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Professional Mobility and the Mutual Recognition of Qualifications in the European Union: Two Institutional Approaches

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The creation of a common European market necessarily assumes that not only goods and capital will travel but also services and labor. This premise is repeated in the literature on European integration and is formally recorded in the Treaty of Rome, which established the European Economic community (EEC). Article 3c of the Treaty of Rome specifically calls on member states to remove obstacles to the free movement of persons and services. Scott Davidson argues that this Article has been interpreted to apply expressly to human—as opposed to purely economic—concerns. Citing paragraph 4 of the Council Regulation 1612/68 (Official Journal 1968 L257/2) in which freedom of movement is considered a fundamental right of workers and their families, Davidson concludes that it is "abundantly clear that the EC is directly concerned with the human dimensions of this particular factor of production."[1]

The concept of creating an integrated trans-European labor market introduces the issues of training, certification, and hence the importance of the mutual recognition of qualifications in the European union. In practice, migrant Europeans rely on some kind of authoritative ruling in order to enter the labor market in a foreign state. This fact is spelled out in the preamble to the 1988 Council Directive on the recognition of higher education diplomas: "Whereas, in order to provide a rapid response to the expectations of nationals of Community countries who hold higher-education diplomas awarded on completion of professional education and training issued in a member state other than that in which they wish to pursue their profession, another method of recognition of such diplomas should be in place such as to enable those concerned to pursue all those professional activities which in a host member-state are dependent on the completion of post-secondary education and training."[2]

[1] S. Davidson, "Free Movement of Goods, Workers, Services, and Capital," in *The European Community and the Challenge of the Future,* ed. J. Lodge (London: Pinter, 1987), p. 120.

[2] *European Educational Policy Statements* (Brussels: Council on the European Communities, 1989), p. 67.

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Recognition has been defined in many ways: as equivalence, that is, the unconditional and full acceptance of one's educational qualifications and training for the purposes of employment; as partial recognition, that is, the conditional acceptance of qualifications and training and the demand that additional requirements be fulfilled beforehand; or the acceptance of periods of specific short-term training or study abroad as credit toward another qualification.[3] While there is little universal agreement on the notion of recognition, and indeed, all of the above definitions have been applied, the recognition of qualifications is a topical issue in the European Union. This point is underlined in the recent *Green Paper on Education, Training, and Research,* which asserted that the lack of recognition could be a handicap to trans-European mobility.[4] For example, the nonrecognition of training periods spent abroad acts as a disincentive because it can mean that the periods concerned have to be repeated or may even result in a loss of credit. Nonrecognition can also be a barrier to finding work in the host country or to finding another job when returning home.

This article analyzes the relationship between education, training, and certification and the goals of political and economic integration in the European Union. It assesses the European Union's response to the demands of a unified labor market by examining two institutional paths for facilitating the mutual recognition of professional qualifications. To this end, it incorporates institutional analysis to investigate the inner workings of the European Commission and European Parliament's Committee on Petitions. Following Keohane and March and Olsen,[5] I assume that: (1) institutions shape politics and (2) institutions are fashioned by their histories, laws, and customs that produce certain political outcomes. Yet, while it is important to recognize that history is path-dependent and that institutions may themselves be bound by the terms of their inception, it should be noted that institutions can achieve ends that sometimes elude traditional actors, including states. As political scientist Robert Putnam writes, institutions can also serve as devices for achieving purposes—not just political agreements.[6] For the purposes of this study, it is therefore essential not simply to evaluate the degree to which professional qualifications have been recognized but the institutional processes that make this possible. With this in mind, two insti-

[3] See Ulrich Teichler, *Recognition: A Typological Overview of Recognition Issues Arising in Temporary Study Abroad,* ERASMUS monographs, no. 3 (Brussels: ERASMUS Bureau, 1990).

[4] See *Green Paper on Education, Training, and Research: The Obstacles to Transnational Mobility* (COM[91] 349 final) (Brussels: Commission of the European Communities, 1996).

[5] See R. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly* 32 (1988): 379–96; and J. G. March and J. P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press, 1989).

