



**Free movement and recognition of qualifications
in the European Union:
the case of music professionals**

MA European Law and Policy

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This study is intended to provide an overview of legislation and issues at stake regarding the free movement of music professionals within the European Union, with an emphasis on the particular areas of regulated professions and diploma recognition. Hopefully this study will be of use to music professionals, music educators, policy makers and others active in the music sector. It is written from the viewpoint of music professionals who wish to receive clear and comprehensible information on their legal position when performing, studying or teaching abroad within the EU. Many interesting and related themes have been left out of this study, due to constraints in time and size, but hopefully these will be explored by others in future.

My interest in this particular subject stems from my work for the 'Association Européenne des Conservatoires, Académies de Musique et Musikhochschulen' (AEC), for which I have been involved in several projects relevant to the mobility of music students and professionals. Through these projects it came to my notion that there was a definite need for one document or source compiling all relevant legislation, issues at stake combined with information per country and analyses.

Special thanks goes to Professor Verwey for his academic advice and supervision and to my family and friends for their continuous support. I am also grateful to my employer AEC and in particular chief executive Martin Prchal for providing me with both the subject and the time to fulfil these studies.

ABSTRACT

Music professionals who originate from an EU country are allowed to travel and work freely within the territory of all EU Member States, as provided by Article 39 (freedom of movement for workers), Art 43 (freedom of establishment) and Art 49 (freedom to provide services) of the EC Treaty. Thanks to mobility schemes such as the Socrates/Erasmus Programme of the European Union, an increasing number of music students gain international experience and are therefore more interested in and more suited for an international career. Although music is by nature a field of study and work in which there has always been a great deal of mobility, problems that occur when music professionals or students travel can be numerous.

Diploma recognition is one of the areas in which serious problems can occur when travelling abroad to undertake studies, to be employed or to set up a company. There are several international developments which aim at improving the mobility situation by increasing transparency and comparability of national educational systems, such as the Bologna Declaration Process and the Lisbon Recognition Convention.

The main research questions of this study are therefore:

- What are the Treaty articles, case law and secondary legislation applicable to the free movement of professional musicians and music students in the EU?
- What are the main obstacles to the free movement of professional musicians and music students within the EU?
- What are the regulated professions in music in EU countries?
- In how far have objectives of the Bologna Declaration Process been implemented in the professional music training sector in EU countries?

The first Chapter discusses the Treaty articles, case law and secondary legislation applicable to the free movement of professional musicians and music students. A distinction is made between the free movement of workers and the free movement of the self-employed, analysing the rights and entitlements of EU migrants in each situation.

The second Chapter is dedicated to the recognition of qualifications as regards the regulated professions. Following a study of the concept of regulated professions and the latest developments in this field, I have included and analysed an overview of regulated professions in music per EU Member State.

Recent developments in European higher education, focussing on the effects and implementation of the Bologna Process in professional music training, are treated in the third Chapter. This Chapter furthermore includes an overview of the implementation of several important aspects in professional music training per country: the two-cycle system (Bachelor-Master), a system for quality assurance and the ratification of the Lisbon Recognition Convention.

The greatest obstacle to the mobility of people working (or studying) in the music performance or music teaching sector in the European Union seems to be the bureaucracy and inflexibility of national systems which prevent migrants and other foreign workers from receiving equal treatment. My recommendations therefore include the establishment of a 'one-stop-shop', preferably online, for music professionals, music students, recognition agencies dealing with music qualifications, institutions for professional music training, governments and quality assurance agencies. An important and useful part of the web application would be to provide clear information on European legislation, explaining not only the rights and entitlements of music professionals but also where they should go when they suspect that their rights are being violated.

TABLE OF CONTENTS

Acknowledgements	2
Abstract	3
Table of contents	4
List of figures	5
Introduction	6
1. Free movement of persons	9
1.1. Freedom of movement for workers	11
1.1.1. The concept of 'worker'	11
1.1.2. The rights and entitlements of workers	12
1.1.3. Entry and residence of workers	15
1.1.4. Job seekers and retired persons	16
1.1.5. Restrictions to the free movement of workers	17
1.2. Freedom of movement of the self-employed	18
1.2.1. Freedom of establishment	19
1.2.2. Freedom to provide services	21
1.2.3. Entry and residence of the self-employed	23
1.3. Free movement of students	24
1.4. Free movement to and from the new EU Member States	25
1.5. Conclusions	27
2. Recognition of qualifications: regulated professions	29
2.1. The concept of regulated professions	30
2.2. From a sectoral towards a general system approach	31
2.3. Regulated professions in music per country	34
2.4. Analysis of the country overview	40
2.5. Conclusions	44
3. Recognition of qualifications: towards one European Higher Education area ..	45
3.1. The Bologna Process	45
3.1.1. The Bologna Declaration	45
3.1.2. The Bologna Process follow-up Communiqués	46
3.1.3. Developments concurrent with the Bologna process	48
3.2. The Bologna Process and professional music training	52
3.3. Implementation of the Bologna Process in professional music training per EU country	53
3.4. Analysis of the country overview	61
3.5. Conclusions	63
Final conclusion and recommendations	65
Bibliography	67
Annex I - Member States of the European Union	78

LIST OF FIGURES

Figure 1	Regulated professions - Music teacher in primary education	42
Figure 2	Regulated professions - Music teacher in secondary education	43
Figure 3	Regulated professions - Music teacher in higher education	43
Figure 4	Regulated professions - Music teacher in music schools	44
Figure 5	Regulated professions - Other professions in music.....	44
Figure 6	Implementation of a two-cycle system in institutions for professional music training	63
Figure 7	Quality assurance systems in institutions for professional music training..	63
Figure 8	Ratification status of the Lisbon Recognition Convention	64
Figure 9	Member States of the European Union.....	79

INTRODUCTION

Music professionals who originate from an EU country are allowed to travel and work freely within the territory of all EU Member States, as provided by Article 39 (freedom of movement for workers), Art 43 (freedom of establishment) and Art 49 (freedom to provide services) of the EC Treaty. Thanks to mobility schemes such as the Socrates/Erasmus Programme of the European Union, an increasing number of music students gain international experience and are therefore more interested in and more suited for an international career. Although music is by nature a field of study and work in which there has always been a great deal of mobility, problems that occur when music professionals or students travel can be numerous. Musicians can exercise their right to free movement in many different ways - often even at the same time - as workers (e.g. orchestral employees or music teachers), as service providers (e.g. Master classes or short concert tours) or as self-employed (e.g. music teaching practice from home, performing soloist) and therefore it is important to gain insight in the laws and issues at stake.

Diploma recognition is one of the areas in which serious problems can occur when travelling abroad to undertake studies, to be employed or to set up a company. There are several international developments which aim at improving the mobility situation by increasing transparency and comparability of national educational systems, such as the Bologna Declaration Process and the Lisbon Recognition Convention.

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The first Chapter discusses the Treaty articles, case law and secondary legislation applicable to the free movement of professional musicians and music students. A distinction is made between the free movement of workers and the free movement of the self-employed, analysing the rights and entitlements of EU migrants in each situation. Not

only the situation of the Community worker¹ himself but also the grounds on which Member States are permitted to restrict the free movement of persons. Special focus is dedicated to the free movement of students and the free movement to and from the new EU Member States.

There can be no true freedom of movement if qualifications obtained in another Member State are not recognised as being of equal value to national qualifications. Following Directive 89/48/EEC on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, a host Member State may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue a certain regulated profession on the same conditions as apply to its own nationals. In practice however this is always the case. The reasons for not recognising foreign degrees are not in all cases purely 'patriotic'. There are great differences in educational systems which cause lack of transparency and a general lack of knowledge of and trust in different systems. The second Chapter is dedicated to the recognition of qualifications as regards the regulated professions. Following a study of the concept of regulated professions and the latest developments in this field, I have included and analysed an overview of regulated professions in music per EU Member State.

When a profession is not officially regulated, there is no framework that employers or job applicants can rely upon. Often applicants are simply not hired or not given a chance to apply due to lack of knowledge and understanding of other educational systems or incomparability of degrees and degree structures.

There are many movements in Europe today which aim to improve the transparency, readability and comparability of qualifications throughout Europe, such as the Bologna Process, the development of international quality assurance systems, the Lisbon Recognition Convention and practical tools such as the Diploma Supplement and the European Credit Transfer and Accumulation System (ECTS). These and more developments are studied in the third Chapter, which furthermore includes an overview of the implementation of several important aspects in professional music training per country: the two-cycle system (Bachelor-Master), a system for quality assurance and the ratification of the Lisbon Recognition Convention.

¹ In this study, 'Community worker' always refers to an EU national working in an EU country of which he is not a national

In the conclusion I will discuss the main obstacles that affect the mobility and free movement of people working (or studying) in the music performance or music teaching sector, followed by recommendations on how to improve the current situation.

1. FREE MOVEMENT OF PERSONS

When EU² music professionals decide to work or establish themselves in another EU Member State than the Member State of which they are a national, they are subject to EU legislation on the free movement of persons³. Although they may come across many minor hindrances or even major obstacles in their attempt to have an international career, there is a body of law that they should be able to rely upon. This Chapter will therefore provide an insight into the laws, secondary legislation and jurisprudence which are applicable.

The basis for the right to free movement for persons is laid down in Article 18 (1) of the EC Treaty⁴:

Art 18(1) EC Treaty

“Every citizen shall have the right to move and reside freely within the territory of the Member States, subject to the limitations laid down in this Treaty and by the measures adopted to give it effect.”

Every person who has the nationality of a Member State is a citizen of the European Union and can therefore exercise this right to free movement. Union citizenship complements and does not replace national citizenship⁵, which is a matter under the competence of the Member States.

Free movement of persons is further established through various Treaty articles, such as Article 39 EC which gives workers, employed persons, the right of free movement between Member States. The self-employed are dealt with by Article 43 EC, providing for the right of establishment and Article 49 EC which grants the right to provide services across borders. The latter two freedoms are applicable to natural persons as well as to companies, whereas the rules regarding workers are relevant only to natural persons (Weiss 2002:2). The articles are cited fully further on in this Chapter. All three articles prohibit discrimination on grounds of nationality; a prohibition underpinned by Article 12

² In this study, ‘EU’ and ‘Union’ always refer to ‘European Union’

³ For extensive information on the subject of Free movement of persons’, please see Craig P. and De Búrca, G. (2003) *EU Law: text, cases and materials*, 3rd edition, New York: Oxford University Press, Handoll, J. (1995) *Free Movement of Persons in the EU*, London: Wiley Chancery and Schermers, H. (et al.) (1993) *Free movement of persons in Europe: legal problems and experiences* Dordrecht: Martinus Nijhoff Publishers

⁴ In this study, ‘EC Treaty’ always refers to the ‘Treaty establishing the European Community’, as amended by the Treaty of Nice, entered into force on 1 February 2003

⁵ Article 17(1) EC Treaty

EC which stipulates that any discrimination on the ground of nationality, by public authorities as well as by private parties⁶, is forbidden.

According to the European Court of Justice (ECJ)⁷, Article 12 EC requires that persons in a situation covered by EU law, like migrant EU workers, should be placed on a completely equal footing with nationals of a host Member State⁸. Moreover, the ECJ held that the prohibition of discrimination on the grounds of nationality in the free movement articles covers not only direct, but also indirect discrimination, which can occur when national measures have as effect that a group of people of which the majorities are non-national cannot enjoy certain benefits which are available to nationals (Apap 2002:16). An example of such indirectly discriminatory measures would be to make advantages dependent on residency requirements⁹ or the requirement to have performed military service in the national army¹⁰. Moreover, it is possible that national measures which do not discriminate on grounds of nationality still constitute an obstacle to free movement; this can be the case when a national legal system applies in the same way to those moving internally and those moving between Member States¹¹.

The right to free movement is only applicable when a person has actually crossed a border into the territory of another Member State; it does not apply to completely internal situations¹². Consequently, it is not possible under EU law for national workers to oppose national rules that benefit migrant workers, an effect called 'reverse discrimination' [Schneider 1995:463], as Member States are not required to treat their own nationals equally¹³. However, persons who have been employed and resided in another Member State can be covered by Community rules when they return to their Member State of origin¹⁴.

Articles 39¹⁵, 43¹⁶ and 49¹⁷ EC have all been held to have direct effect, which means that individuals can rely on this law and invoke it before national courts.

⁶ Communication from the Commission: "Free movement of workers - achieving the full benefits and potential" (COM(2002)694)

⁷ In this study, 'Court' or 'ECJ' always refers to the European Court of Justice

⁸ Case 186/87 Ian William Cowan v Trésor public [1989] ECR 195

⁹ Case 152/73 Giovanni Maria Sotgiu v Deutsche Bundespost [1974] ECR 153

¹⁰ Case 15/69 Württembergische Milchverwertung-Südmilch AG v Salvatore Ugliola [1969] ECR 363

¹¹ Case C-415/93 Union royale belge des sociétés de football association ASBL and others v Jean-Marc Bosman [1995] ECR I-4921

¹² Cases 35&36/82 Morson and Jhanjan v State of the Netherlands [1982] ECR 3723

¹³ Case 175/78 La Reine v Vera Ann Saunders [1979] ECR 1129 para.9-11

¹⁴ Case 115/78 Knoors v Secretary of State for Economic Affairs ECR [1979]399, Case C-18/95 Terhoeve v Inspecteur van de Belastingdienst Particulieren/Ondernemingen buitenland ECR [1999] I-345, paras.39, 43-47

¹⁵ Case 36/74 Walrave and L.J.N. Koch v Association Union cycliste internationale, [1974] ECR 1405, [1975] 1 CMLR 320

1.1 Freedom of movement for workers

Music professionals who reside in another Member State and work there under an employment contract, as may often be the case for music teachers or orchestral musicians, would in the framework of EU law be considered 'workers'. The basic provisions on the free movement for workers are laid down in Article 39 EC which provides that:

Art 39 EC Treaty

1. Freedom of movement for workers shall be secured within the Community.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
4. The provisions of this article shall not apply to employment in public service.

Art 39 applies to workers who are nationals of Member States and not to non-EU nationals who reside and work in an EU Member State, as they are not citizens of the EU. Employed activities performed outside the EU territory may be covered by this article on the condition that the employment relationship continues to have a close link with the EU territory, such as work performed on a ship which sails under the flag of a Member State¹⁶. This latter application can be of interest to musicians working on board cruise ships; even they can rely on EU legislation.

1.1.1 The concept of 'worker'

The definition of the concept of 'worker' in the framework of Article 39 EC is not described within the Treaty, but has been shaped by several judgements of the ECJ. The ECJ claims to have ultimate authority to define its meaning and scope, to prevent the concept

¹⁶ Case 2/74 *Reyners v Belgian State* [1974] ECR 631, para.32

¹⁷ Case 33/74 *Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299, para.27

¹⁸ Case 9/88 *Lopes da Veiga v Staatssecretaris van Justitie* [1989] ECR 2989

from being interpreted differently by national laws¹⁹. The ECJ found that the concept must not be interpreted in a restrictive way as it defines the scope of the fundamental principle of freedom of movement²⁰. In its judgement in *Meeusen*²¹, a worker in the framework of EU law is described as “any person who pursues activities which are effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary”.

Part-time workers are also covered by Article 39 EC, as was clarified by the case *Levin*²². In *Lawrie-Blum*²³, concerning a teacher trainee who would receive less than a full salary, the ECJ formulated a further definition of ‘worker’: “the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.”

The amount of pay is therefore not important, as long as the work is genuine, and the remuneration does not even have to be in money, as is laid down in the *Steymann*²⁴ case. The motive for undertaking work is also irrelevant; it is simply the genuineness of the economic activity that should be taken into consideration²⁵. Furthermore, the Court held in *Kempf*²⁶ that a German music teacher, living and working in The Netherlands, who earned less than the minimum means of subsistence, could despite the fact that she claimed social assistance from public funds, still be considered a worker for the purposes of EU law. A director of a company in which he is also the sole shareholder is not considered a worker because there is no relation of subordination²⁷. For musicians these provisions signify that they can be considered a worker and therefore rely upon EU law as long as they are employed and remunerated.

1.1.2 Rights and entitlements of workers

The rights that employed music professionals can rely upon are provided by Article 39 EC are made substantial through secondary legislation. ‘Regulation 1612/68 on Freedom of Movement for Workers within the Community’ is an important contribution in this sense, as

¹⁹ Case 75/63 *Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* ECR [1964] 177

²⁰ Case 53/81 *Levin v Staatssecretaris van Justitie* ECR [1982] 1035

²¹ Case C-337/97 *Meeusen v Hoofddirectie van de Informatie Beheer Groep* ECR [1999] I-03289

²² Case 53/81 *Levin v Staatssecretaris van Justitie* ECR [1982] 1035

²³ Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* ECR [1986] 2121

²⁴ Case 196/87 *Steymann v Staatssecretaris van Justitie* ECR [1988] 6159

²⁵ Case 53/81 *Levin v Staatssecretaris van Justitie* ECR [1982]1035. An exception to this ruling is however given in Case 344/87 *Bettray v Staatssecretaris van Justitie* ECR [1989] 1621, in which it was held that tailored work undertaken by a person enrolled in a drug rehabilitation programme for reintroduction in the workforce was not considered a genuine economic activity. For further discussion see *Apap* (2002:20)

²⁶ Case 139/85 *Kempf v Staatssecretaris van Justitie* ECR [1986] 1741

²⁷ Case C-107/94 *Asscher v Staatssecretaris van Financiën* ECR [1996] I-3089, para.26

its main purpose is to ensure that any EU national, irrespective of his place of residence, has the right to take up an activity as an employed person within the territory of another Member State. In particular, EU citizens have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State²⁸. Migrant workers may not be discriminated against when concluding and performing contracts of employment²⁹, and administrative practices or legislation by a Member State which have (in)direct discriminatory effect are not applicable³⁰. Any rules which limit job applications or offers of employment for migrant workers, or which subject them to conditions different from those for national workers, are forbidden. In the *Groener*³¹ case, the ECJ ruled that a requirement for primary school teachers to speak the national language can be legitimate, if the aim of this requirement is to protect that language and if it is applied proportionately. To my expectation it would however be difficult to uphold this reasoning in case of a music teacher at primary school level, as for some types of musical education a basic knowledge of a local language may suffice.

