularities of German labour law nor the fine details of the distribution of responsibilities under the federal system in Germany should constitute grounds for the exclusion of certain professions from the German labour market (cf. SCHANDOCK/BREMSE in BWP 5/2012).

### STANDARDIZED ENFORCEMENT

Ensuring the broadest possible degree of standardization when enforcing the new recognition regulations of the Federal Government and the *Länder* will require:

- extensive standardization of the administrative procedures regulated by Federal and *Länder* law
- the greatest possible pooling of procedural competences, which up to now have been regulated differently in the *Länder* and varied greatly,
- the targeted development of expertise among the authorities responsible for the assessment of foreign qualifications, and
- consistent and, above all, practice-related monitoring of enforcement.

The Federal law already largely takes account of the desired standardization of administrative procedures. It achieves this through the application of standardized assessment benchmarks in an equivalency review of foreign qualifications, the introduction of procedural deadlines, the possibility of pooling the tasks of the responsible authorities, the inclusion of federal statistics that serve as a basis of the monitoring process, and an evaluation requirement. In addition to the evaluation required by the law, the Federal Government has also committed itself to introducing a system to monitor enforcement of the law in the short term. Preparations are currently under way to add this task to the area of responsibility of the BMBF.

Standardized enforcement of the law is best achieved when responsibilities and competences are pooled to ensure that procedures are seamless. One example of the institutional concentration of tasks is the central agency IHK-Fosa, which is responsible for the recognition of qualifications in the professions in the remit of the Chamber of Industry and Commerce (cf. PFISTER/TREU in BWP 5/2012). The craft and skilled trades sector has adopted a model in which competences are specifically concentrated at individual Chambers within the *Länder* and for certain professional groups (cf. KRAMER/WITT in BWP 5/2012). The Federal Government is promoting the development of expertise within the responsible authorities in charge of the training occupations. The BQ-Portal sponsored by the Federal Ministry of Economics and Technology provides information for decision-making and support in administrative enforcement (cf. MICHALSKI/RIESEN/STRAUCH in BWP 5/2012). The objective of the BMBF-funded project PROTOTYPING is to standardize so-called ‘qualification analyses’, which are the procedures by which the responsible authorities can determine professional skills and abilities when formal documentation is insufficient (cf. OEHME in BWP 5/2012).

The *Länder* – which are not only responsible for the enforcement of their own recognition laws but also for that of the Federal law governing the regulated professions –

must also take appropriate measures. The working group of the *Länder* ministries, which was instituted in 2011 and is responsible for the coordination of recognition policy, has adopted a common agenda that includes the introduction of uniform fee structures, the greater development of expertise in the health care professions at the responsible *Länder* authorities, and the pooling of competence within, and possibly among, the *Länder*. As a first step, there should only be one responsible authority for every occupation in each *Land*. These efforts will be reviewed for the first time in a report that is to be presented to the Minister-Presidents at their annual conference in October 2012.

### DEVELOPMENT OF INFORMATION AND COUNSELLING SERVICES

Since the competences for occupational law and therefore for the recognition of foreign professional qualifications are so varied, information and counselling services for those seeking recognition that is tailored to individual circumstances have either been set up or are being expanded – particularly abroad. The BIBB's [www.anerkennung-in-deutschland.de](http://www.anerkennung-in-deutschland.de) online portal, which was launched on behalf of the BMBF, provides a source of information that addresses applicants for recognition in Germany as well as skilled staff abroad (cf. MORAVEK in this issue). A hotline operated by the Federal Office for Migration and Refugees or local contact points set up under the federal funding programme “Integration through Qualification (IQ)” provide personal counselling services (cf. BADERSCHNEIDER/DÖRING in BWP 5/2012).

The Federal Government will optimize these information and counselling services in the upcoming years in coordination with the *LÄNDER*. It is a medium-term goal to empower the institutions responsible for labour market counselling services for skilled staff to also provide advice on questions of professional recognition. It makes sense to bestow the *Länder* with the responsibility for providing counselling services at ‘welcome centres’, particularly to skilled workers newly arrived from abroad. Hamburg and some of the other *Länder* have already set up such centres or have plans to do so.

An initiative at the Federal level is also needed to develop an overall approach to attracting skilled people and students from abroad. It must align the various information services and take account of the often complex counselling needs of people interested in coming to Germany.

### PROVIDING RETURN-TO-LEARN PROGRAMMES

The fourth focus area is development of flexible second-chance training and return-to-learn programmes in conjunction with the recognition procedure as well as the

development of corresponding funding tools. This is important because not every applicant for recognition will obtain certification of equivalence at the end of a review. In time, the documentation of training shortfalls in the notifications that are issued – especially to applicants in the non-regulated occupations – will create a demand for corresponding training programmes (cf. KRAMER/WITT in this issue).

The regulations of the Act create entirely new requirements on both the supply and the demand sides. The demand for modular courses or other training that is highly individualized is one new aspect. Everyday practice will show whether standardized continuing education programmes or tailored in-company qualification is more effective.

Another new aspect is that people who may have completed training in a field which is not a recognized type of initial or further training will be seeking to continue their education. This is precisely why the existing instruments and requirements for receiving individual funding for continuing education and financial support during training (age limitations, restrictions to certain stages of training or content) are not applicable. Alterations to the range of funding instruments are therefore also on the agenda. There is clearly still a lot of work to be done. ■

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#### Literature

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## VET Data Report Germany

Since 2009 the Federal Institute for Vocational Education and Training (BiBB) publishes a Data Report to serve as a central data compendium containing essential information and data relating to vocational education and training and to supplement the annual Report on Vocational Education and Training issued by the Federal Ministry of Education and Research (BMBF).

The Data Report presents the current situation in initial and continuing vocational training in Germany as well as highlighting the changes which have taken place over the course of time. The report provides information on international indicators and finally on mobility as part of VET. In addition, each issue has a main thematic focus.

In 2010, BiBB first published a short version of the Data Report in English, which contains a selection of the main findings.

The full text of the report in German as well as additional information and the short version in English are available on the BiBB internet portal at [www.bibb.de/vet-data-report](http://www.bibb.de/vet-data-report).

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