[6] Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, N.J.: Princeton University Press, 1993).

tutional paths have been selected, including the commission's use of directives and the European Parliament's efforts as a lobbying forum.

The theoretical basis for this study is informed by the literature on international cooperation and European integration. Why states choose to comply with mandates from the commission and whether or not cooperative efforts by national governments actually lead to integration are just two questions of a larger political inquiry regarding the evolution of the European Union. Integration has been accounted for in many ways, including institutionalist-functionalist assertions that integration occurs when national powers are transferred to supranational institutions through a process of "spillover"; federalist explanations that emphasize the role of the European Court of Justice and the creation of European Community (EC) law that takes precedence over national laws; and communicationist approaches that stress the effectiveness of transborder contacts, high levels of interdependence, and market forces that serve to weaken national authorities and administrative traditions.

This article incorporates functionalist and communicationist analyses to demonstrate the importance of institutions as forums for political mediation. In this study, integration is examined following Ernest Haas's model of functionalism,[7] which it identifies with occurrences of spillover, and Leon Lindberg's approach of seeking out evidence of *engrenage*.[8] According to Lindberg, *engrenage* was understood as "bureaucratic interpenetration" where, over the course of repeated high-level communication, officials in different member states tended to work through institutions toward common European objectives. In contrast to both the pure functionalists and federalists, Lindberg attaches less weight to the transference of loyalties as a means to supranational integration and instead focuses on international cooperation. In this study, evidence of *engrenage* and mutual trust also support Putnam's statement regarding the instrumental value of institutions as a means of achieving political change.

The first part of this essay examines the role of the European Commission and member states regarding the application of EC directives. In part 2, I evaluate the role of the European Parliament's Committee on Petitions as a citizens' lobbying forum by examining six cases that were heard before the committee. This sampling highlights some of the practical difficulties of securing recognition and the limitations of integration by describing four sources of problems: (1) member states may deliberately violate EC law; (2) member states may ignore EC legal precedents; (3) member states reserve the right to determine national standards and administer entrance ex-

[7] Ernest Haas, *The Uniting of Europe* (Stanford, Calif.: Stanford University Press, 1968).

[8] Leon Lindberg, *The Political Dynamics of European Integration* (Princeton, N.J.: Princeton University Press, 1971).

aminations according to their own traditions; and (4) gaps in EC law may lead to bureaucratic complications.

Data informing this study were gathered from petitions housed in the archives of the European Parliament's Committee on Petitions in Luxembourg and records held in Directorate General 22 and the central library of the European Commission. This information was supplemented by interviews conducted from November to March 1996 with subjects who were members of the European Parliament in Brussels and with petitioners in Paris.

The Legal Framework

In the 1990s, the European Commission became increasingly reliant on directives as a means of implementing EC law. With respect to free movement, the use of directives became synonymous with the commission's ambition of creating a "People's Europe" based on a mobile transnational labor force. However, as the recent *White Paper on Education* records demonstrate, freedom of movement is a "general rule" but is not universally accepted.[9] The white paper also describes three principal types of nondiscriminatory measures that constitute "significant obstacles" to the free movement of professionals in the Community. For the migrant worker, these obstacles are the practice of recognizing professional qualifications; establishing proof of good health, good repute, and sound financial standing; securing membership in professional organizations, and complying with codes of conduct. Each of these potential barriers to free movement warrants some discussion.

The European Union's attempt to recognize professional qualifications has centered on three articles recorded in the EEC Treaty. These are Article 57 on professional recognition; Article 49, which calls for the abolition, systematically and progressively, of all potential obstacles to the liberalization of the movement of workers; and Article 235, which gives the Council of Ministers the powers to extend the provisions of the treaty in the course of completing the common market. Of all of these, only Article 57(1) explicitly includes the mutual recognition of diplomas as a measure aimed to promote free movement.[10] It should be added that while the establishment of an integrated common market hinges on the application of the freedom of movement and settlement, mutual recognition is not a precondition, but rather a facilitating condition. As Julia Lasett notes, "Article 57(1) talks merely of

[9] *White Paper on Teaching and Learning: Towards the Learning Society* (Brussels: Commission of the European Communities, 1996).