It is not permissible to prescribe special recruitment procedures or to set quota for non-nationals³². Migrant workers should receive the same assistance by the employment offices in a host State as nationals of that State seeking employment³³, and any discriminatory medical, vocational or other criteria for recruitment and appointment are prohibited³⁴.

Regulation 1612/68 furthermore provides that an EU migrant worker may not be treated differently from national workers in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment. Non-nationals should enjoy the same social and tax advantages as national workers, and, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres³⁵. A further analysis of the right of access to education is included in paragraph 1.3. Non-national workers are guaranteed the same rights as nationals regarding trade union membership, although they may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by

²⁸ Regulation 1612/68(1)

²⁹ Regulation 1612/68(2)

³⁰ Regulation 1612/68(3)

³¹ Case 379/87 *Groener v Minister for Education* ECR [1989] 3967, para.24

³² Regulation 1612/68(4)

³³ Regulation 1612/68(5)

³⁴ Regulation 1612/68(6)

³⁵ Regulation 1612/68(7)

public law³⁶. Moreover, migrant workers should enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of housing³⁷.

The provision on social and tax advantages in particular has been litigated extensively (Weiss 2002:56). The ECJ has held that these include all advantages, whether or not attached to the employment contract, which are firstly linked in general to national workers, either because of their objective status as workers or because they are residents, and secondly whose extension to non-national workers therefore seems likely to facilitate their mobility³⁸. This has been held to cover, for example, public transport fare reductions for large families³⁹, child raising allowances⁴⁰, study grants for dependent children⁴¹, interest free child birth loans⁴², funeral payments⁴³ and minimum subsistence payments⁴⁴. The provisions of Article 7(2) of Regulation 1612/68 can however only be invoked where the advantage claimed is in fact of some direct or indirect benefit to the worker, and not just to a family member⁴⁵. The acknowledgement of seniority, where prior professional experience determines the professional and salary classification of an employee, is also considered a social advantage, meaning that account should be taken of experience acquired abroad as migrant workers may find it harder to obtain a certain minimum number of years⁴⁶. An exemplary case in this respect is *Commission v. Greece*⁴⁷, regarding a Greek professional musician working for the Thessaloniki Orchestra who had in the past worked for five years for the Nice Municipal Orchestra in France. The Greek authorities however refused to take account of these five years previous professional experience for the purposes of his grading on the salary scale and the award of additional seniority, whereas that period would have been taken into account if it had been served in municipal orchestra in Greece. The ECJ ruled that Greece was in breach of its obligations under Article 39 (than 48) of the EC Treaty and Article 7(1) of Regulation 1612/68.

It is important to note that the European Union has adopted the new Directive 2004/38/EC, which will replace Regulation 1612/68 and current Directives on the free

³⁶ Regulation 1612/68(8)

³⁷ Case 305/87 *Commission of the European Communities v Hellenic Republic* [1989] 1461

³⁸ Case C-85/96 *Martínez Sala v Freistaat Bayern* ECR [1998] I-02691, para.25

³⁹ Case 32/75 *Cristini v Société nationale des chemins de fer français* ECR [1975] 1085

⁴⁰ Case C-85/96 *Martínez Sala v Freistaat Bayern* ECR [1998] I-02691

⁴¹ Case C-3/90 *Bernini v Minister van Onderwijs en Wetenschappen* ECR [1992] I-1071

⁴² Case 65/81 *Reina v Landeskreditbank Baden-Württemberg* ECR [1982] 33

⁴³ Case C-237/94 *O'Flynn v Adjudication Officer* ECR [1996] I-2617

⁴⁴ Case 75/63 *Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* ECR [1964] 177

⁴⁵ Case 316/85 *Centre public d'aide sociale de Courcelles v Lebon* ECR [1987] 2811

⁴⁶ Case C-15/96 *Kalliope Schöning-Kougebetopoulou v. Freie und Hansestadt Hamburg* ECR [1998] I-47

⁴⁷ Case C-187/96 *Commission of the European Communities v Hellenic Republic* ECR [1998] I-1095

movement of EU citizens within the Member States in order to combine them into one instrument. This Directive still has to be implemented, but will definitely contribute to the free movement of music professionals as its aim is to simplify administrative procedures for citizens and their family members as well as for the authorities, and thereby to stimulate mobility.

1.1.3 Entry and residence of workers

Directive 68/360 provides the rules regarding entry and residence permits. For the issue of a residence permit, host Member States may require an EU migrant worker to demonstrate several documents: firstly the document on basis of which he entered the territory and secondly a confirmation of engagement from the employer, or a certificate of employment⁴⁸. Even if the formalities to obtain a residence permit are not yet completed, the applicant may already start working under a contract⁴⁹. Residence permits should be valid for at least five years and automatically renewable; breaks in residency of shorter than half a year or for reasons of military service do not influence the validity of the permit. Temporary residence permits for the duration of the employment may be given to workers who reside between three months and a year. A valid residence permit may not be withdrawn from a worker only on the grounds that he is no longer in employment, either because he is temporarily incapable of work as a result of illness or accident, or because he is involuntarily unemployed. Penalties of the host Member State on failure to comply with formalities of the worker should always be proportionate and cannot lead to deportation (Weiss 2002:51). Furthermore, Directive 68/360 provides that family members of a migrant worker have the right to receive residence permits of the same duration as the worker, and non-EU family members may not be refused entry or residence even if they do not have a valid visa⁵⁰. As was held by the ECJ in the case Diatta⁵¹, family members of a migrant worker do not lose their right of residence merely because they are separated and do no longer live under the same roof.

⁴⁸ Council Directive 68/360 (4.3)

⁴⁹ Council Directive 68/360 (5)

⁵⁰ Case C-459/99 *Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State* ECR [2002] I-6591

⁵¹ Case 267/83 *Diatta v Land Berlin* ECR [1985] 567, para.22

1.1.4 Job seekers and retired persons

Although all citizens of the Union can move freely within the territory of the other Member States and stay there for the purposes of seeking employment, the status of a job-seeker is not the same as that of a worker⁵². After having been given a 'reasonable period of time' to search for employment, the host Member State is allowed to expel the job-seeker. An exact duration of this 'reasonable period' has not been provided, but the ECJ ruled that while a period of 3 months is too short⁵³, 6 months would not be insufficient⁵⁴. A person who is voluntarily unemployed is also entitled to a reasonable time in which to search for employment⁵⁵. Furthermore, although a job seeker has the right to equal access to employment, he does not have the right to equal access to social and tax advantages under Regulation 1612/68⁵⁶. The duration of the period in which a job seeker is able to reside in another Member State to search for employment can moreover be influenced by the fact that unemployment benefits from the home Member State can be transferred to another country only for a limited amount of time (Apap 2002:11).

Music professionals wishing to remain in a host Member State after having been employed there can rely on Regulation 1251/70. There are several conditions which a worker has to meet to be allowed to stay⁵⁷: if he has reached the old-age pension age, he has to have been employed in the host State for at least the last twelve months and have resided there for at least three years. If he has become permanently incapable of work, he has to have resided there for more than two years, unless the incapacity is employment-related. If he has been employed and resided in a host State for three years, he can take up work in another Member State and remain resided in the host State, as long as he returns there at least once a week. Persons exercising this right are entitled to the same social and tax advantages as nationals, according to Article 7 of Regulation 1612/68.

⁵² Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Antonissen* ECR [1982] I-1035, para.13

⁵³ Case C-344/95 *Commission of the European Communities v Kingdom of Belgium* ECR [1997] I-1035

⁵⁴ Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Antonissen* ECR [1982] I-1035

⁵⁵ Case C-171/95 *Tetik v Land Berlin* ECR [1997] I-0329, para.27

⁵⁶ Case 316/85 *Centre public d'aide sociale de Courcelles v Lebon* ECR [1987] 2811

⁵⁷ Regulation 1251/70(1)

1.1.5 Restrictions to the free movement of workers

Article 39(3) EC allows for limitations of free movement rights on grounds of public policy, public security or public health; grounds which have been further defined in Directive 64/221 and which have in general been interpreted narrowly in the case law⁵⁸ of the ECJ (Weiss 2002:143).

More importantly, Article 39(4) provides for the 'public service exception'. In the interpretation of the Court, the Member States are only allowed to restrict public service posts to their nationals if these posts are directly related to the specific activities of the public service, namely those involving the exercise of public authority and the responsibility for safeguarding the general interest of the State or local authorities⁵⁹. The ECJ was clear in its judgment in *Commission versus Luxembourg*⁶⁰ that the area of education cannot be limited to nationals, not even on grounds of protection of the national identity. Specifically, Article 39(4) has been held not to apply to trainee teachers⁶¹, foreign language assistants⁶², secondary school teachers⁶³ or primary schools teachers. It is therefore safe to presume that the position of music teachers can also not be restricted to nationals of a Member State. It remains possible however, to request specific language knowledge, even if this would lead to indirect discrimination, as was explained in the *Groener case*⁶⁴.

From the viewpoint of music professionals an interesting case is *Commission v. Greece*⁶⁵, concerning the access to musician's posts at the Athens Opera and in municipal and local orchestras. The Greek authorities had imposed a Greek nationality restriction for employment in public, semi-public or municipal undertakings and following these rules, the Athens Opera refused to engage a German musician on grounds of his nationality. The Court ruled that Greece, in restricting access to employment to foreign workers, had failed to fulfil its obligations under Article 39 (than 48) of the EC Treaty and Article 1 of Regulation 1612/68.

Despite several judgements, infringement procedures and actions on this subject

⁵⁸ Examples of the exceptional cases in which such discriminatory measures were considered legitimate are Case C-204/90 *Bachmann v Belgian State* ECR [1992] I-249, regarding the requirement to make payment of certain social contributions on the territory to ensure the cohesion of the national tax system and Case C-176/96 *Lehtonen and Castors Canada Dry Namur-Braine ASBL v FRBSB* ECR [2000] I-2681, which concerns rules establishing transfer deadlines in professional sport teams.

⁵⁹ Case 149/79 *Commission of the European Communities v Kingdom of Belgium* ECR [1982] 1845
⁶⁰ Case C-473/93 *Commission of the European Communities v Grand Duchy of Luxembourg* ECR [1996] I-3207, para.36

⁶¹ Case 66/85 *Lawrie-Blum v Land Baden-Württemberg* ECR [1986] 2121, para.28

⁶² Case 33/88 *Allué and Coonan v Università degli studi di Venezia* ECR [1989] 1591, para.9

⁶³ Case C-4/91 *Bleis v Ministère de l'Education Nationale* ECR [1991] I-5627, para.7

⁶⁴ Case 379/87 *Groener v Minister for Education* ECR [1989] 3967

⁶⁵ Case C-290/94 *Commission of the European Communities v Hellenic Republic*, ECR [1996] I-03285

however, the Commission still receives many complaints regarding posts restricted to nationals of the host Member State which clearly do not involve public authority and responsibility for safeguarding the general interests of the State⁶⁶. Where this is the case, Member States must either amend existing legislation or control its internal application.

1.2 Freedom of movement of the self-employed

The distinction between the categories of persons who can claim rights under the free movement articles is laid down by the ECJ in its case law. The essential difference between those covered by Article 39 EC - workers - those covered by Article 43 EC or Article 49 EC - service providers or the self-established - is the capacity of being employed or self-employed. The Court held that self-employed persons are "pursuing or have pursued, otherwise than under a contract of employment or by way of self-employment in a trade or profession, an occupation in respect of which they receive income permitting them to meet all or some of their needs, even if that income is supplied by third parties"⁶⁷.

The difference between the right of establishment and the right to provide services was formulated as follows:

"The concept of establishment within the meaning of the Treaty is therefore a very broad one, allowing a Community national to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons. [...] In contrast, where the provider of services moves to another Member State, the provision of the chapter on services, in particular the first paragraph of Article 60, envisage that he is to pursue his activity there on a temporary basis. [...] the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for performing the services in question"⁶⁸

⁶⁶ Communication from the Commission: "Free movement of workers - achieving the full benefits and potential" (COM(2002)694), p19

⁶⁷ Case 300/84 Van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid ECR [1986] 3097, para.22

⁶⁸ Case C-55/94 Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano ECR [1995] I-4165, para.25-27

Summarising it can be said that the concept of establishment related essentially to stable and continuous participation in the economic life of a host Member State, whereas services are normally pursued on a temporary basis. One person can be established in more than one State through branches or subsidiaries⁶⁹. Establishment is furthermore defined by the ECJ as ‘the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period’⁷⁰.

Making the distinction between employed or self-employed status can be of great importance to music professionals, as came forward from a study on artists’ mobility performed in 2002 by professor Audéoud at the request of the European Commission. Apparently, this status can have a large impact on a musician’s right to certain social benefits, pension payments, sickness insurance schemes and more. An example that was mentioned concerned a group of Finnish opera singers who went on tour in the UK. Whereas in Finland they were considered employees, in the UK they were considered as self-employed because they did not have an agent there. They were forced to pay social contributions themselves and at return in Finland, they experienced difficulties with their pension insurance: the Finnish pension law for the self-employed did not recognise them as self-employed, as musicians are normally considered employees in Finland, but they could also not join the scheme for employees as there was no employer to pay contributions.

1.2.1 Freedom of establishment

Article 43 of the EC Treaty provides:

Art 43 EC Treaty

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals if any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.

⁶⁹ Case C-55/94 Gebhard v Consiglio dell’Ordine degli Avvocati e Procuratori di Milano ECR [1995] I-4165, para.24

⁷⁰ Case C-221/89 The Queen v Secretary of State for Transport, ex parte Factortame Ltd and others ECR [1991] I-3905 para.20

According to the EC Treaty, any restrictions on the right to a permanent place of business in another Member State are forbidden. This implies that all laws and administrative practices which discriminate against nationals of other Member States should be removed. Furthermore, Article 43 has been held to prohibit non-discriminatory restrictions, meaning that national rules can be illegal even when they apply equally to both nationals and non-nationals, when they could act to disadvantage non-nationals⁷¹.

As is the case with the provisions on the free movement for workers, Article 43 cannot be invoked in purely internal situations, in which individuals establish themselves in the Member State of which they are nationals⁷². However, nationals who return to their home Member State after having resided in another Member State are able to benefit from invoking this article against their home State⁷³.

Self-employed activities can be pursued through the formation of undertakings, agencies, branches or subsidiaries, covering an office managed by the undertaking's own staff or by an independent person who is authorised to act on behalf of the undertaking⁷⁴. However it is not necessarily the case that any company or individual who has established some sort of infrastructure in another Member State is considered to be established (Apap 2002:60). Companies or firms are defined in the EC Treaty⁷⁵ as companies or firms constituted under civil or commercial law, including cooperative societies and other legal persons governed by public or private law, except those which are non-profit-making. Non-profit-making persons or organisations are consequently denied the benefit of the freedom of movement under Article 43.

Restrictions to the freedom of establishment can be justified only by reasons of public policy, security and health⁷⁶; concepts which have been interpreted narrowly by the ECJ (Weiss 2002:143). When these restrictions are used to justify rules which are likely to restrict the exercise of the freedom to provide services, such justification must be interpreted in accordance with the general principles of law and of fundamental human rights⁷⁷. The same directive, Directive 64/221, (discussed in paragraph 1.1.5) applies to both established persons and to workers.

In order to facilitate the possibility for persons to take up and pursue activities as self-employed persons, several directives for the mutual recognition of diplomas have been

⁷¹ Case C-55/94 Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano ECR [1995] I-4165

⁷² Case 136/78 Criminal proceedings against Vincent Auer ECR [1979] 437 [1979] 2 CMLR 373

⁷³ Case 204/87 Guy Beckaert ECR [1988] 2029, 2039

⁷⁴ Case 205/84 Commission of the European Communities v Federal Republic of Germany ECR [1986] 3755

⁷⁵ EC Treaty Article 48(2)

⁷⁶ EC Treaty Article 46

⁷⁷ Case 260/89 ERT v. DEP ECR [1991] I-2925

adopted. These provisions will be considered in detail and in the perspective of professional musicians in Chapters 2 and 3.

1.2.2 Freedom to provide services

Articles 49 and 50 of the EC Treaty provide:

Art 49 EC Treaty

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

Art 50 EC Treaty

Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- a) activities of an industrial character
- b) activities of a commercial character
- c) activities of craftsmen
- d) activities of the professions.