[10] "In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and [in cooperation with the European Parliament] after consulting the Assembly, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications"; see Bernard Rudden and Derrick Wyatt, eds., *Basic Community Laws* (Oxford: Oxford University Press, 1990), p. 43.

making access easier to the said activities; legally the right to take up activities has already been attained."[11]

On the basis of Article 57 and the provisions of Article 235, the European Commission and European Council have been able to introduce a number of directives aimed at completing the internal market. Between 1964 and 1994, approximately 60 directives were created for the purposes of recognizing professional qualifications.[12] In addition to the application of case law, the introduction of these directives may facilitate recognition in one of three ways: recognizing professional experience, automatically recognizing professional qualifications, or recognizing qualifications without the coordination of education and training.

The first method of recognition applies to the oldest directives known as "transitional directives." These directives were introduced for skilled trades and to a lesser extent for some professional services from 1964 to 1982, and they aimed at sectoral harmonization. This type of legislation offered individuals a real advantage insofar as they could rely on the directive to pursue their professional activity anywhere in the Community, even if their trade was not regulated in some member states. There were also some obvious drawbacks to this approach. First, individuals needed to have practiced their profession for a number of years in their home country before migrating to another country. Second, the attempt to introduce sector- or profession-specific directives proved administratively burdensome and was subsequently abandoned.

The second class of directives is similar to the series of legislation described above insofar as it operates on a profession by profession basis. What distinguishes this series of directives is the automatic provision of recognition based on a minimal coordination of education and training. The basic criterion for recognizing certain professions (e.g., healthcare professionals such as doctors, dentists, and pharmacists) is that they were considered to be similar across the member states, and therefore a minimum level of training could be relied upon as an objective measure. However, this type of legislation was as cumbersome to implement as the transitional directives and was largely abandoned in 1985. There was one directive introduced in 1993 to consolidate the "doctor's directive," but overall, this style of recognition was abandoned in favor of a more general system.

The third approach to professional recognition was established at a time when the Community was preparing to relaunch itself and embrace a new integrationist era. In 1984 at the European Council meeting in Fontainebleau, France, the members called upon the council to introduce a "general system" for ensuring the equivalence of university diplomas. The aim was to

[11] Julia Lasett, "The Mutual Recognition of Diplomas, Certificates, and Other Evidence of Formal Qualifications in the European Community," *Legal Issues of European Integration* 1 (1990): 1–66.
[12] Ibid.

protect freedom of establishment within the Community. Freedom of establishment is a basic right of citizens of EU member states to move and settle anywhere in the EU. While the Community did not focus either on the notion of equivalence or on the specifics of university education, it did, in 1988, install a general procedure for recognizing professional qualifications. This was introduced by means of a new general directive, 89/48/EEC, "on a general system for the recognition of higher-education and training of at least three years' duration." This general directive was followed by a supplemental one, 92/51/EEC, on June 18, 1992.

Directive 89/48/EEC is interesting for a number of reasons. First, it is general but only applies to nationals who are fully qualified to practice a regulated profession in one of the host member states. Second, it is nonsector specific and covers any diploma or evidence of training awarded by a competent authority in cases where the student has completed at least 3 years training at the post-secondary level. Third, this type of directive, while based on the principle of mutual respect, also offers the possibility for member states to insist on aptitude tests or additional training. For this reason, the green paper describes this approach as "semi-automatic."

The manner in which this directive was constructed is also noteworthy. In many ways, it is a carefully designed piece of legislation aimed at satisfying all states and EU institutions by balancing rights with obligations. For example, Article 4 of this directive acts as a counterbalance to Article 3, which stresses the individual's right to qualified recognition. This is immediately apparent in the tone of Article 4: "Notwithstanding Article 3, the host Member State may also require the applicant to provide evidence of professional experience . . . to complete an adaptation period not exceeding three years or take an aptitude test."[13] The notion of a balancing act was understood by all the institutions, as described eloquently in the commission's report to the European Parliament and council on the application of Directive 89/48/EEC: "The challenge to Community policy in this field has remained unaltered since the signature of the Treaty of Rome: how to resolve the inherent conflict between national educational systems, the diversity of which testifies to, and preserves, national identity, and the right conferred upon every European citizen to exercise his or her profession through the Union."[14] This balancing act was, however, further complicated. On paper, Directive 89/48/EEC also provides the commission with certain regulatory and consultative powers. This is expressed in

Article 4: which mandates that states must offer applicants the right to choose between an aptitude test or an adaptation period.