Without prejudice to the provisions of the chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Following the Court's case law, the following criteria must be met in order to qualify as a service (Apap 2005:54):

- a) The activity must be temporary in nature⁷⁸. If a person actually settles in another Member State to provide services there for an indefinite period, the provisions on establishment or workers will apply.
- b) The activity has to be in exchange for remuneration, and services financed purely by the State are not covered by these provisions of the Treaty. Regarding education, the court ruled that courses given in an establishment of higher education which is essentially financed out of public funds, do not constitute services within the meaning of the EC Treaty, although where the aim is to make a profit or where the finances are

⁷⁸ Case C-55/94 Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano ECR [1995] I-4165

(partly) from private funds, they could come within the service provisions⁷⁹. See also paragraph 1.3.

- c) The activity must have a cross-border character; the provisions apply only to persons who provide services in a Member State other than the one in which they are established⁸⁰. Article 49 can apply both to service providers, whereby the person provides services in a State other than the one in which he is established, and to service receivers, where the recipient travels to another Member State than the one in which he is established in order to receive services⁸¹. It is also possible that the service itself, rather than the provider moves.
- d) The service provisions are residual in nature, meaning that they only apply when other provisions concerning the free movement of capital, persons or goods do not apply⁸².

Furthermore, Apap (2002:57) states that Article 49 prohibits any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services exclusively within one Member State, and requires the abolition of non-discriminatory restrictions where they are liable to prohibit, impede or otherwise render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services⁸³.

The Court ruled that the free provision of services may only be restricted by rules which can be justified by 'overriding requirements to public interest' and which are applicable to all persons and undertakings operating in the territory of the State where the service is provided, in so far as the service is not safeguarded by rules to which the provider of such a service is subject in the Member State where he is established⁸⁴. In other words, such restrictions must equally apply to nationals and a service provider should be protected from having to meet certain conditions, such as license requirements⁸⁵, both in the State of establishment and again in the State where the service is provided. The national rule must furthermore be proportionate to the objective and not go further than what is necessary to attain it⁸⁶. Difficulties regarding the free movement of services may arise when a certain service is illegal in one State but not in another (such as abortion or euthanasia), but as far as the performing or teaching music profession is concerned there does not seem to be much risk of such illegality.

⁷⁹ Case C-109/92 Wirth v Landeshauptstadt Hannover ECR [1993] I-6447, para.19

⁸⁰ Case 52/79 Procureur du Roi v Marc J.V.C. Debaeve and others ECR [1980] 833, [1981] 2 CMLR 362, paras.11-16

⁸¹ Joint Cases 286/82 and 26/83, Luisi and Carbone v Ministero del Tesoro ECR [1984] 377

⁸² Article 50 EC Treaty

⁸³ Joint Cases C-369/96 and 376/96 Arblade ECR [1999] I-8453

⁸⁴ Joint Cases C-369/96 and 376/96 Arblade ECR [1999] I-8453

⁸⁵ Case 279/80 Criminal proceedings against Webb ECR [1981] 3305

⁸⁶ Case C-76/90 Säger v Dennemeyer & Co. Ltd ECR [1991] I-1417, [1991] 2 CMLR 818, para.15

1.2.3 Entry and residence of self-employed persons

Rules regarding the entry and residence of self-employed persons, their family members and recipients of services are laid down in Council Directive 73/148⁸⁷. Nationals of a Member State who establish themselves in another Member State have the right to obtain a residence permit with a duration of no less than five years, automatically renewable. Breaks in residence not exceeding six consecutive months and absence on military service should not affect the validity of a residence permit and a permit may not be withdrawn because of unemployment caused by temporary incapability to work as a result of illness or accident⁸⁸.

The right of residence for service providers or receivers must be of equal duration with the period during which the services are provided. If this period exceeds three months, the Member State in the territory of which the services are performed shall issue a 'right of abode' as proof of the right of residence. If the period is not longer than three months, the identity card or passport with which the person concerned entered the territory should be sufficient to cover his stay⁸⁹. The Member State may, however, require the person concerned to report his presence in the territory. Applicants for a residence permit or right of abode should not be required by a Member State to produce anything other than the identity card or passport together with proof that they are a self-employed person or his family member.

For a large part, the provisions on entry and residence in Directive 73/148 for the self-employed are similar to those for workers in Regulation 1612/68; however Directive 73/148 does not include any reference to equality of treatment regarding social advantages. On this matter, the ECJ ruled that Article 43 of the Treaty allows the self-employed to claim these advantages for their families including education rights for their children⁹⁰.

The right to remain in a host Member State after having resided there as self-employed person or his family is laid down in Directive 75/34. The requirements that should be met in order to be allowed to stay are very similar to those provided to workers in Regulation 1251/70. There is however no equivalent of Regulation 1612/68 for the self-employed, although they may in some cases invoke Article 12 EC on non-discrimination to claim equal treatment as regards social and tax advantages or in relation to housing and

⁸⁷ Council Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services

⁸⁸ Council Directive 73/148 (4.1)

⁸⁹ Council Directive 73/148 (4.2)

⁹⁰ Case C-185/96 Commission of the European Communities v Hellenic Republic ECR [1998] I-6601 and Case C-337/97 Meeusen v Hoofddirectie van de Informatie Beheer Groep ECR [1999] I-03289

education, often depending on the length of their stay in the host State (Weiss 2002:84-85).

1.3 Free movement of students

The right of entry and residence for EU students in another EU Member State and the admission in educational institutions depend on the status on which a student can rely. Van Gerven and Van den Bossche (1993:408-426) explain that different situations can be distinguished. Firstly, if a student can invoke the status of Community worker, secondly if he has the status of child of a Community worker, thirdly the status of receiver of services and lastly the situation in which he can merely invoke the general status of Community citizen.

In the first case, a student can rely on all provisions available for Community workers as explained in this Chapter and in particular on Articles 7(2) and 7(3) of Regulation 1612/68. Article 7(3) provides that Community workers shall have access to training in vocational schools and retraining centres under the same conditions as national workers. As the scope of this wording is quite limited⁹¹ and does not include universities, Art 7(2) which gives EU migrant workers the right to enjoy the same social and tax advantages as national workers is more helpful. It is not only the access to educational institutions, but also the right to receive an educational grant in the host State⁹², on the same conditions as national workers, that can be claimed under this article. Moreover, Community workers can claim the same rights as national workers to financial assistance from the host Member State to study abroad⁹³, but also as regards means-tested educational grants for their children⁹⁴. Migrant workers who give up employment voluntarily to become fulltime students in the host Member States can retain the status of Community worker⁹⁵, on the condition that there is a relationship between the previous occupational activity and the field of studies.

Migrant students can enjoy a derived right of free movement if they are the child, spouse or dependent of a Community worker or self-employed person; this can include the right to a national study grant⁹⁶ or grants to study abroad from the host State, even if study abroad takes place in the State of the child's nationality⁹⁷. Children must be allowed to

⁹¹ Case 39/86 *Lair v. Universität Hannover* ECR [1988] 3161, para.26

⁹² Case 39/86 *Lair v. Universität Hannover* ECR [1988] 3161, para.24

⁹³ Case 235/87 *Matteuci v. Communauté française of Belgium and commissariat général aux relations internationales of the Communauté française of Belgium* ECR [1988] 5589, para 16

⁹⁴ Case 9/74 *Casagrande v Landeshauptstadt München* ECR [1974] 773

⁹⁵ Case 39/86 *Lair v. Universität Hannover* ECR [1988] 3161, para.39

⁹⁶ Case 9/74 *Casagrande v Landeshauptstadt München* ECR [1974] 773, para.9

⁹⁷ Case C-308/89 *Di Leo v. Land Berlin* ECR [1990] I-4185, para.15-17

remain in the host State to complete their education, also when the parents have left the country.

If a student can neither be considered a Community worker nor the family member of a worker, his right of residence in a host Member State is covered by Directive 93/96. The conditions that need to be met are that the student has to have sufficient resources to avoid becoming a burden on the social assistance system of the host State; he needs to be enrolled in a recognised educational establishment for the purpose of following a vocational course and he must be covered by sickness insurance⁹⁸. Students can be joined by spouse and dependent children, who also have the right to access employed or self-employed work in the host Member State⁹⁹. The student can be required to present an identity card or passport, together with proof that he is a student, to obtain a residence permit. The validity of the residence permit may be limited to the duration of the course or to one year if the course lasts longer¹⁰⁰.

Students can claim rights as recipients of services in only a small number of cases, which is when they take courses at private schools, i.e. institutions which provide education with as aim to make a profit¹⁰¹.

As regards the portability of national loans and grants for students to study abroad, the European Ministers of Education have committed themselves to take the necessary steps to achieve this objective in the Bergen Communiqué¹⁰², which is further discussed in Chapter 3.

1.4 Free movement to and from the new EU Member States

Although freedom of movement is a right for all citizens of the European Union, nationals of the ten recently acceded EU Member States (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia) may still not always enjoy the same freedom as citizens of the 'old' fifteen Member States. During the first two years after accession, access to the labour markets depends on the national law and policy of the host countries, and on any bilateral agreements that are in place. This means that in most cases, nationals of the new Member States will need a work permit¹⁰³. In 2006, the

⁹⁸ Council Directive 93/96 (1)

⁹⁹ Council Directive 93/96 (2.2)

¹⁰⁰ Council Directive 93/96 (2.1)

¹⁰¹ Case 263/86 *Belgian State v Humbel and Edel* [ECR 1988] 5365, para 18

¹⁰² 'The Bergen Communiqué (2005) The European Higher Education Area – Achieving the Goals', Communiqué of the Conference of European Ministers responsible for Higher Education, Bergen, 19-20 May 2005

¹⁰³ "The transitional arrangements for the free movement of workers from the new Member States following enlargement of the European Union on 1 May 2004"

http://europa.eu.int/comm/employment_social/free_movement/docs/transition_en.pdf

Commission will draft a report on the basis of which the Council will review the functioning of the transitional arrangements. If old Member States intend to prolong their restrictive policies, they can do so only for a maximum period of three years. Therefore, in principle five years after the accession, transitional measures should end. There is however a possibility for old Member States to ask the Commission for authorisation to continue to apply measures for another two years, but this will only be granted if there is a threat of disturbance of the labour market. As a result, the absolute maximum duration of the transitional measures is seven years: until 2011. After this date, host Member States may still issue work permits, but solely for monitoring and statistical purposes, not as condition of access to their labour market. There are no transitional arrangements with respect to Cyprus and Malta¹⁰⁴.

Although all accession Treaties (except Cyprus's) include a 'safeguard clause' which permits for an authorisation request to re-impose restrictive measures when there are serious problems on the labour market, these safeguard clauses have never been invoked in any former accession¹⁰⁵.

Citizens of new Member States who are already working in one of the old Member States and who have a work permit do not automatically have a right to access the labour markets of other Member States. Family members (spouse, children under twenty-one or dependents) of such a citizen will have access to the labour market of the host Member State after eighteen months of residency. In principle there are no restrictions for nationals of old Member States to work in one of the new Member States, however, the new Member States are allowed to impose equivalent restrictions as their nationals encounter in the old Member State in question¹⁰⁶.

In summary it can be stated that it is difficult to give an overview of the restrictions there are to mobility of persons between old and new EU Member States, as all these arrangements are bilateral, political in nature and not fixed. Music professionals wishing to move between old and new Member States should therefore contact the host country's consulates, embassies and local authorities to learn the rules and regulations applicable to their situation.

It is important to note that the above mentioned restrictions only limit the access to the labour market of salaried workers; freedom of establishment is already granted on the basis of the Europe Agreements and will be maintained. Moreover, all EU citizens have

¹⁰⁴ "Factsheet on transitional measures",

www.europa.eu.int/youreurope/nav/en/citizens/guides/neweucitizens/index.html

¹⁰⁵ "The transitional arrangements for the free movement of workers from the new Member States following enlargement of the European Union on 1 May 2004"

http://europa.eu.int/comm/employment_social/free_movement/docs/transition_en.pdf

¹⁰⁶ Guide "Free movement of workers to and from the new Member States – How will it work in practice?" www.europa.eu.int/youreurope/nav/en/citizens/guides/neweucitizens/index.html

freedom to provide cross-border services¹⁰⁷ throughout the territory of the European Union. As regards the recognition of qualifications, there are no measures or transitional periods and holders of diplomas of the new Member States face the same rules as those with diplomas from old Member States¹⁰⁸. There are certain exceptions to this rule¹⁰⁹, but these do not concern musical professions. Furthermore, the Community rules on the coordination of social security schemes apply from the day of accession¹¹⁰ (Regulations 1408/71 and 574/72). This permits for the transfer of certain social benefits (e.g. retirement pensions) and the accumulation of pension rights on the basis of contributions paid in various countries of the European Union.

As the enhancement of the free movement of workers is supposed to be a central development of the EU, it seems contradictory that not all EU citizens should have the same rights. Turman and Carrera (2005) rightly point out that the continuation of national migration measures regarding workers from the new EU Member States leads to a paradoxical situation in the enlarged EU; it implies the existence of discrimination within the EU based on nationality and the lack of equal rights and freedoms for 'new EU citizens' compared with 'old-EU citizens'. Furthermore, they claim that the grounds for imposing the measures, the fear for large inflows of workers and expected effects on the labour market, are unfounded. Instead, the transitional periods contravene the need to improve the freedom of movement of workers by alienating the workers from the new Member States.

1.5 Conclusions

The EU has developed a large body of rules and regulations aimed at facilitating and stimulating the free movement of professionals. One of the main challenges that remain is the lack of transparency of all legislation, which is moreover changing continuously. Lack of knowledge of the legislation of on one hand employers and on the other hand the professionals can lead to situations in which the free movement of persons is actually hindered.

¹⁰⁷ The only exceptions to the freedom to provide cross-border services are in Germany and Austria and do not include any field related to the music profession.

¹⁰⁸ 'Special provisions applicable to the citizens of the new Member States concerning the recognition of professional qualifications'

<http://europa.eu.int/youreurope/nav/en/citizens/guides/neweucitizens/en.html>

¹⁰⁹ Regarding specific sectoral directives on architecture and health professions, a citizen of the EU with a diploma from a new Member State may have to proof professional experience in the relevant country, unless it concerns a diploma for training begun since accession.

¹¹⁰ Communication from the Commission: "Free movement of workers - achieving the full benefits and potential" (COM(2002)694)

Music professionals may not be aware of their rights or simply accept situations in which they are disadvantaged; there are many examples available in which musicians were disadvantaged by ways of double taxation, by denying social benefits, by being forced to re-establish their company in another Member State to be allowed to practice there or by problems caused by discrepancies of the status as either self-employed or employed in different countries (Audéoud 2002, 81, 119, 123, 241, 243). The problems related to mobility in the fields of social security and double taxation are also recognised by Pearle, the Performing Arts Employers Associations League Europe in their Activity Report of 2004 (pages 1 and 9).

A large area in which obstacles to the free movement of music professionals exists is the field of recognition of qualifications. Chapter 2 and 3 will discuss different aspects of this specific area in detail.

2. RECOGNITION OF QUALIFICATIONS: REGULATED PROFESSIONS

One of the most important areas where music professionals can encounter obstacles in their free movement within the European Union, concerns the recognition of qualifications. This may occur when a musician wishes to continue his studies in another Member State, when he wishes to have a period of studies abroad recognised in his home institution, if he wishes to apply for a job or if he wishes to establish himself in another Member State, for example as music teacher. In a study on artists' mobility by professor Audéoud (2002), the only genuine obstacle to the right to free movement that was found concerned 'the absence of recognition for professional purposes, by certain Member States of degrees awarded by other Member States'.

Two types of recognition can be distinguished: academic and professional recognition. Rauvagher (2004) explains that academic recognition is the recognition of a foreign qualification for the purpose of further studies; in academic recognition an evaluators' main task is to assess whether the applicant is capable of continuing studies in the chosen direction in a chosen field. Professional recognition alternatively is the recognition of a foreign qualification for the purpose of employment in a certain profession. In professional recognition it should be established whether the knowledge and professional skills of the applicant are sufficient to pursue a particular profession in the host country. It is quite possible, that the same qualification in the same country can be recognised for one of the purposes but not (or not completely) recognised for the other. This can be the case when a music student with an instrumental Bachelor degree is allowed to continue with a Master's degree course in another Member State, but not permitted to teach there. Academic and professional recognition are dealt with in different legal acts and carried out by different bodies. Academic recognition is regulated by international conventions and cooperation programmes, and its assessment is carried out by higher education institutions and/or national academic recognition information centres (ENIC and NARIC¹¹¹). In the case of 'cumulative academic recognition', a student has completed studies for a full qualification in one country and applies for studies for the subsequent qualification in another country (Rauvagher 2004:5). An example of this could be a viola student who has obtained a Bachelor degree in Belgium and applies for a Master's course in Sweden. 'Academic recognition by substitution' on the other hand concerns the recognition of studies abroad in order to substitute a part of the programme of studies in

¹¹¹ ENIC Network (European Network of National Information Centres on academic recognition and mobility) established by Council of Europe and UNESCO, NARIC Network (National Academic Recognition Information Centres) created by the European Commission. Both networks work closely together and complement each other. More information at <http://www.enic-naric.net>.

the host country (Rauvagher 2004:5), like a singer from Spain who has performed a study exchange in Denmark and upon returns receives full credit for the period abroad without having to perform additional examinations or follow extra courses at the home institution. Professional recognition is mainly regulated by national legislations, EU directives and documents adopted by international professional associations. Assessment can be carried out by employers, governmental bodies or professional bodies (often upon advice by ENIC/NARIC centres). There are two types of professional recognition; 'de jure professional recognition' which applies to the right to work in a specific country in a legally regulated profession and 'de facto professional recognition' which refers to situations of unregulated professional recognition (Vlăsceanu et al 2004:55-56).