[13] *European Educational Policy Statements,* p. 70.

[14] *Report to the European Parliament and the Council on the State of the Application of the General System for the Recognition of Higher Education Diplomas* (COM[96] 46 final) (Brussels: Commission of the European Communities, 1996).

Article 7: which requires member states to report back to the commission on the implementation of the directive every 2 years.

Article 11: which sets a 2-year deadline for complying with the directive enforceable through the European Court of Justice.

Article 12: which sets out a specific category and time limit for part-time and full-time work.

The 1992 supplementary directive further extended the commission's powers in the context of 89/48/EEC. For example, under

Chapter IV: it guarantees certain provisions of health standards.

Article 5b: it insists that those seeking recognition must be notified no more than 4 months after they file the request.

Chapter X: it states that the commission can review national courses.

Article 15: it determines if member states meet criteria by establishing if courses have a special structure.

What is also interesting to note about the formal division of powers and the explicit recognition of rights and responsibilities recorded in this legislation is the fact that the European Commission associates the general directive with the principle of subsidiarity that it believes may facilitate cooperation.[15] Subsidiarity is a principle in which the functions that subordinate or local organizations perform effectively belong more properly to them than to a dominant central organization. Yet, assuming that member states will act in accordance with the commission's idealized reading of subsidiarity has not proved to be the general rule. Evidence against cooperation is found in the commission's report on the implementation of Directive 89/48/EEC.

Implementing Directive 89/48/EEC

The reports collected by the European Commission on Directive 89/48/EEC paint a superficially optimistic picture of the institutional mechanisms for recognizing diplomas based on this piece of legislation. According to the *Article 11 Reports,* a series of statements submitted by the member states and European Economic Area (EEA) countries to the Commission Directorate XV, which monitors the internal market, the directive has been implemented fairly successfully in a number of cases. Table 1 records the total number of applications received and the results of individuals' petitions for recognition.

Table 1 is informative for several reasons. First, it demonstrates that in 1994, requests for recognition based on this directive varied widely among the member states and professions, and it calls into question some of the

[15] *Article 11 Reports* (directive 89/48/EEC) for the period 1993–94 (document XV/58589/95-EN) (Brussels: Commission of the European Communities, 1995), p. 13.

TABLE 1
APPLICATIONS SUBMITTED FOR RECOGNITION BASED ON DIRECTIVE 89/48/EEC

Country	Total Number of Complete Applications Received	Total Number of Applications Automatically Accepted	Total Number of Tests and Adaptation Periods	Total Number of Rejections
Austria	211	179 (84.83)	2 (.95)	3 (1.42)
Denmark	59	36 (61.02)	0 (0)	0 (0)
Finland	64	64 (100)	10 (15.63)	0 (0)
France	1,279	170 (13.29)	434 (33.93)	32 (2.5)
Germany	370	71 (19.19)	85 (22.97)	161 (43.51)
Great Britain	5,145	3,926 (76)	192 (3.79)	927 (18.01)
Iceland*	45	31 (68.89)	0 (0)	13 (28.88)
Ireland†	117	822 (2.07)	55 (47)	12 (10.26)
Italy	235	144 (61.28)	11 (4.64)	13 (5.53)
Netherlands	90	48 (53.33)	7 (7.78)	8 (8.89)
Norway	131	118 (90.08)	11 (8.4)	2 (15.27)
Portugal	61	21 (34.43)	6 (9.84)	10 (16.39)
Spain	317	198 (62.46)	1 (.32)	8 (2.52)
Sweden	63	60 (95.24)	2 (3.17)	0 (0)

SOURCE.—*Article 11 Reports* (Brussels: Commission of the European Communities, 1995).

NOTE.—Numbers in parentheses are percents. *Article 11 Reports* (Directive 89/48/EEC) is for the period 1993–94 (Document XV/58589/95–EN).

*The statistics provided by Iceland do not add up. The table of "all professions" included at the end of this country's report does not agree with a cumulative assessment of the profession by profession reports.

†The documentation submitted by Ireland suggests that there were hundreds more incomplete files than complete files submitted. In spite of this, it appears that files were amended and later considered.

commission's optimism. The reported level of acceptance, based on the application of the general system, was under 6,000 citizens in total. Second, a potential obstacle, the use of supplemental exams as a condition for recognition, seems to have been largely avoided. With the exception of France and to a lesser extent Great Britain, the insistence on aptitude tests and additional training as a means of securing recognition as a percentage of total applicants, except in Britain and Germany.

However, a critical reading of the commission's data reveals that the above statistics do not provide the complete picture. In many cases, the percentages simply do not add up, and it is difficult to estimate what happened to the rest of the applicants. There are a number of discernible problems with the commission's documentation: first, not all member states had supplied information by the time the report was compiled—Greece and Belgium were the offending states; second, only a fraction of professions have been included; third, there is no description of how the data were collected, and hence, the statistics provided appear inexplicably low. For example, while the United Kingdom offered data on 38 professions, Germany and Denmark provided information on five. In some cases, the figures do not add up at all.

A more instructive account of the members' attempts to implement this directive is found in the *Application Report* submitted to the European Parliament. In a contradictory paragraph, the commission acknowledges that while approximately 11,000 citizens obtained professional recognition between January 4, 1991, and December 31, 1994, the vast majority of these were teachers, and over half applied to the United Kingdom. While the commission argues that only about 8 percent of applicants are unsuccessful, the sample pool is very small and hardly inclusive. The language used in the above-mentioned report is suggestive and inconclusive. The directive "may have improved the situation of migrants already established," and the increased student mobility brought about by the ERASMUS and SOCRATES programs "may also act as an impetus to greater professional mobility."[16]

In spite of European Commissioner Mario Monti's delight that "the general system for recognizing higher education diplomas has proved successful in practice,"[17] there are few reported data on the overall implementation of Directive 89/48/EEC. The commission itself has published scarce information on the successful implementation of this directive. The following problems still pose real obstacles to the provision of professional recognition. First, according to the 1996 report *Free Movement of People: General System for Recognition of Higher Education Diplomas Working Well,* [18] some member states have not completely implemented the directive and instituted adequate compensatory mechanisms. Second, the commission assumes that the provisions of the directive are "sufficiently clear" and should encourage citizens to seek recognition even if the legislation is not properly implemented in their country of appeal.[19] As discussed above, this directive is a complicated legal text aimed at satisfying all parties on the basis of mutual trust. It would be a mistake to assume that it is truly a self-evident piece of legislation. Third, there is unwillingness to implement the directive in certain professions. The above-mentioned report even cites complaints made against German practices of recognizing teachers' qualifications, in addition to the infringement proceedings filed against France for imposing excessive conditions upon non-French applicants who want to teach in France.[20] Fourth, in some cases, linguistic ability must be established and certified before the application is made, and this may lead to discriminatory practices.

Complying with EC Law

Members who fail to comply with EC law by not introducing and enforcing directives can be investigated by the commission with a view to possible

[16] *Application Report,* pp. 5–6.

[17] *Free Movement of People: General System for Recognition of Higher Education Diplomas Working Well* (Brussels: Commission of the European Communities, 1996).

[18] Ibid.

[19] Ibid., p. 2.

[20] *Article 11 Reports,* p. 3.

judicial action. There are two courses of action that can be taken. The Treaty of Rome provides for a procedure to go before the European Court of Justice under Article 169, and members may also be fined under Article 171 if they are found in noncompliance with EC law.[21]

According to one commission official, the practice of filing infringement procedures varies according to the severity of the case.[22] The commission files approximately 30 letters of formal notice and fewer than 20 reasoned opinions per year. When it does file, a press release is issued. For example, on December 18, 1995, the Spokesman's Service of the Commission circulated a statement informing the public that infringement procedures had been taken against Greece and the United Kingdom for failing to transpose two directives concerning medical professions into law. Ultimately, both states could be brought before the European Court of Justice.