This Chapter will deal with 'de jure professional recognition' and the European Union approach towards professional recognition. In Chapter 3, I will discuss the current processes which aim at harmonising education structures and qualifications frameworks in Europe.

2.1 The concept of regulated professions

The ECJ in its ruling *Aranitis*¹¹² provides that where the conditions for taking up or pursuing a professional activity are directly or indirectly governed by legal provisions, whether laws, regulations or administrative provisions, that activity constitutes a regulated profession. Access to, or pursuit of, a profession must be regarded as directly governed by legal provisions where the laws, regulations or administrative provisions of the host Member State create a system under which that professional activity is expressly reserved to those who fulfil certain conditions and access to it is prohibited to those who do not fulfil them. In other words, a profession is regulated if national legislation requires particular education or training to be allowed to carry out of this profession. Every country can decide which professions are to be legally regulated in its territory, which can create needless complications for professionals holding qualifications from other Member States. An overview of regulated professions in the field of music in all EU Member States is included in paragraph 2.3.

If a profession is not regulated, it is the employer who takes the real decision regarding employment of a holder of a foreign qualification. In practice, employers who wish to see if the foreign qualification is equivalent to the home qualification with which they are familiar, may seek advice from academic recognition centres (ENIC/NARIC). Such 'academic recognition for professional purposes' is becoming more and more important in the

¹¹² Case C-164/94 *Aranitis v Land Berlin* ECR [1996] I-135

framework of the Bologna Process (Rauhvargers 2004:18), which is further discussed in Chapter 3.

2.2 From a sectoral towards a general system approach

Through Article 47 of the EC Treaty, the Council of Ministers is empowered to issue directives regarding the recognition of qualifications:

Article 47 EC Treaty

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
2. For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.
3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Initially, the European Union's approach to the problem of recognition of diplomas was sectoral; Member States attempted to harmonise and coordinate minimum education and training requirements profession by profession. Sectoral directives were adopted for specific professions: doctors (1975), nurses (1977), dentists (1978), veterinary surgeons (1978), midwives (1980), pharmacists (1985), and also lawyers (1977) and architects (1985). For each profession, there are two directives: the Mutual Recognition Directive and the Coordination Directive, with as exception the Architect's Directive which does not coordinate the minimum education and training and the Lawyers' Directive which deals only with 'services'. The process of drafting, agreeing upon and implementing sectoral directives however proved to be very long and difficult. In some cases, the Council could not even come to an agreement, regarding for example the engineer profession. The method of sectoral harmonisation was therefore abandoned by the Commission and instead, Directive 89/48 was adopted (Schneider 1995:465).

Directive 89/48 covers the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration. Later

on, Directive 92/51 was adopted additionally, dealing with recognition of diplomas of post-secondary courses of less than three years and vocational training certificates. These General System Directives both apply to workers as well as to the self-employed¹¹³. The definition of 'diploma' in the sense of the directives is very broad, basically including all documents - diplomas, certificates or other evidence of formal qualifications - which confer the right to take up a certain regulated profession in the home Member State¹¹⁴. Article 3 of Directive 89/48 provides that Member States may not refuse a migrant worker from another Member State to take up a regulated profession if he holds the diploma required in another Member State for practising that profession. If he comes from a Member State in which this profession is not regulated, he may be required to proof two years within the last ten years of professional experience in that profession as well as formal qualifications which prepared for that profession. Professional experience has been defined as 'the actual and lawful pursuit of the profession concerned in a Member State'¹¹⁵.

If the duration of education and training was at least one year shorter than required in the host Member State, the host Member State may require proof of professional experience for the duration of maximum twice the duration of the shortfall in education and training. Furthermore, if the content of the education and training received differs substantially from the education and training required in the host Member State, the host Member State may require an applicant to take an aptitude test or to complete an adaptation period not exceeding three years. In such a case, the host Member State must give an applicant the choice between an adaptation period or an aptitude test; it may never require both. To my opinion this part of the Regulation causes concern, also from the viewpoint of professional musicians: As it is up to the host Member State to make the decision on whether the education received 'differs substantially', this leaves opening for discrimination against applicant from other States. The simple duration of a degree course does not always say much about the content or quality of the education received; account should also be taken of secondary education, entrance level and content of education. This system allows for the situation in which professionals with a music teacher degree from one Member State are not allowed to teach in another Member State (e.g. because their education is one year shorter), whereas the students from that other State are allowed to teach in their own State. Capelli (1993:447) also expresses fear that particularly in those cases in which diploma recognition is subject to an aptitude test, Member States could abuse this examination to disadvantage foreign candidates.

¹¹³ Regulation 89/48/EEC(2) and Regulation 92/51/EEC(2)

¹¹⁴ The definitions of 'Diploma' in Regulation 89/48/EEC(1) and Regulation 92/51/EEC(1) are not identical, due to the different purposes of the Regulations.

¹¹⁵ Regulation 89/48/EEC(1e)

In any case, Member States maintain plenty flexibility in the evaluation of applications for the recognition of diplomas. However, the Directive also requires that the procedure for examining an application to pursue a regulated profession must be completed within four months, that the decision must be motivated, and that applicants must be able to appeal to the decision, or the absence thereof, before a national court or tribunal¹¹⁶. Although the four month period is apparently difficult for the Member States to adhere to, for professional musicians who wish to respond swiftly on a current vacancy, this may cause serious difficulty. The position will most likely already be filled by the time they receive their official recognition.

A specific case that came to my attention regards requirements in France to become a music teacher. Any musician who wishes to teach music in France, needs to possess a French pedagogy diploma called 'Certificat d'Aptitude (CA)', and in addition go through a competition called 'concours externe de professeur territorial d'enseignement artistique'; a 30-minute interview with a jury. If holders of a foreign diploma apply, a committee called 'Commission d'assimilation des diplômes européens' studies the equivalency to the CA. Apparently, several pedagogy degrees from German and Belgian professional music training institutions were not recognised as being equivalent to the CA, whereas whichever diploma of any French university (such as engineering) corresponding to 'baccalauréat + 4 years minimum' (higher education) would entitle applicants to take part in the competition. In the latter case, a 'Commission de recevabilité' will merely check the duration after which the jury of the competition will consider the capacity and knowledge required to become a music teacher. In my opinion, this practice constitutes discrimination on grounds of nationality and an infringement of Articles 12 EC Treaty and Directive 89/48. Article 12 because it constitutes discrimination: applicants from other countries are treated differently and disadvantaged merely because they are not French, and Directive 89/48 as it provides that "the competent authority may not, on the grounds of inadequate qualifications, refuse to authorize a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals, [...] if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State".

Other Directives which deal with the recognition of qualifications are Directive 99/42, which mainly concerns vocational training leading to self-employment and those sectors in which practical experience can qualify an individual to carry out a profession, and Directive 2001/19, the so-called SLIM Directive, which aimed at simplification of the system of diploma recognition (Rauhvargers 2004:30-36). Very recently however, a proposal of the

¹¹⁶ Regulation 89/48/EEC(8.2)

Commission for a Directive which would replace fifteen existing Directives in the field of recognition of professional qualifications was adopted by the Council on 6 June 2005¹¹⁷. The Member States will have two years to implement this Directive 2005/36/EC into their national system¹¹⁸. To my expectation, the implementation of this Directive will contribute greatly to the free movement of professional musicians because eventually it will lead to more clarity and easier accessible and comprehensible information on the system of diploma recognition and on their rights.

2.3 Regulated professions in music per country

The European Commission maintains a database¹¹⁹ of all regulated professions in EU Member States and in addition Iceland, Norway, Liechtenstein and Switzerland. This list does not claim to be exhaustive as all countries are responsible for the provision and updating of their own information, and the overviews of the ten new EU Member States and Switzerland are in the process of being uploaded. The database often provides useful information on contact persons or competent authorities and aims to offer statistics on numbers of migrants by profession and by country. For each profession, it includes the number of the Directive which regulates the diploma requirements. If a diploma is required under Directive 89/48, this means that it requires higher education of at least three years' duration, whereas Directive 92/51 can include any form of education or training course shorter than three years.

Browsing through the list of more than 700 professions, only a few professions related to music are mentioned as being regulated in one or more countries: music teacher, organist and teacher of orchestral conducting.

According to this list, the profession of music teacher is regulated only in Greece, Luxembourg, Spain and Sweden, always under Directive 89/48. The profession of organist is regulated in Denmark and until 2003 also in Sweden. In the UK, one needs to have a diploma under Regulation 92/51 in order to become a fellow or an associate of the Royal College of Organists (ARCO). Listed under organist is also the profession of cantor, which is regulated in Finland and Norway under Regulation 89/48. Regulated professions in the database which may also include music professionals are the teaching professions: primary school teacher, secondary school teacher, higher level secondary teacher,

¹¹⁷ More information and full texts available at

www.europa.eu.int/comm/internal_market/qualifications/future_en.htm

¹¹⁸ Conseil de L'Union Européenne, 'Adoption de la Directive sur la reconnaissance des qualifications professionnelles, Luxembourg le 6 Juin 2005 9775/05 (Presse 137)

¹¹⁹ Database accessible via

http://www.europa.eu.int/comm/internal_market/qualifications/regprof/index.cfm

specialised teacher, teacher/lecturer in vocational institution, university lecturer/teacher. However, information regarding the content of these professions is not provided and therefore it cannot be concluded if it affects music professionals.

A more detailed overview of regulated music professions in Europe was obtained through the European Forum for Education and Training – EFMET¹²⁰ in 2004. EFMET was created to improve the cooperation between organisations active in different fields of music education and to assemble information on the training of music teachers and music professionals. In relation to that, information on international recognition of qualifications and examples of good practice were collected. Through my work for the European Association of Conservatoires, one of the project partner organisations, I was involved in a survey approaching all national academic recognition centres with the following questions:

- Which musical professions are regulated professions in your country?
- If applicable: what is the system of qualifications regarding teaching in different levels of education?
- What is the regulating institution?
- How many questions regarding the recognition of musical professions are received on a yearly basis?

A detailed overview of all outcomes of this project can be obtained from the project website; the below overview merely contains a summarised impression and analysis of the information obtained, focussing on the first question. Not all countries have been included¹²¹, as insufficient information was provided. It is remarkable to conclude that the database of the EU does not include most of the below information.

Austria

- Music teacher in general primary education requires a general teacher diploma, not specifically musical
- Music teacher in general secondary education requires an academic degree 'magister' in the field of music education for teaching
- Instrumental or voice teacher at music schools requires a degree in music education – voice and instruments
- Teacher in a professional music training institution requires a music qualification

¹²⁰ More information on the European Forum for Music Education and Training (EFMET), established in 2003, is available at <http://www.emc-imc.org/efmet/>

¹²¹ Cyprus, Luxembourg and Malta are not included

Belgium – Flanders

- Music teacher in general primary education requires a general teacher diploma, not specifically musical
- Music teacher in secondary education, higher education and part-time arts education requires a music qualification
- Teacher in a professional music training institution requires a music qualification

Belgium – Wallonia

- Music teacher in general primary education requires a general teacher diploma, not specifically musical. Such training of general teachers for primary education includes music
- Music teacher in general education and short-cycle education requires successful undertaking of an exam in front of a jury. These examinations are regulated.
- Teacher in a professional music training institution requires a music qualification of an institution for higher music education

Czech Republic

- Music teacher in general primary or secondary education requires a university pedagogical degree, not specifically musical
- Teacher in music schools or conservatoires requires a specialised qualification

Denmark

- Music teacher is not regulated by law, although a practical system of required training exists
- The profession of organist is regulated

Estonia

- Music teacher at elementary school requires pedagogical higher or secondary vocational education in music, or higher or secondary vocational education in the music field and an additional 160 hour course of pedagogy
- Music teacher at general secondary school requires pedagogical higher education in music, or higher education in the music field and an additional 160 hour course of pedagogy
- Music teacher in higher education requires for teacher, lecturers and assistants a Master's degree and for docents and professors a doctoral degree
- Requirements for music teacher at the level of amateur music schools are not clearly stated

Finland

- Class teacher in general education grades one to six, requires a Bachelor's degree from a university or equivalent polytechnic degree
- Music teacher in general education grades seven to nine, and in general and vocational upper secondary education, require a Master's degree in which a substantial share is dedicated to music (55 credits) and pedagogical subjects (35 credits)

France

- Music teacher in general primary education requires a general teacher diploma, not specifically musical
- Additional music teacher in school ('musician intervenant en milieu scolaire') requires a 'diplôme universitaire de musicien intervenant' (DUMI)
- Music teaching in colleges (ages 11-15) requires a university degree of three years and a separate teacher training qualification (certificat d'aptitude à l'enseignement secondaire)
- Music teacher in lycées (ages 15-18) requires a university degree of four years (maîtrise) and a separate teacher training qualification (agrégation)
- Music teacher in amateur level music schools requires the 'diplôme d'état de professeur de musique'
- Music teacher in regional conservatoires, écoles nationales de musique and professional music training require the 'certificat d'aptitude de professeur'

Germany

- Music teacher in general primary education requires a general teacher diploma, not specifically musical
- Music teacher in general secondary education requires a specific qualification
- Music teachers in general education are required to also teach one other subject (e.g. a language)
- The profession of music teachers at music schools, teaching outside general education is also regulated

Greece

- Music teacher in primary and secondary education requires a degree in musical studies, awarded by a university. The profession is exceptionally exercised by holders of titles in music awarded by recognised schools of music (conservatories) in case of lack of university degree holders.

Hungary

- Music teacher is the only regulated profession in the field of music in Hungary. This includes teaching in primary, secondary and vocational schools as well as the music school sector.

Ireland

- Music teacher in general primary education requires a primary school teacher qualification (degree in education)
- Music teacher in general secondary education requires a primary degree and a Higher diploma in education, which is a postgraduate teaching diploma

Italy

- Music teacher in general secondary education requires a secondary education degree and a first level music degree, as well as a specific diploma for teaching music, awarded by a music conservatoire
- Teacher in music conservatoires requires a conservatoire degree, as well as a list of artistic achievements (meriti artistici). A teaching license is not required.

Latvia

- The profession of music teacher in general education and in music education is regulated

Lithuania

- Music teacher in general education requires a general teacher diploma, not specifically musical

The Netherlands

- Music teacher in general education (primary and secondary level as well as vocational training) requires a music teacher qualification; the specific expertise will be marked on the Bachelor's degree certificate
- Instrumental/vocal music teacher in music schools is not a regulated profession. However, most music schools require the applicant to have completed conservatoire training.
- Teaching in all types of education requires a teachers' license

Norway

- Music teacher at primary school (grades 1-4) requires at least one semester of training in music, either included in general teacher education (Norwegian situation) or in addition to another teacher degree suitable for grades 1-4
- Music teacher at primary school (grades 5-10) requires at least one semester of training in music, either included in general teacher education or in addition to another teacher degree suitable for grades 5-10, or any other university degree of at least four years durations including pedagogical subjects
- Music teacher at upper secondary level (grades 11-13) requires at least one academic year of training in music either as part of a single subject teacher degree, or any other university degree of at least four years duration including pedagogical subjects
- With a completed music teacher degree of at least three years (BA) one can teach grades 5-10 and upper secondary school (grades 11-13)

Poland

- The profession of music teacher in general education and in music schools is regulated

Portugal

- The profession of music teacher for primary and secondary education is regulated

Slovak Republic

- Music teacher in primary schools requires a Master's degree from University
- Music teacher and teacher of other vocational subjects with music orientation in secondary schools and conservatoires require a Bachelors' or Master's degree from University
- Music teacher in music schools requires a Bachelor's or Master's degree, or 'absolutorium' (music conservatoire diploma)

Slovenia

- The profession of music teacher in elementary, lower secondary and secondary education is regulated
- The profession of music teacher at music schools is regulated
- The profession of 'korepetitor' (accompanist) – a person who accompanies teachers of music or dance, e.g. by playing piano while pupils are learning to dance or sing or play any other instrument is regulated

Spain

- Music teacher at primary schools requires a specific 3-year university degree
- Music teacher in secondary education requires one of the following degrees: 5-year university degree (licenciado) + título de profesor + CAP/título de especialización didáctica, 5-year university degree (licenciado) in music history + CAP/Título de especialización didáctica or título superior de música + CAP/título de especialización didáctica
- Holders of Título de Profesor de Música + CAP/título de especialización didáctica are allowed to teach at elementary and intermediate levels at conservatoires.
- Holders of Título Superior de Música + CAP/título de especialización didáctica are allowed to teach also at advanced level at conservatoires.

Sweden

- The profession of music teacher in general education is regulated

United Kingdom

- Music teacher in public schools requires a Qualified Teacher Status (QTS). Private schools also mostly employ QTS teachers.
- Music teacher in primary education requires a Bachelor of Education (BEd), a speciality in music is not compulsory.
- Music teacher in secondary schools and colleges (higher education, not university level) have usually completed a specialist three or four year undergraduate music course followed by a one-year course leading to a Post Graduate Certificate in Education (PGCE). This provides QTS (Qualified Teacher Status).

2.4 Analysis of the country overview of regulated professions in music

Reviewing the overview of regulated professions in music per EU Member State, it is interesting to see that there are quite large differences in the way countries have organised their system of regulated professions in music. In order to gain better insight in the results, I have presented them in schematic maps of the European Union¹²² (see below).

The largest differences seem to appear in the level of primary education where music teaching is sometimes provided by especially trained music teachers but most often only a general teacher diploma is required (figure 1). Denmark, Italy, the Netherlands, Poland

¹²² For a list and map of all current EU Member States, please see Annex I

and the United Kingdom have not regulated the profession of music teacher in primary education.

In secondary education (figure 2) it is more usual to require a specialised diploma from music teachers. Virtually all countries require music teacher in higher education institutions to have a specific degree (figure 3), which is also the case for music teachers in music schools (figure 4). Other professions in music are only rarely regulated, which can be concluded from figure 5.

There are no obvious regional tendencies, other than that Austria, Belgium, France, Germany, Portugal, Slovak Republic, Slovenia and Spain seem to have more shared elements than the other countries. Further research on the actual content of the requirements for regulated professions in music would however be necessary to confirm this suggestion.

Figure 1: Regulated professions - Music teacher in primary education

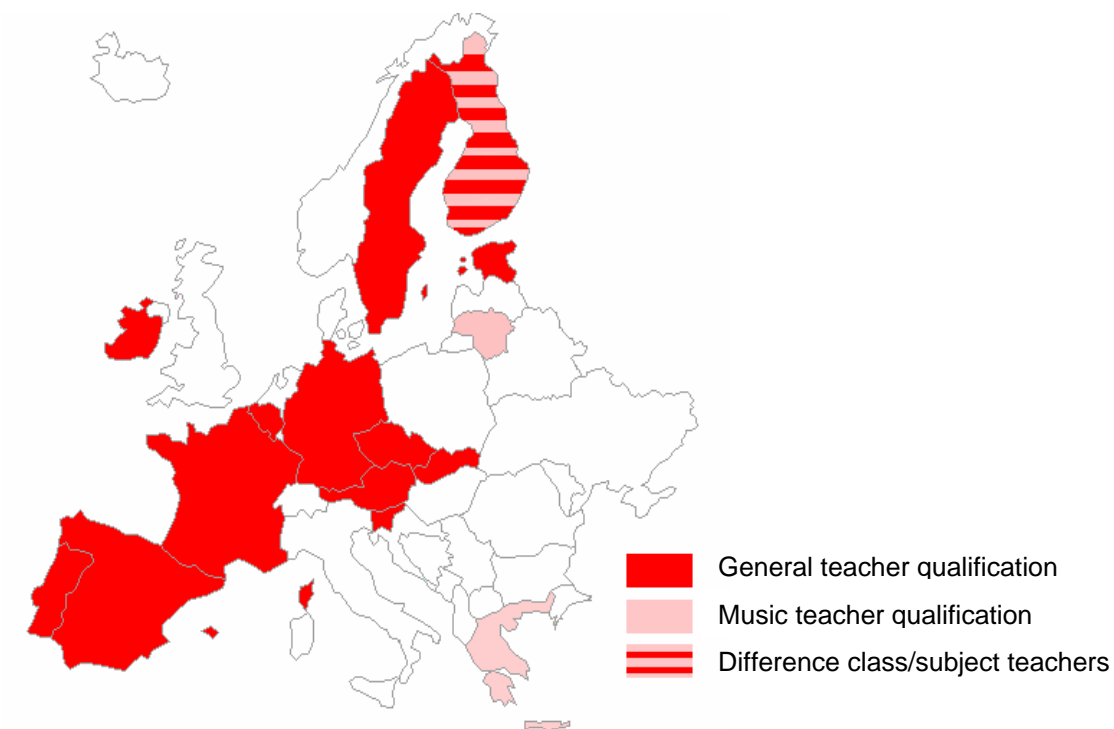


Figure 2: Regulated professions - Music teacher in secondary education

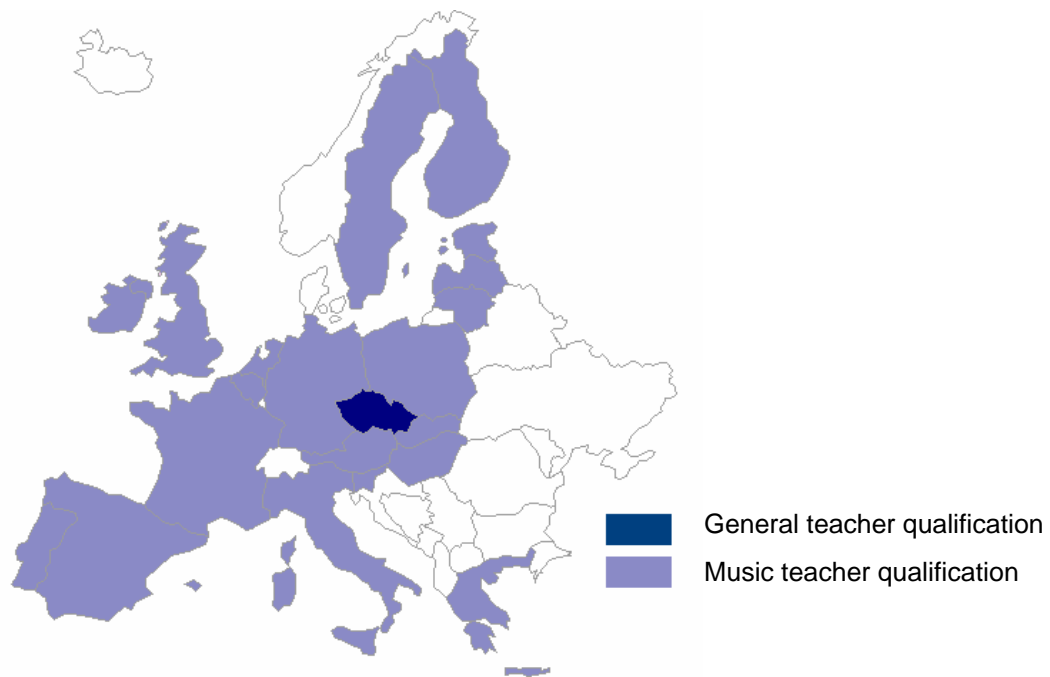


Figure 3: Regulated professions - Music teacher in higher education

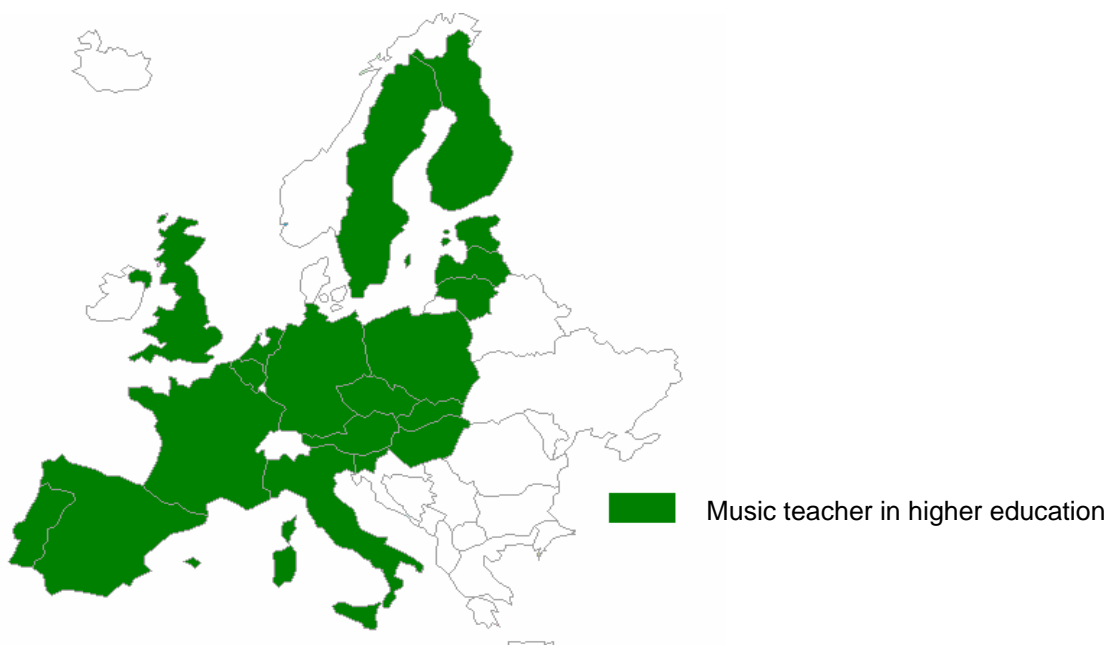


Figure 4: Regulated professions - Music teacher in music schools

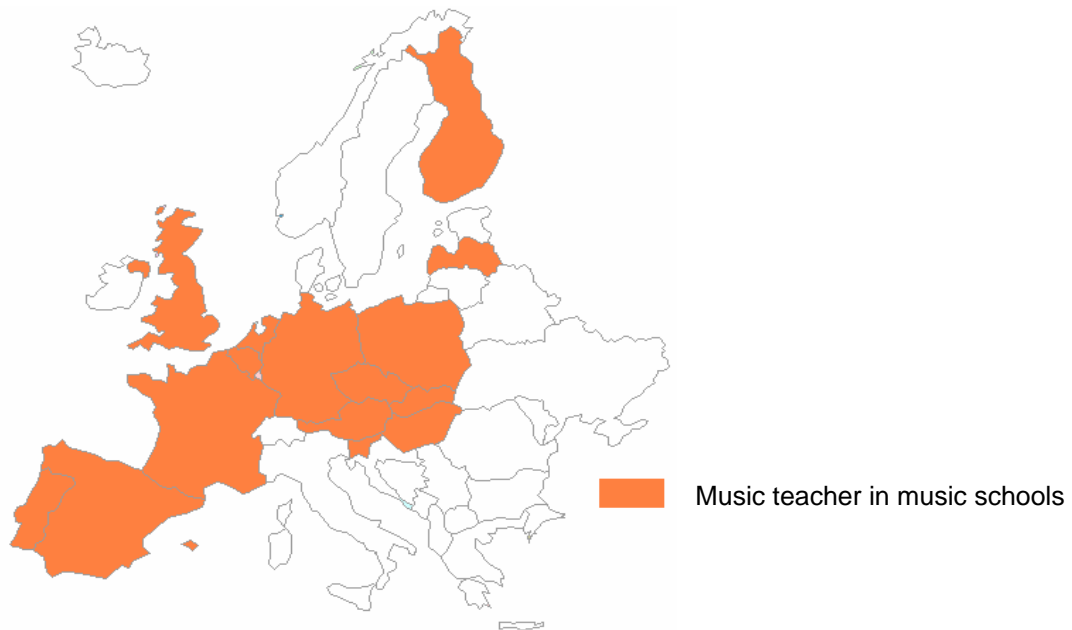
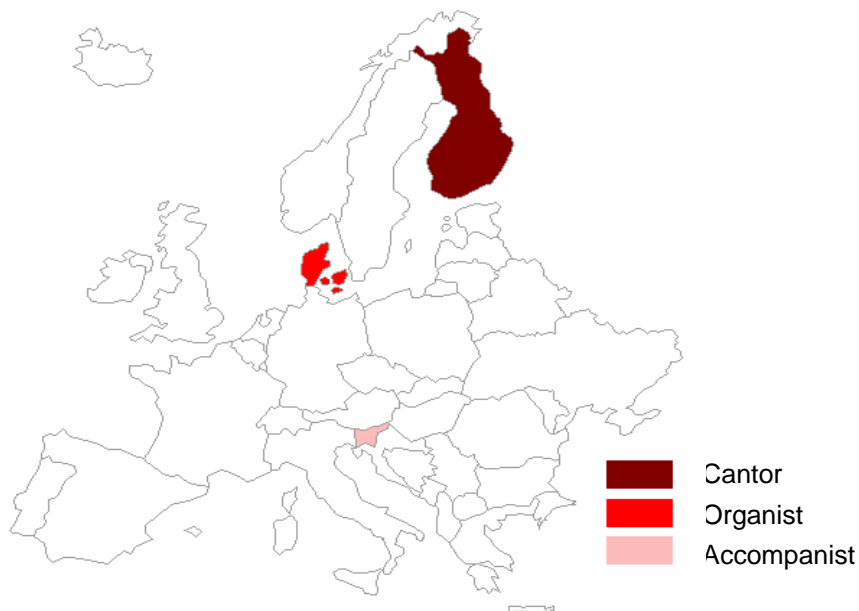


Figure 5: Regulated professions - Other professions in music



2.5 Conclusions

The remarkable fact that both overviews (EU and EFMET) of regulated professions in music differ, conceals the most significant hindrance in the field of recognition of qualifications as regards regulated professions: the lack of transparency and information. Another fact which should not be disregarded is that even though most music professions, apart from the profession of music teacher in most countries, are not regulated, this does of course not imply that employers of musicians do not require specific qualifications. Therefore if an employer is not familiar with a certain foreign qualification, he may tend to prefer applicants with qualifications which he recognises and knows about, or which are from institutions that have a good reputation.

It is therefore crucial for music professionals who wish to execute their profession in another country that national qualifications frameworks are comparable and transparent, to allow employers as well as applicants to gain insight in the content and level of a foreign qualification. The next Chapter hence deals with European processes which aim to make the European higher education area more transparent and to make qualifications comparable. Even officials dealing with these issues often do not have a clear insight in the situation in other countries, which was confirmed to me at the EIPA conference in Maastricht in 2004 assembling administrators dealing with diploma recognition in the field of teachers¹²³.

A recurring major hindrance seems to be the disproportionate bureaucracy that migrant workers and self-employed persons encounter when they wish to see their qualification recognised, and the failure by host Member States to reply within the required time limit of four months¹²⁴.

The actual differences between the systems are important, as in my opinion they indicate a clear need for harmonisation. These discrepancies combined with the trouble it takes to merely find the information from all countries, constitute an obstacle to the free movement of music professionals in the European Union.

¹²³ Colloquium on "The recognition of Diplomas: A Quest for a more effective/efficient operation of the system – the case of the teaching and paramedical professions", organised by the European Institute for Public Administration (EIPA) | Maastricht on 11-13 October 2004

¹²⁴ Communication from the Commission: "Free movement of workers - achieving the full benefits and potential" (COM(2002)694)

3. RECOGNITION OF QUALIFICATIONS: TOWARDS ONE EUROPEAN HIGHER EDUCATION AREA

From the previous Chapter it already came forward that in many cases, the mere lack of transparency and comparability of national educational systems can cause obstacles to the free movement of musicians. This is not only the case concerning regulated professions, but also for non-regulated professions in music. Employers will always consider the educational background of job candidates, and if it is not possible to compare the qualifications of foreign candidates with those of national candidates, it is only natural that the employer will give preference to qualifications that are well-known and trustworthy to him.

In the following Chapter I will discuss the current political developments that aim at making the European higher education area more transparent in order to facilitate mobility of students and professionals. I will start by clarifying the Bologna Process on the establishment of one European Higher Education Area by 2010, followed by an analysis of the effects of this process on professional music training, including an overview of the implementation of several 'Bologna principles' per country.

3.1 The Bologna Process

3.1.1 The Bologna Declaration 1999

A first significant step towards the creation of an open European area for higher education was taken by France, Italy, Germany and the United Kingdom when they undersigned the 'Sorbonne Joint Declaration on harmonisation of the architecture of the European higher education system'¹²⁵ in 1998. In this Declaration, they recognised the important role of higher education and universities within the European process. The Sorbonne Declaration focused on a system of two main cycles, undergraduate and graduate, the use of credit points and semesters, aimed at improving external recognition and facilitating student mobility as well as employability by encouraging a common frame of reference.

Little more than a year later, Ministers of Education of 29 European countries¹²⁶ came together in Bologna and undersigned the 'Bologna Declaration - The European Higher

¹²⁵ 'Sorbonne Joint Declaration - Joint declaration on harmonisation of the architecture of the European higher education system' Paris, by the Ministers of Education for France, Germany, Italy and the United Kingdom, Paris, the Sorbonne, May 25th 1998

¹²⁶ Countries that undersigned the Bologna declaration in 1999: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Swiss Confederation, United Kingdom

Education Area¹²⁷. While affirming their support to the general principles laid down in the Sorbonne Declaration, the Ministers formulated six specific objectives, which they considered to be of primary relevance in order to establish the European area of higher education by the year 2010 and to promote the European system of higher education worldwide:

- “Adoption of a system of easily readable and comparable degrees, also through the implementation of the Diploma Supplement, in order to promote European citizens employability and the international competitiveness of the European higher education system
- Adoption of a system essentially based on two main cycles, undergraduate and graduate. Access to the second cycle shall require successful completion of first cycle studies, lasting a minimum of three years. The degree awarded after the first cycle shall also be relevant to the European labour market as an appropriate level of qualification. The second cycle should lead to the Master and/or doctorate degree as in many European countries.
- Establishment of a system of credits - such as in the ECTS system – as a proper means of promoting the most widespread student mobility. Credits could also be acquired in non-higher education contexts, including lifelong learning, provided they are recognised by receiving Universities concerned.
- Promotion of mobility by overcoming obstacles to the effective exercise of free movement with particular attention to:
 - for students, access to study and training opportunities and to related services
 - for teachers, researchers and administrative staff, recognition and valorisation of periods spent in a European context researching, teaching and training, without prejudicing their statutory rights.
- Promotion of European cooperation in quality assurance with a view to developing comparable criteria and methodologies.
- Promotion of the necessary European dimensions in higher education, particularly with regards to curricular development, interinstitutional co-operation, mobility schemes and integrated programmes of study, training and research.”¹²⁸

3.1.2 The Bologna Process follow-up Communiqués

In 2001, the European Ministers in charge of Higher Education came together again in Prague, where they adopted a Communiqué¹²⁹ reaffirming their commitment to the objectives set out by the Bologna Declaration. They emphasised that the adoption of credit point systems and quality assurance systems and the use of the diploma supplement are necessary to facilitate students’ access to the European labour market, and confirmed their commitment to pursue the removal of all obstacles to the free movement of students, teachers, researchers and administrative staff. Furthermore, the

¹²⁷ ‘Bologna Declaration - The European Higher Education Area - Joint declaration of the European Ministers of Education convened in Bologna on the 19th of June 1999

¹²⁸ ‘Bologna Declaration - The European Higher Education Area - Joint declaration of the European Ministers of Education convened in Bologna on the 19th of June 1999

¹²⁹ ‘The Prague Communiqué’, Communiqué of the meeting of European Ministers in charge of Higher education in Prague, on May 19th 2001

Ministers stressed the vital role that quality assurance systems play in ensuring high quality standards and in facilitating the comparability of qualifications throughout Europe. They agreed that a common framework of qualifications should be developed. The Ministers took note of the constructive assistance of the European Commission, which was granted even though the Bologna Process is not initiated by the European Union, nor limited to its territory.