The European Parliament's Committee on Petitions

The right to petition the European Parliament was not recorded in the initial treaties. In spite of this omission, the right to petition has always figured in the Parliament's mission and even predates the signing of the Treaty of Rome.[23] This is documented in the *Rules of Procedure of the Assembly of the European Coal and Steel Assembly of 1953.*[24] In May 1981, the Parliament formally acknowledged the right of citizens to submit petitions.[25]

There is little published on the workings of the Committee on Petitions (COP) beyond the official pamphlets. Nonetheless, the very existence of this institution offers the Parliament an unprecedented degree of proximity to the average European citizen. For this reason, M.E.P. Arie Oostlander argues that this institution is closest to the citizen.[26] The 1990 *Report Drawn Up on Behalf of the Committee on Petitions* also provides evidence of greater proximity between the Parliament and citizens. "Parliament attaches great importance to petitions, because they provide a much closer link with individual citizens than do the five-yearly elections. Petitions give Parliament a direct line to public opinion and the peoples it represents; they constitute

[21] "If the Court of Justice finds that a Member State has failed to fulfill an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice" (Rudden and Wyatt, eds., p. 86).

[22] G. M., interview by author, Brussels, March 1, 1996.

[23] *Report Drawn Up on Behalf of the Committee on Petitions,* European Parliament Session Documents 1991–92, Document A3-1222/91 (Strasbourg: European Parliament, 1990), p. 7.

[24] *European Parliament Rules of Procedure* (Strasbourg: European Parliament, 1994).

[25] According to Rule 156 of the Rules of Procedure of the current European Parliament, "any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the European Union's field of activity and which affects him, her or it directly" (ibid., p. 100).

[26] Reported by Christophe Wielemaker, assistant to Arie Oostlander, M.E.P. in Brussels interview, 19 January 1996.

both an indicator and a means of contributing the democratic running of the Community."[27]

The workings of the committee are similar to those of typical parliamentary bodies. Meetings take place in Brussels approximately 15 times a year, although a small permanent secretariat operates out of the Parliament's office in Luxembourg where files are stored. In practice, the COP, under the leadership of an appointed chairman, serves as a clearinghouse for complaints submitted by individuals. Petitions may be dismissed outright if they do not fall under the Community's competencies, but more often than not these petitions are examined. Additional information may be solicited by the chair, who then forwards it to the commission, which offers a legal analysis of the situation. The commission may then act as an intermediary on behalf of the applicant. It contacts national authorities and reports back to the Parliament, which then responds to the citizen. Ultimately, the committee aims to provide information to the citizen so that grievances may be addressed without judicial recourse.

The number of petitions submitted to the European Parliament on the theme of professional recognition is relatively low. From 1989 to 1990, only 26 petitions were submitted. From 1990 to 1994, between 11 and 17 petitions were submitted each year. Between 1994 and 1995, however, 38 petitions were recorded.[28] This information demonstrates that relatively few citizens have approached the European Parliament on this issue. The question remains: just how close is the Parliament to the individual when it comes to solving a practical problem of using a foreign diploma as a means of entry into a different labor market? Answers to this are explored in the following case studies.

Case Studies on Recognition

Case 1: Recognition Resisted—Greece Challenges EU Norms

The first case, petition 305/91, concerns a German national who sought recognition of her teaching qualifications in Greece and was denied on the basis of her nationality. The petitioner was married to a Greek and had been living in Greece since 1983. Under Greek law, her training entitled her to teach English. However, in January 1991, she was refused permission to teach on the basis that she was not a Greek national. Instead, the authorities believed that if the petitioner wanted to work in Greece, she should take out Greek nationality and renounce her German citizenship.[29]

[27] *Report Drawn Up on Behalf of the Committee on Petitions,* p. 8.

[28] *Reports of the Committee of Petitions on the Work of the Committee on Petitions during the Parliamentary Years, 1990–91, 1991–92, 1993–94, 1994–95* (documents: A3-107/90; A3-1222/91; A3-229/92; A3-147/93; A3-0158/94; A4-1051/95).