In their next meeting in Berlin in 2003¹³⁰, the European Education Ministers committed themselves to three intermediate priorities for the next two years: to promote effective quality assurance systems, to increase the effective use of the two-cycle system and to improve the recognition system of degrees and periods of studies. Furthermore, the Ministers underlined the importance of the Lisbon Recognition Convention (explained below in paragraph 3.1.3), and all countries were urged to make full use of the Diploma Supplement (idem): “every student graduating as from 2005 should receive the Diploma Supplement automatically and free of charge. It should be issued in a widely spoken European language. They appeal to institutions and employers to make full use of the Diploma Supplement, so as to take advantage of the improved transparency and flexibility of the higher education degree systems, for fostering employability and facilitating academic recognition for further studies [...]”¹³¹.

The 2005 follow-up meeting took place last May in Bergen¹³². The Bergen Communiqué¹³³ resulting from this meeting again stresses the importance of the creation of the framework of qualifications and national implementation of the ‘Lisbon Recognition Convention’. Many countries have joined the Process since the signing of the Bologna Declaration in 1999, totalling after the Bergen conference 45 signatory countries¹³⁴. The next Ministerial Conference will take place in 2007 in London¹³⁵. It is interesting to see the Bologna Process follow-up meetings emphasise primarily on deepening and further developing the objectives rather than on monitoring of national implementation. The reason is

¹³⁰ For information and background documents regarding the Conference of European Ministers Responsible for Higher Education in Berlin, 18/19 September 2003, see <http://www.bologna-berlin2003.de/index.htm>

¹³¹ ‘The Berlin Communiqué (2003) – realising the European Higher education Area’, Communiqué of the conference of Ministers responsible for Higher Education in Berlin on 19 September 2003

¹³² For information and background documents regarding the Conference of European Ministers Responsible for Higher Education in Bergen, 19-20 May 2005, see <http://www.bologna-bergen2005.no/>

¹³³ ‘The Bergen Communiqué (2005) The European Higher Education Area – Achieving the Goals’, Communiqué of the Conference of European Ministers responsible for Higher Education, Bergen, 19-20 May 2005

¹³⁴ Countries that have joined the Bologna Process during the ministerial follow-up conferences: Prague 2001: Croatia, Cyprus, Turkey. Berlin 2003: Albania, Andorra, Bosnia and Herzegovina, Holy See, Russia, Serbia and Montenegro, Former Yugoslav Republic of Macedonia. Bergen 2005: Armenia, Azerbaijan, Georgia, Moldova, Ukraine.

¹³⁵ For up-to-date information regarding the Conference of European Ministers Responsible for Higher Education in London, May 2007, see <http://www.dfes.gov.uk/bologna/>

understandable, as education is a national affair and the assembled Ministers of education do not have any power to force other countries to make certain changes or to speed up the process. The Bologna Process is a voluntary commitment. However I do often get the impression that every country is currently implementing Bologna in its own way, resulting in quite different systems which do however on the surface look the same and even make use of the same titles (Bachelor, Master). It therefore remains to be seen if the transparency has actually been improved by the year 2010 between all 45 signatory countries. The developments within the EU in this respect look more promising, especially with regards to the development of a European Qualifications Framework, discussed in the next paragraph.

3.1.3 Developments concurrent with the Bologna Process

Simultaneous with the Bologna Process, there are several international cooperation developments which also aim at improving the situation as regards the recognition of qualifications.

The Lisbon Recognition Convention¹³⁶ – in full the ‘Convention on the Recognition of Qualifications concerning Higher Education in the European Region’ was adopted in 1997 by representatives of a number of European countries, at the initiative of the Council of Europe and UNESCO. It has since then been signed by the majority of European countries but also by Australia, Canada and the United States. The ratification is not yet completed however; in paragraph 3.3 I will investigate the ratification status¹³⁷ in the EU member countries, as this affects the situation of music professionals wishing to have their qualifications recognised in another country.

The main agreements listed in the Lisbon Recognition Convention include that holders of qualifications issued in one country shall have adequate access to an assessment of these qualifications in another country. Furthermore, each country has to recognise qualifications – whether for access to higher education, for periods of study or for higher education degrees – as similar to the corresponding qualifications in its own system unless it can show that there are substantial differences between its own qualifications and the qualifications for which recognition is sought. Recognition of a foreign higher education qualification should give access to the use of an academic title and to further higher education studies, including relevant examinations and preparations for the doctorate, on the same conditions as candidates from the country in which recognition is

¹³⁶ Convention on the Recognition of Qualifications concerning Higher Education in the European Region, CETS No.: 165, Lisbon, 11 April 1997

¹³⁷ Ratification status downloaded 6 September 2005 at

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=8&DF=19/03/04&CL=EN>
[G](#)

sought. The signatories moreover agreed to provide information on their higher education systems by appointing a national information centre, and to encourage their higher education institutions to issue the Diploma Supplement to their students in order to facilitate recognition. Although the Lisbon Recognition Convention will in its own way contribute to taking away some of the obstacles to the free movement of music professionals, especially the statement that gives States the option to disallow recognition in case of 'substantial differences' of a foreign degree¹³⁸ is not very helpful in my opinion; it may leave room for States to disadvantage applicants from other countries by stating that the qualifications differ too much from the national qualifications.

The Lisbon Recognition Convention should not be confused with the Lisbon Strategy¹³⁹: in March 2000, the EU Heads of State and Government agreed in Lisbon on the objective of making the EU "the most competitive and dynamic knowledge-based economy in the world by 2010", by establishing an effective internal market, by boosting research and innovation and by improving education, among other ways. Although national implementation of the Lisbon Strategy is being monitored by the EU Presidency¹⁴⁰, in my experience it is difficult for citizens to gain insight in its implementation status.

The Bologna Declaration and its follow-up Communiqués all refer to the Diploma Supplement. This document has been developed jointly by the European Commission, the Council of Europe and UNESCO, in order to improve transparency and fair academic recognition of international qualifications. Attached to a higher education diploma, degree or certificate it should provide a description of the nature, level, context, content and status of the studies that were pursued and successfully completed. A template Diploma Supplement was developed by a joint working group of the three organisations, containing eight main sections which should provide information identifying the holder of the qualification, information identifying the qualification, information on the level of the qualification, on the contents and results gained, and on the function of the qualification, additional information, certification of the Supplement and general information on the national higher education system¹⁴¹.

¹³⁸ Lisbon Recognition Convention, Article IV.1

¹³⁹ http://europa.eu.int/comm/education/policies/2010/et_2010_en.html

¹⁴⁰ Information on the current EU Presidency is available at <http://www.eu2005.gov.uk>

¹⁴¹ Outline for Diploma Supplement downloaded 1 September 2005 at http://europa.eu.int/comm/education/policies/rec_qual/recognition/ds_en.pdf

In virtually all documents produced in the framework of the Bologna Process, reference is made to the elaboration of so-called 'qualifications frameworks'. In a report¹⁴² exploring this subject, the Bologna Working Group on Qualifications Frameworks not only advises on good practice in the elaboration of national qualifications frameworks, but also makes recommendations and proposals for an overarching 'Framework for Qualifications of the European Higher Education Area'. According to the report, national frameworks benefit from including cycles and/or levels in their system, and articulation with outcome-focused indicators and/or descriptors of qualifications as well as a direct link to credit accumulation and transfer systems. As regards the overarching framework it is recommended that it should have a high level of generality, consisting of three main cycles. It should furthermore include cycle descriptors, for which the 'Dublin Descriptors' are proposed. These Dublin descriptors are non-sectoral descriptors for all Bachelor and Master study programmes, which have been developed by an international 'Joint Quality Initiative' working group¹⁴³.

In order to ensure that the national frameworks will be compatible with the overarching framework, a set of criteria has been proposed, among which the requirement of a clear link between qualifications in the national frameworks and the cycle qualification descriptors of the European framework. Also, the national framework and its qualifications should be based on learning outcomes and ECTS credits and the national framework should be referenced in all Diploma Supplements. Each country should certify the compatibility of its own framework with the overarching framework.

The European Commission is currently involved in a consultation process regarding the establishment of such a European Qualifications Framework for lifelong learning, closing end of 2005¹⁴⁴.

Another development which aims at improving the situation as regards recognition of qualifications is the project 'Tuning educational structures in Europe'¹⁴⁵ which was initiated in the year 2000 by a group of universities that wished to take up the challenges posed by the Bologna Declaration collectively. They addressed several of the Bologna action lines,

¹⁴² 'Bologna Working Group on Qualifications Frameworks (2005) A Framework for Qualifications of The European Higher Education Area' http://www.bologna-bergen2005.no/Docs/00-Main_doc/050218_QF_EHEA.pdf

¹⁴³ 'Shared 'Dublin' descriptors for Short Cycle, First Cycle, Second Cycle and Third Cycle Awards', Draft 1 working document on Joint Quality Initiative group meeting in Dublin on 18 October 2004, downloaded 1 Sept 2005 from <http://www.jointquality.org/content/descriptors/CompletesetDublinDescriptors.doc>

¹⁴⁴ Commission staff working document "Towards a European Qualifications Framework for lifelong learning", Brussels, 8.7.2005 SEC(2005) 957 http://europa.eu.int/comm/education/policies/2010/consultations_en.html

¹⁴⁵ Website of the Project 'Tuning Educational Structures in Europe': <http://www.relint.deusto.es/TuningProject/index.htm>

particularly the adoption of a system of easily readable and comparable degrees, a system based on two main cycles and the establishment of a system of credits. The project claims that whereas educational *systems* are primarily the responsibility of governments, educational *structures* and *content* are that of higher education institutions. Its main aim is therefore to contribute significantly to the elaboration of a framework of comparable and compatible qualifications, which should be described in terms of workload, level, learning outcomes, competences and profile. A methodology to achieve this aim was developed to serve as a common basis. The project is currently in its third phase, which focuses on the validation of the outcomes of the first two phases, on the dissemination of the Tuning methodology and to develop the outcomes further¹⁴⁶.

The European Union is involved in the abovementioned developments in many ways. First of all, the EU contributes largely to the actual mobility of students and teachers as well as the intensive cooperation between higher education institutions through funding programmes such as Erasmus¹⁴⁷. There are however no figures available of the exact quantity of music students or music teachers that actually make use of the mobility programmes.

In the Socrates Erasmus Thematic Network programme¹⁴⁸, all participating networks of institutions are stimulated to be involved in the Tuning methodology. The professional music training sector is involved in Tuning and mobility issues through its Thematic Network called 'Polifonia'¹⁴⁹.

As part of its Lisbon Strategy aimed at making Europe the most competitive and dynamic knowledge based economy in the world, the EU monitors implementation and the progress that is being made by the Member States.

The European Union is furthermore supportive of and proactively involved in the Bologna Process, the Copenhagen Process, the Lisbon Recognition Convention and the creation of a European Qualifications Framework (EQF), as mentioned previously.

¹⁴⁶ 'Tuning Educational structures in Europe – Phase III: Validation, dissemination and further development', published in reader of the Tuning Launch Meeting in Budapest, 22-23 April 2005

¹⁴⁷ Detailed information on all EU funding programmes in education can be found at

http://www.europa.eu.int/comm/education/programmes/programmes_en.html

¹⁴⁸ Detailed information on Socrates Thematic Networks available at

http://www.europa.eu.int/comm/education/programmes/socrates/tnp/index_en.html

¹⁴⁹ Erasmus Thematic Network 'Polifonia', more information available at

<http://www.aecinfo.org/polifonia>

3.2 The Bologna Process and professional music training

The music sector has responded to the Bologna Declaration by initiating in 2001 a project called 'The effects of the Bologna Declaration on professional music training', as part of a larger Socrates Thematic Network in the arts entitled 'Innovation in Higher Arts Education'. My role in the international project working group was that of project administrator and researcher.

When confronted with the action lines of the Bologna Declaration, most institutions for professional music training in the undersigning countries were quite apprehensive. Their main fears concerned the threatening decline in quality of their educational programmes if they would be shortened to the minimum of three years for the first cycle as described in the Bologna Declaration; traditionally, music education takes longer than education in other sectors, pertaining to the physical and artistic development of the student. Furthermore they worried that the purpose of this process was not so much the promotion of mobility as it was a hidden agenda for their Ministry of Education to find ways to cut on the number of years of funding for training music students. The introduction of credit point systems in music training was another cause for suspicions: would this mean institutions could be forced to recognise study periods from other institutions without detailed knowledge about the level of the training received?

In order to address these worries, the project organised conferences, meetings and seminars and published position papers. Through quantitative research we attempted to obtain an overview of the general situation in Europe but soon it appeared that each country is experiencing different problems and implements the Bologna Process in its own way. As it would be impossible and undesirable to agree on European harmonisation of the exact number of years or credit points for each study cycle, the approach was therefore taken to describe common learning outcomes for first and second study cycles in higher music education. An advanced draft of the final document was already discussed by the General Assembly of the European Association of Conservatoires¹⁵⁰, representing more than 200 institutions for professional music training in- and outside Europe. Today, the implementation of the Bologna Declaration is in different stages in the EU Member States and many issues still need to be overcome.

¹⁵⁰ AEC General Assembly 2003 in Karlsruhe

3.3 Implementation of the Bologna Process in professional music training per EU country

In the framework of the abovementioned international Socrates Thematic Networks project 'The effects of the Bologna Declaration on professional music training'¹⁵¹ and the transatlantic EU/USA project 'Music study, mobility and accountability'¹⁵², I have studied the organisation of professional music training in European countries for several years, through the use of questionnaires, interviews and personal contacts. These results were collected in detailed country overviews¹⁵³, which I will analyse with a special focus on the priorities which were stressed by the conferences of Ministers in Berlin and Bergen: the two-cycle degree system, quality assurance and recognition of studies. For the latter point I will refer to the country's ratification of the Lisbon Recognition Convention¹⁵⁴. Intentionally I did not include reference to the specific degree titles such as Master of Arts in Music, Master in Music, MA, MMus, PhD, as this is a highly complex matter, involving also translation issues, which is currently being studied within the framework of the Polifonia project (see paragraph 3.1).

Austria

Professional music training in Austria is organised in three cycles: the first cycle is a Bachelor degree of 3-4 years, the second cycle a Magister degree of 1-2 years, followed by a third cycle Doktor degree of 2 years. The entry requirement for the second cycle is the possession of a Bachelor degree, it is however not possible to obtain an indication of how many students normally continue with second cycle studies.

A system of quality assurance and accreditation is in place for universities, although at the moment appropriate methods according to the evaluation of professional music training institutions are still being developed and therefore these institutions are not yet subject to regular quality reviews or accreditation procedures.

Austria has ratified the Lisbon Recognition Convention in 1999.

¹⁵¹ More information available at the project website <http://www.aecinfo.org/bologna>

¹⁵² More information available at the project website <http://msma-arts-accredit.org>

¹⁵³ Full country overviews are available at <http://www.aecinfo.org/bologna>

¹⁵⁴ Ratification status downloaded 6 September 2005 at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=8&DF=19/03/04&CL=EN>
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Belgium

Flanders: Since the academic year 2004-2005, the cycle system according to the Bologna Declaration is in place: the first cycle lasts three years and leads to a Bachelor degree, the second cycle of two years leads to a Master degree. Although there is still some debate about the offering of third cycle studies by institutions for professional music training, a special institution called 'Orpheus Institute' was established to offer practice-based PhD courses in music, in collaboration with the University of Leiden (NL). Bachelor students are automatically admitted in the Master study cycle, without an entrance examination.

Music training institutions in Flanders are subject to a quality assurance procedure every eight years, and accreditation of study programmes is a condition to be allowed to issue Bachelor and Master qualifications and to receive government funding.

Wallonia: Although the studies in professional music training are on paper organised in three cycles, Bachelor, Master and Doctorate, it seems that there is no clear point of departure after the first cycle: 100% of students with a Bachelor degree continue with the Master degree course. The Doctoral course is offered in collaboration with universities.

In 2004, a system for quality assurance for professional music training institutions was put in place in Wallonia. It will however still take several years before the first evaluations will be carried out.

Belgium has not yet signed the Lisbon Recognition Convention.