[29] European Parliament Committee on Petitions (COP), case 305/91, June 10, 1991.

The petition was first discussed on September 17, 1991, when the commission was asked to provide information. Noting the similarity between this case and petition 133/90, the commission stated that "the rules called into question are the same in both cases and have been deemed discriminating by the Commission. The application of two different procedures for allowing access to the language teaching profession means that Greek nationals who possess a 'proficiency' diploma are allowed to teach, while non-Greek nationals with the same qualifications are banned from entering the profession."[30]

The commission therefore decided to file Article 169 proceedings against the Greek state and included the new petition as evidence. Notice was served on the Greek government on June 10, 1992—exactly 1 year after petition 305/91 was filed. The European Parliament took an active interest in this case as it developed, and on July 13, 1993, M.E.P. Rosaria Bindi submitted a written question in which she recorded a litany of complaints against Greece and asked what the commission was prepared to do. There was no disagreement between the Parliament and the commission on this matter. Replying on behalf of the commission, Vanni D'Archirafi declared that the Greek government's behavior was inadmissible and that the commission would use political pressure while examining legal options to enforce conformity.

On December 14, 1993, the commission formally referred the problem to the European Court of Justice. Finally, on August 22, 1994, 18 months after the internal market was supposed to have been completed, the Greek government issued a new decree (F.E.K. 232) that abolished the condition of Greek nationality for non-Greek citizens of the EU that had ignited this case.

Case 2: The Limits of Recognition: Acquired Experience Ignored

The second case, petition 109/91, concerns a Belgian sports instructor who sought to have his diploma from Nivelles, a Belgian institution, recognized in France. He had been working as an auxiliary physical education and sports instructor in a private school in France since 1978 and was unable to secure a permanent position because his qualifications were not accepted as equivalent in France. The issue was important because it suggested that national agencies refused to recognize experience acquired in one state and, therefore, undermined the spirit of "mutual recognition."

The facts of the case were disclosed on June 27–28, 1991, when it was noted that the petitioner received his diploma after a training period of 2 years as opposed to 3 years. His case did not therefore fall under Directive 89/48/EEC. However, the commission remarked that EC law could be applied and referred to Articles 5, 48, and 59 of the EEC Treaty and to

[30] COP, Commission reply, March 2, 1992.

two European Court rulings. *UNECTEF v. Heylens* (C-222/86) (ECR, 1987) and *Ministerium für Justiz, Bundes und Europaangelegenheiten v. Vlassopoulu* (C-340/89).

The commission recalled that member states are required, even in the absence of a directive, to consider the extent to which knowledge and qualifications certified by the original state correspond to those required under the rules of the host country. The commission argued that since the petitioner had worked in France since 1978, the national authorities should assess whether the knowledge acquired may be counted for the purpose of establishing qualifications. It therefore advised the petitioner to submit applications to the French authorities on the basis of Directive 89/48 and the Heylens and Vlassopoulu cases.

Case 3: National Supremacy: Teaching Diplomas and Public Competitions

The following case concerns the division of authority within the Community. While EC law takes precedence over national law, there is the possibility of conflict between the community and members given the fact that national agencies may define the criteria for certification in their own countries. The possibility for conflict was recorded in petition 500/91 regarding a Belgian graduate who sought recognition of her teaching diplomas to work in France. The petitioner taught French at a private secondary school in northern France, but the Lille education authorities refused to recognize her Belgian diploma as being "three steps above the Baccalauréat."[31]

In its reply, the commission referred to Directive 89/48/EEC and noted its provisions. According to the commission, the directive was indeed applicable; however, there were some caveats. First, the French authorities were within their right to ask applicants to take part in the competition required under French regulations since this was a competitive recruitment examination. Second, France had recently adopted provisions allowing French holders of a diploma or other qualification "awarded on completion of a course of post-secondary study of at least three years' duration in another EC Member-State" to take part in such competitive examinations. The commission therefore concluded that the petitioner could take a competitive entrance examination but that France was within its rights to recognize or not recognize other qualifications on the basis of knowledge acquired either through formal study or practical experience.