Cyprus

As regards professional music training in Cyprus, no sufficient information is available.

Cyprus has ratified the Lisbon Recognition Convention in 2001.

Czech Republic

Both Czech music academies have organised their studies in a three-cycle system; the first cycle, Bachelor, taking three years, the second cycle, Master, two years and the Doctoral programme taking another three years. Approximately 50% of Bachelor students are allowed in the Master study cycle, after an entrance examination.

Participation in a quality assurance process is obligatory for music institutions; accreditation takes place every five years.

The Czech Republic has ratified the Lisbon Recognition Convention in 1999.

Denmark

Since the academic year 2004-2005, professional music training institutions in Denmark adopted a two-cycle structure. The first cycle lasts three years and leads to a Bachelor degree; the second cycle lasts two years and leads to a Candidate degree. Approximately 90% of first cycle students enter the second cycle. There is no third cycle in professional music training, and institutions are not subject to any formal external quality assurance process.

Denmark has ratified the Lisbon Recognition Convention in 2003.

Estonia

In Estonia, the three cycle system is organised as follows: the first cycle of four years leads to a Bachelor degree, the second cycle of two years (from 2007 one year) leads to a Master degree and then can be continued with a Doctorate or PhD of four years. In the current system, 30-50% of Bachelor students are admitted in the second cycle after an entrance examination, but this percentage is expected to go up after implementation of the one-year Master in 2007.

The obligatory quality assurance and accreditation process for public State universities takes place every seven years.

Estonia has ratified the Lisbon Recognition Convention in 1998.

Finland

In Finland, the only music institution having university status, the Sibelius Academy, offers three study cycles in professional music training: the Bachelor of three years, the Master of two and a half years and Doctoral studies lasting one and a half to three years. The music polytechnics offer only the first cycle, leading to Bachelor, taking four and a half years, and sometimes a postgraduate course which may in future evolve into an officially recognised second cycle course. Students with a Bachelor from the Sibelius Academy are automatically admitted in the second cycle, whereas students with a Bachelor from a polytechnic have to pass an entrance examination. In principle, 100% of students with a first cycle at Sibelius will continue with the second cycle.

An elaborate quality assurance system for universities and polytechnics has been developed in recent years by the Finnish Ministry of Education, and the process will be put into motion in 2005 or 2006.

Finland has ratified the Lisbon Recognition Convention in 2004.

France

Due to the many different levels and types of institutions at which professional music training is provided, the French system is rather complicated. The use of the three cycle system is not yet implemented at the two superior conservatoires (conservatoires nationaux supérieurs de musique et de danse – CNSMD). It is expected that in the near future, the two national superior conservatoires will offer three cycles, whereas the regional conservatoires (conservatoires nationaux de région - CNR) would offer only the first cycle. In the meantime however, the possibility exists for CNRs to collaborate with regular universities and in that way offer all three study cycles but so far none of the CNRs has taken up this opportunity.

Although there are certain validation procedures, there is no strong quality assurance system and no accreditation procedure in place, neither for the national conservatoires or for the regional conservatoires.

France has ratified the Lisbon Recognition Convention in 1999.

Germany

The curricula offered at the Musikhochschulen in Germany are not organised in a two- or three-cycle structure, partly due to the sovereignty of the different 'Länder' as regards education. Most institutions are however working on the implementation of two cycles, and sometimes find cooperation opportunities with universities to enable them to offer doctorate courses. The national educational law prescribed that a Master degree can take a maximum of 5 years.

There is an obligatory quality assurance system which is however not connected to accreditation.

Germany has signed but not yet ratified the Lisbon Recognition Convention.

Greece

The Greek university departments of music are operating in a three-cycle system, or are in the process of implementing one. The first cycle (Bachelor/ptyhio) lasts five years, followed by a second cycle (Master) of one year. The Doctorate degree course lasts three years. There is currently no external quality assurance process in place.

Greece has not yet signed the Lisbon Recognition Convention.

Hungary

Professional music training in Hungary is not yet organised in a two- or three cycle system, although plans are being developed.

On the other hand, the quality assurance and accreditation process is very much established, it is obligatory and takes place every eight years.

Hungary has ratified the Lisbon Recognition Convention in 2000.

Ireland

While professional music training is organised in two cycles, with a four-year Bachelor and a one/two-years Master, there are no third cycle studies in professional music training in Ireland yet. To enter the second cycle, students must have a Bachelor degree and pass an audition. Approximately 10% of Bachelor students continue with the Master degree course.

Institutions are subject to an external quality review and accreditation process.

Ireland has ratified the Lisbon Recognition Convention in 2004.

Italy

Although a law was approved in 1999 to reorganise the music education sector, prescribing conservatoires to offer the first and second cycle of higher education, the current situation is not transparent as institutions are at different stages of implementation and often offer different types of cycles simultaneously. In addition there are problems regarding the higher education status of conservatoires (which will become 'institutions of advanced music education'), as they traditionally offer music education at all levels, starting from elementary level. Once the new law is fully implanted, institutions should all offer a first cycle of three and a second cycle of two years, and there are plans to also create a third study cycle in music.

As the former system for quality assurance is no longer valid due to the reforms taking place, a new system is under development; it is not yet clear how the process will be constructed.

Italy has signed but not yet ratified the Lisbon Recognition Convention.

Latvia

There is only one institution for professional music training at university level in Latvia, which offers a first cycle of four years (Bachelor), a second cycle of two years (Master) and a Doctorate of two years. To enter the second cycle, a student must have completed the first cycle and complete an audition and several examinations. Approximately 10% of Bachelor students are admitted in the second cycle.

The Music Academy underwent a quality assurance process in 2002 which resulted in accreditation of all study programmes valid until 2008.

Latvia has ratified the Lisbon Recognition Convention in 1999.

Lithuania

Professional music training in Lithuania is organised in a first cycle of four years, leading to a Bachelor degree, and a second cycle of two years, leading to a Master degree. The Doctoral degree (PhD) takes four years.

An obligatory quality assurance and accreditation process takes place every five years.

Lithuania has ratified the Lisbon Recognition Convention in 1999.

Luxembourg

As regards professional music training in Luxembourg, no sufficient information is available.

Luxembourg has ratified the Lisbon Recognition Convention in 2000.

Malta

As regards professional music training in Malta, no sufficient information is available.

Malta has signed but not yet ratified the Lisbon Recognition Convention.

The Netherlands

The first study cycle in professional music training in the Netherlands takes four years (Bachelor), the second cycle two years (Master). Doctorate degrees can only be awarded in collaboration with universities.

A new quality assurance and accreditation process was developed recently, involving validation of programmes at least every six years.

The Netherlands have signed but not yet ratified the Lisbon Recognition Convention.

Poland

The two- or three cycle system has not yet been implemented in professional music training in Poland. Only one out of eight Music Academies offers two cycles; a Bachelor of three years and a Master of two years. There is no third cycle in professional music training in Poland, and institutions are not subject to any formal external quality assurance process.

Poland has ratified the Lisbon Recognition Convention in 2004.

Portugal

Professional music training institutions in Portugal are undergoing many changes currently, and a new law which still needs to be implemented prescribes that the first cycle should have a duration of four years. Until the new law is implemented, the old system will be valid which does not follow the two- or three-cycle system as proposed in the Bologna Declaration. The situation as regards the third cycle is not clear: it seems to be the case that only universities can offer Doctoral degree courses.

Portugal has ratified the Lisbon Recognition Convention in 2004.

Slovakia

The first study cycle in Slovakia takes three years and leads to a BA degree; the second cycle two years, leading to an MA degree. To enter the second cycle, students must have a BA degree and pass an acceptance test. Approximately 90% of BA students continue with the second cycle. Music institutions undergo an obligatory quality assurance and accreditation procedure every five years.

Slovakia has ratified the Lisbon Recognition Convention in 1999.

Slovenia

Professional music training in Slovenia is organised in a three-cycle system: the first cycle of four years, the second cycle of two years and a third cycle of four years. There is currently no system for quality assurance or accreditation in place.

Slovenia has ratified the Lisbon Recognition Convention in 1999.

Spain

Also in Spain, the current situation is not very transparent. At the moment, professional music training is not organised in two or three cycles, even though a law was approved in 2001. Different systems coexist. Doctorate courses can only be followed at universities.

Institutions for professional music training are not subject to any formalised system of quality assurance and accreditation.

Spain has not yet signed the Lisbon Recognition Convention.

Sweden

Professional music training in Sweden involves a first cycle of three years (Bachelor) and a second cycle of two years (Master). Some institutions also offer a third cycle.

A detailed system for quality assurance is in place.

Sweden has ratified the Lisbon Recognition Convention in 2001.

United Kingdom

The first cycle in professional music training in the United Kingdom takes four or three years (Bachelor), the second cycle one to two years (Master). Only one conservatoire is able to award third-cycle degrees; the other conservatoires can do so through cooperation with universities. Entrance requirements for the second cycle normally include good study results from the first cycle. It is not possible to estimate the percentage of students that continues with second cycle studies after having finished the first cycle, as institutions receive many Master students who completed their Bachelor degree course at another (non UK) institution.

The United Kingdom has ratified the Lisbon Recognition Convention in 2003.

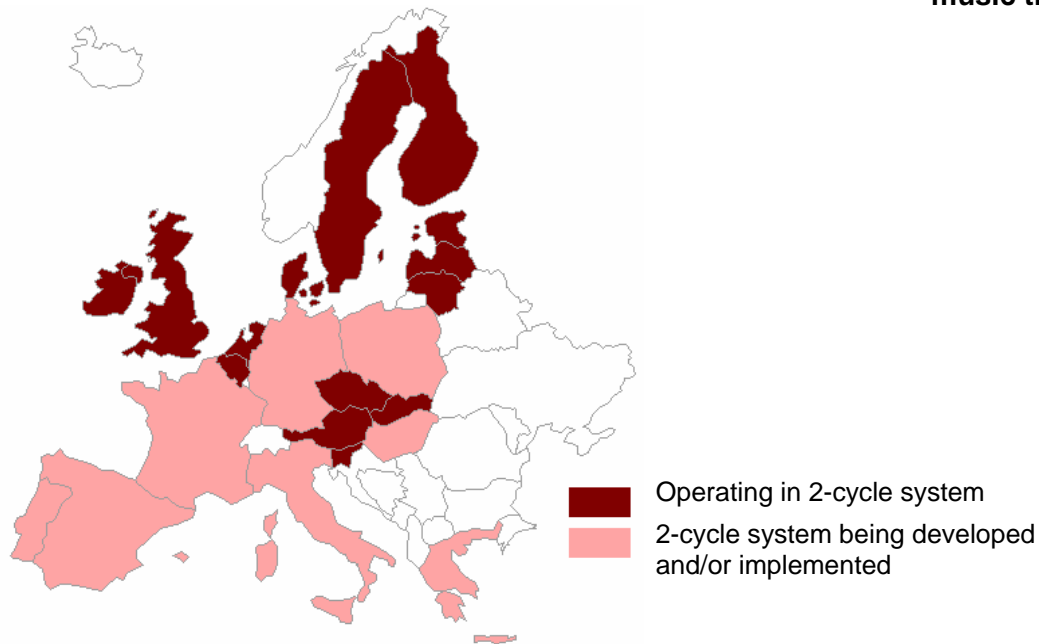
3.4 Analysis of the country overview

One of the most important features of the Bologna Process is the two-cycle system in higher education. Looking at the implementation of a two-cycle system in professional music training (figure 6) we see that even if a majority of EU Member States have implemented such a system, there are many that are still in the process of development. All these countries encounter different challenges when attempting to apply the Bachelor-Master scheme in their particular situation which may have been in use for centuries, or which may have suffered from many restructurings in the past.

Expecting to see significant tendencies, I also included where possible the percentage of students that, after finishing the first cycle, continue with second cycle. If this is equal to 100%, can the system really be regarded as consisting of two cycles? What I expected to see was that in situations where the first cycle is shorter (3 years), the percentage of students continuing with the second cycle would be higher than when the first cycle is longer (4 years). There were however too many countries that could not answer this question to draw any hard conclusions on this hypothesis. There are however some indicators already: in the three countries with the highest percentage of students continuing with the second cycle (Belgium, Denmark and Finland), the first cycle is three years. In the two countries where only 10 % of students is expected to continue with the second cycle (Ireland and Latvia), the first cycle takes four years. Nevertheless there are many factors that could play a role in establishing the duration of the first cycle, such as the entrance level of the average student in a particular country.

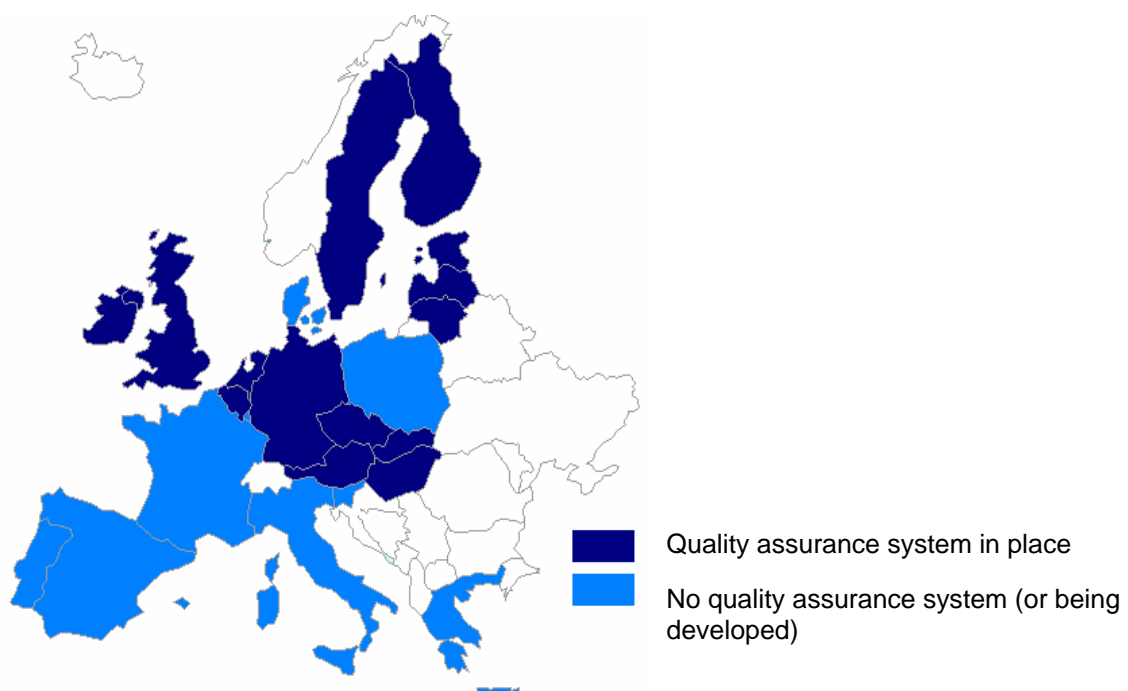
Another aspect that deserves more research is that even though most countries have introduced the two cycles, at the moment this does not seem to have contributed much to the comparability or transparency of systems for professional music training. There is still a need for information on the actual content of studies in other countries to be able to assess if recognition is appropriate or not or whether it would be interesting to do part of one's studies abroad. The move towards the description of study programmes in terms of learning outcomes and competencies, as taken forward by the European Association of Conservatoires (AEC), and the introduction of modular curricular structures will be very helpful in this sense and will, harming neither the diversity nor the quality of different educational and pedagogical systems, lead to a clearer and more mobile professional music training sector.

Figure 6: Implementation of a two-cycle system in institutions for professional music training



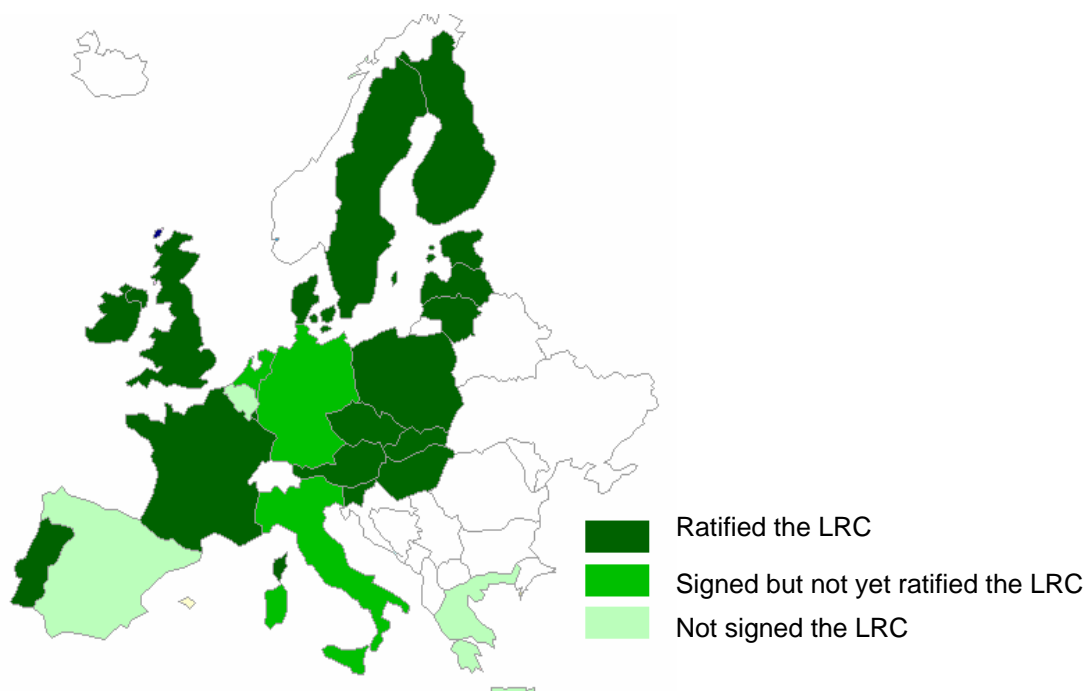
As regards the implementation of a system for quality assurance (figure 7), yet another one of the Bologna Process emphases, there is a clear north-south division within the EU. Whereas most Nordic countries are working with one or another quality assurance system, some more advanced than others, none of the Mediterranean countries have yet actually implemented such a system.

Figure 7: Quality assurance systems in institutions for professional music training



Although the Lisbon Recognition Convention is an important aspect within the creation of one European higher education area, there are still a number of countries who have not even signed the Convention (figure 8). Moreover, the ratification is not in place in some of the Member States. The new EU member States are clearly ahead of the old Member States in undersigning and ratifying the Convention.

Figure 8: Ratification status of the Lisbon Recognition Convention (LRC)



3.5 Conclusions

The Bologna Process as well as the concurrent movements and the EU activities will contribute greatly to the free movement for music students and music professionals. Although the deadline of the year 2010 set by the Bologna Declaration may be too optimistic, at least all countries are by now working determinately to implement all different aspects, and to create the European higher education area.

The Bergen Communiqué even intertwines with the EU provisions on free movement persons where it says: "Aware of the many remaining challenges to overcome, we reconfirm our commitment to facilitate the portability of grants and loans where appropriate through joint action, with a view to making mobility within the EHEA a reality. We shall intensify our efforts to lift obstacles to mobility by facilitating the delivery of visa and work permits and by encouraging participation in mobility programmes. We urge

institutions and students to make full use of mobility programmes, advocating full recognition of study periods abroad with such programmes.”¹⁵⁵

Although initially there was a lot of scepticism within the professional music training sector, claiming that an analogous application of the Bologna aspects to the field of music would not be possible and would supposedly lead to loss of quality and diversity, today it seems that in most countries, the sector is working hard to make the most out of it and even appreciating the benefit of greater transparency and comparability. Especially the move towards modular structures and description of curricula in learning outcomes, competences and credit points contribute to the key objectives of the Bologna Process: free mobility of students, teachers and professionals.

¹⁵⁵ ‘The Bergen Communiqué (2005) The European Higher Education Area – Achieving the Goals’, Communiqué of the Conference of European Ministers responsible for Higher Education, Bergen, 19-20 May 2005

FINAL CONCLUSIONS AND RECOMMENDATIONS

There are many things that prompt music professionals to go abroad to pursue long or short term professional activities including: accessing wider audiences, creating innovative music, cooperating with international colleagues, attending or presenting Master classes and participating in study exchanges. In addition, the tight employment market and decreased government support for culture may stimulate musicians to cross borders and find employment in other countries.

However, music professionals wishing to study or work abroad must overcome numerous barriers, despite having access to the vast body of legislation which is in place to remove such obstacles. These barriers do not so much concern the actual entry into other Member States but more the bureaucracy and inflexibility of national systems which prevent migrants and other foreign workers from receiving equal treatment. An interesting area for further study would be an investigation into the social security and taxation situation facing mobile music professionals, because at the moment no statistical information¹⁵⁶ on the subject exists.

The specific circumstances which disadvantage citizens of the ten new EU Member States as regards their free movement as workers are supposedly temporary in nature; according to plan, the issue will be resolved by 2007.

It is however worrying to see the vast number of rules and regulations that music professionals must familiarise themselves with in order to be aware of their rights and entitlements when working in other EU countries. Hopefully this study will be a helpful tool in that sense. However, the question remains whether they will be willing to start litigation procedures for every infringement of their right to free movement.

As regards the recognition of qualifications for the purpose of practising regulated professions in music, the main hindrance is the lack of information about other countries and about one's own country abroad. The implementation of the Bologna process, including the move towards modular curricular structures described in terms of learning outcomes and competences, and other means to improve the transparency and comparability of national educational systems are steps in the right direction and will eventually contribute to the free movement of music professionals.

¹⁵⁶ Organisations which are or can be involved in this field are FIM (Fédération Internationale des Musiciens), Pearle (Performing Arts Employers Associations League Europe), national musicians unions and more.

As most difficulties seem to involve a lack of information and excessive bureaucracy, my first recommendation would be the establishment of a 'one-stop-shop', preferably online, for music professionals, music students, recognition agencies dealing with music qualifications, institutions for professional music training, governments and quality assurance agencies. Such an information centre should provide clear information on administrative procedures and the qualification framework in all countries, with contact information and possibly a database of all past and current recognition procedures in music. Examples of Diploma Supplements could be included. It would be crucial to keep the country overview of regulated professions and of systems for professional music training constantly up-dated. An important and useful part of the web application would be to provide clear information on European legislation, explaining not only the rights and entitlements of music professionals but also where they should go when they suspect that their rights are being violated, and examples of recent and relevant litigation procedures.

Network organisations such as ENIC-NARIC (national recognition centres), the AEC (Association Européenne des Conservatoires), Pearle (Performing Arts Employers Associations League Europe), FIM (Fédération International des Musiciens) and musician's unions could work together in the management of this one-stop-shop.

In addition, a large conference could be organised, assembling officials of recognition agencies responsible for music qualifications, together with representatives of professional music training institutions, music students and employers, not only for information exchange but also to assemble data, experiences and challenges. Outcomes of such a conference could include cooperation models, examples of good practice and improved free movement for music professionals.

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Tabel of cases - alphabetical

Case 33/88	Allué and Coonan v Università degli studi di Venezia ECR [1989] 1591
Case C-164/94	Aranitis v Land Berlin ECR [1996] I-135
Joint Cases C-369/96 and 376/96	Arblade ECR [1999] I-8453
Case C-107/94	Asscher v Staatssecretaris van Financiën ECR [1996] I-3089
Case C-204/90	Bachmann v Belgian State ECR [1992] I-249
Case 263/86	Belgian State v Humbel and Edel [ECR 1988] 5365
Case C-3/90	Bernini v Minister van Onderwijs en Wetenschappen ECR [1992] I-1071
Case 344/87	Bettray v Staatssecretaris van Justitie ECR [1989] 1621
Case C-4/91	Bleis v Ministère de l'Education Nationale ECR [1991] I-5627
Case 9/74	Casagrande v Landeshauptstadt München ECR [1974] 773
Case 316/85	Centre public d'aide sociale de Courcelles v Lebon ECR [1987] 2811
Case 205/84	Commission of the European Communities v Federal Republic of Germany ECR [1986] 3755
Case C-473/93	Commission of the European Communities v Grand Duchy of Luxemburg ECR [1996] I-3207
Case 305/87	Commission of the European Communities v Hellenic Republic [1989] 1461
Case C-290/94	Commission of the European Communities v Hellenic Republic, ECR [1996] I-03285

Case C-185/96	Commission of the European Communities v Hellenic Republic ECR [1998] I-6601
Case C-187/96	Commission of the European Communities v Hellenic Republic ECR [1998] I-1095
Case 149/79	Commission of the European Communities v Kingdom of Belgium ECR [1982] 1845
Case C-344/95	Commission of the European Communities v Kingdom of Belgium ECR [1997] I-1035
Case 136/78	Criminal proceedings against Vincent Auer ECR [1979] 437 [1979] 2 CMLR 373
Case 279/80	Criminal proceedings against Webb ECR [1981] 3305
Case 32/75	Cristini v Société nationale des chemins de fer français ECR [1975] 1085
Case C-308/89	Di Leo v. Land Berlin ECR [1990] I-4185
Case 267/83	Diatta v Land Berlin ECR [1985] 567
Case 260/89	ERT v. DEP ECR [1991] I-2925
Case C-55/94	Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano ECR [1995] I-4165
Case 152/73	Giovanni Maria Sotgiu v Deutsche Bundespost [1974] ECR 153
Case 379/87	Groener v Minister for Education ECR [1989] 3967
Case 131/85	Gül v Regierungspräsident Düsseldorf ECR [1986] 1573
Case 204/87	Guy Beckaert ECR [1988] 2029, 2039
Case 75/63	Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten ECR [1964] 177
Case 186/87	Ian William Cowan v Trésor public [1989] ECR 195
Case C-15/96	Kalliope Schöning-Kougebetopoulou v. Freie und Hansestadt Hamburg ECR [1998] I-47
Case 139/85	Kempf v Staatssecretaris van Justitie ECR [1986] 1741
Case 115/78	Knoors v Secretary of State for Economic Affairs ECR [1979] 399
Case 175/78	La Reine v Vera Ann Saunders [1979] ECR 1129
Case 39/86	Lair v. Universität Hannover ECR [1988] 3161
Case 66/85	Lawrie-Blum v Land Baden-Württemberg ECR [1986] 2121
Case C-176/96	Lehtonen and Castors Canada Dry Namur-Braine ASBL v FRBSB ECR [2000] I-2681
Case 53/81	Levin v Staatssecretaris van Justitie ECR [1982] 1035
Case 9/88	Lopes da Veiga v Staatssecretaris van Justitie [1989] ECR 2989

Joint Cases 286/82 and 26/83, Case C-85/96	Luisi and Carbone v Ministero del Tesoro ECR [1984] 377 Martínez Sala v Freistaat Bayern ECR [1998] I-02691
Case 235/87	Matteuci v. Communauté française of Belgium and commissariat général aux relations internationales of the Communauté française of Belgium ECR [1988] 5589, para 16
Case C-337/97	Meeusen v Hoofddirectie van de Informatie Beheer Groep ECR [1999] I-03289
Cases 35&36/82	Morson and Jhanjan v State of the Netherlands [1982] ECR 3723
Case C-459/99	Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State ECR [2002] I-6591
Case C-237/94	O'Flynn v Adjudication Officer ECR [1996] I-2617
Case 52/79	Procureur du Roi v Marc J.V.C. Debauxe and others ECR [1980] 833, [1981] 2 CMLR 362
Case 65/81	Reina v Landeskreditbank Baden-Württemberg ECR [1982] 33
Case 2/74	Reyners v Belgian State [1974] ECR 631
Case C-76/90	Säger v Dennemeyer & Co. Ltd ECR [1991] I-1417, [1991] 2 CMLR 818
Case 196/87	Steymann v Staatssecretaris van Justitie ECR [1988] 6159
Case C-18/95	Terhoeve v Inspecteur van de Belastingdienst Particulieren /Ondernemingen buitenland ECR [1999] I-345
Case C-171/95	Tetik v Land Berlin ECR [1997] I-0329
Case C-292/89	The Queen v Immigration Appeal Tribunal, ex parte Antonissen ECR [1982] I-1035
Case C-221/89	The Queen v Secretary of State for Transport, ex parte Factortame Ltd and others ECR [1991] I-3905
Case C-415/93	Union royale belge des sociétés de football association ASBL and others v Jean-Marc Bosman [1995] ECR I-4921
Case 33/74	Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid [1974] ECR 1299
Case 300/84	Van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid ECR [1986] 3097
Case 36/74	Walrave and L.J.N. Koch v Association Union cycliste internationale, [1974] ECR 1405, [1975] 1 CMLR 320
Case C-109/92	Wirth v Landeshauptstadt Hannover ECR [1993] I-6447
Case 15/69	Württembergische Milchverwertung-Südmilch AG v Salvatore Ugliola [1969] ECR 363

Table of case law - numerical

Case 75/63	Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten ECR [1964] 177
Case 15/69	Württembergische Milchverwertung-Südmilch AG v Salvatore Ugliola [1969] ECR 363
Case 152/73	Giovanni Maria Sotgiu v Deutsche Bundespost [1974] ECR 153
Case 2/74	Reyners v Belgian State [1974] ECR 631
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Case 33/74	Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid [1974] ECR 1299
Case 36/74	Walrave and L.J.N. Koch v Association Union cycliste internationale, [1974] ECR 1405, [1975] 1 CMLR 320
Case 32/75	Cristini v Société nationale des chemins de fer français ECR [1975] 1085
Case 115/78	Knors v Secretary of State for Economic Affairs ECR [1979] 399
Case 136/78	Criminal proceedings against Vincent Auer ECR [1979] 437 [1979] 2 CMLR 373
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Case 52/79	Procureur du Roi v Marc J.V.C. Debaeve and others ECR [1980] 833, [1981] 2 CMLR 362
Case 149/79	Commission of the European Communities v Kingdom of Belgium ECR [1982] 1845
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Case 53/81	Levin v Staatssecretaris van Justitie ECR [1982] 1035
Case 65/81	Reina v Landeskreditbank Baden-Württemberg ECR [1982] 33
Cases 35&36/82	Morson and Jhanjan v State of the Netherlands [1982] ECR 3723
Joint Cases 286/82 and 26/83	Luisi and Carbone v Ministero del Tesoro ECR [1984] 377
Case 267/83	Diatta v Land Berlin ECR [1985] 567
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Case 300/84	Van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid ECR [1986] 3097
Case 66/85	Lawrie-Blum v Land Baden-Württemberg ECR [1986] 2121
Case 131/85	Gül v Regierungspräsident Düsseldorf ECR [1986] 1573
Case 139/85	Kempf v Staatssecretaris van Justitie ECR [1986] 1741
Case 263/86	Belgian State v Humbel and Edel [ECR 1988] 5365

Case 316/85	Centre public d'aide sociale de Courcelles v Lebon ECR [1987] 2811
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Case 186/87	Ian William Cowan v Trésor public [1989] ECR 195
Case 196/87	Steymann v Staatssecretaris van Justitie ECR [1988] 6159
Case 204/87	Guy Beckaert ECR [1988] 2029, 2039
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Case 305/87	Commission of the European Communities v Hellenic Republic [1989] 1461
Case 344/87	Betray v Staatssecretaris van Justitie ECR [1989] 1621
Case 379/87	Groener v Minister for Education ECR [1989] 3967
Case 9/88	Lopes da Veiga v Staatssecretaris van Justitie [1989] ECR 2989
Case 33/88	Allué and Coonan v Università degli studi di Venezia ECR [1989] 1591
Case 260/89	ERT v. DEP ECR [1991] I-2925
Case C-221/89	The Queen v Secretary of State for Transport, ex parte Factortame Ltd and others ECR [1991] I-3905
Case C-292/89	The Queen v Immigration Appeal Tribunal, ex parte Antonissen ECR [1982] I-1035
Case C-308/89	Di Leo v. Land Berlin ECR [1990] I-4185
Case C-3/90	Bernini v Minister van Onderwijs en Wetenschappen ECR [1992] I-1071
Case C-76/90	Säger v Dennemeyer & Co. Ltd ECR [1991] I-1417, [1991] 2 CMLR 818
Case C-204/90	Bachmann v Belgian State ECR [1992] I-249
Case C-4/91	Bleis v Ministère de l'Education Nationale ECR [1991] I-5627
Case C-109/92	Wirth v Landeshauptstadt Hannover ECR [1993] I-6447
Case C-415/93	Union royale belge des sociétés de football association ASBL and others v Jean-Marc Bosman [1995] ECR I-4921
Case C-473/93	Commission of the European Communities v Grand Duchy of Luxemburg ECR [1996] I-3207
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Case C-107/94	Asscher v Staatssecretaris van Financiën ECR [1996] I-3089
Case C-164/94	Aranitis v Land Berlin ECR [1996] I-135
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Case C-171/95	Tetik v Land Berlin ECR [1997] I-0329
Case C-344/95	Commission of the European Communities v Kingdom of Belgium ECR [1997] I-1035
Case C-15/96	Kalliope Schöning-Kougebetopoulou v. Freie und Hansestadt Hamburg ECR [1998] I-47
Case C-85/96	Martínez Sala v Freistaat Bayern ECR [1998] I-02691
Case C-176/96	Lehtonen and Castors Canada Dry Namur-Braine ASBL v FRBSB ECR [2000] I-2681
Case C-185/96	Commission of the European Communities v Hellenic Republic ECR [1998] I-6601
Case C-187/96	Commission of the European Communities v Hellenic Republic ECR [1998] I-1095
Case C-337/97	Meeusen v Hoofddirectie van de Informatie Beheer Groep ECR [1999] I-03289
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Relevant organisations and their websites

AEC	Association Européenne des Conservatoires, Académies de Musique et Musikhochschulen, www.aecinfo.org
CEPS	Centre for European Policy Studies, www.ceps.be
Curia	Recent case Law of the Court of Justice, http://curia.eu.int/en/index.htm
Eurlex	The Portal to European Union Law, http://europa.eu.int/eur-lex/en/
EIPA	European Institute of Public Administration, www.eipa.nl
ELIA	European League of Institutes of the Arts, www.elia.ahk.nl
European Union Gateway to the European Union,	www.europa.eu.int
On the Move	The Performing Arts Traveller's Toolkit, www.on-the-move.org
FIM	Fédération Internationale des Musiciens, www.fim-musicians.com
Pearle	Performing Arts Employers Associations League Europe, www.pearle.ws

ANNEX I

MEMBER STATES OF THE EUROPEAN UNION

Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Republic of Ireland, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom

Figure 9: Member States of the European Union¹⁵⁷



¹⁵⁷ Map downloaded on 1 October 2005 from http://www.lib.utexas.edu/maps/cia05/european_union_sm05.gif