A similar case was presented by petitioner 90/93, a German national living in Verdun, where she worked as a contract teacher. The petitioner had obtained a diploma in languages and literature in Germany that qualifed her to teach German and English at the secondary school level. In France in 1992, she sought to reenter the teaching profession but could only obtain a

[31] COP, case 500/91, December 16–17, 1991.

position as a "first level contract teacher." This category put the petitioner at a financial disadvantage compared to staff with French qualifications.

The petition that opened before the European Parliament on April 27–28, 1993, received the following opinion from the commission: "Teachers' pay is a matter for the Member States. The fact that contract teachers are paid less than staff teachers does not constitute discrimination based on the fact that qualifications were obtained abroad, since contract teachers with French qualifications were also paid less than staff teachers. Consequently, the petitioner is in the same position as French nationals working as auxiliary teachers. To obtain higher pay and be appointed as a staff teacher in the French state educational system, applicants must pass a competitive recruitment examination followed by a period of practical training."[32] In effect, the commission threw the case back and reminded the petitioner that Directive 89/48/EEC did not prevent France from requiring applicants to take part in a competitive examination, provided it was done in a nondiscriminatory manner. In the end, both cases served to uphold states' claims to determine national standards and recognition on their own terms.

Case 4: Recognition without Equivalence: German Educational Standards

Petition 86/91 records the problem of securing recognition without equivalence. It draws attention to the fact that standards are higher in some countries than in others. A French national who was certified to teach German as a foreign language in French lycées sought to work in Germany as a secondary school teacher and was initially rebuffed by the Ministry of Culture in Nordrhein-Westfalen on the basis that her qualifications were not equivalent to those required by the German state.

The petition was discussed on June 27, 1991. Three months later, the commission replied and informed the Parliament of the recent Directive 89/48/EEC. It noted that the unfavorable decision was made by the local German authorities before January 21, 1991, when the directive came into force.

One year later, the case was still open. According to a letter dated May 13, 1992, the commission was seeking clarification from the German authorities why this was so. On June 2, 1992, the commission provided the Parliament with a supplementary reply: "According to information available to the Commission . . . this rejection was based on the fact that in North Rhine Westphalia qualifications are required in two subjects to be able to teach in a secondary school and the petitioner is qualified only in one."[33]

The petitioner's subsequent appeal, on the basis of Directive 89/48/EEC, was then rejected in October 1992. Yet, this was not the end of what appeared to be a clear case. In January 1993, another member of Parliament,

[32] COP, reply sent, December 13, 1993.
[33] COP, reply, July 8, 1991.

Mr. Rogalla, took up the case and asked the commission to adopt a position on the problem. The commission replied on February 16, 1993, arguing that "Article 3 of Directive 89/48 lays down the principle of recognition of a diploma as it stands, once the equivalence of the profession is established—which is so. The lack of a second qualification might amount to a material difference in the training requirements of North Rhine Westphalia and the training requirements of the petitioner which must be offset by compensation requirements laid down by Article 4 of the Directive either by aptitude tests or an adaptation period."[34]

In a letter sent on September 28, 1993, Mr. Rogalla forwarded the judgment of the German court that heard the petitioner's case at the local level. The court confirmed the authorities' refusal and recorded that member states were free to define the minimum level of qualifications required for access to, and the practice of, a profession but that they are required to take into account qualifications obtained in other member states. The commission accepted this ruling and agreed that Germany was free to require a fairly high standard of training provided that it was applied in a nondiscriminatory manner. On June 6, 1994, Rosaria Bindi, M.E.P. and chair of the Committee on Petitions, concluded that there was no more that could be done for the petitioner, and the petition was finally closed.

Case 5: Gaps in EC Law

Cases 131/88 and 521/91 concern a French nurse who sought to work in Belgium and who encountered difficulties on the basis that her qualifications were considered obsolete and inferior. The Belgian nurse, on whose behalf a petition was filed in 1988, complained of discrimination and argued that she was carrying out the same tasks as a Belgian A1 grade nurse but was only being paid as an assistant nurse. The case pointed to clear gaps in EC law that were difficult to resolve.

At first, the case was heard and closed on February 27–28, 1989, when the committee argued that a specific directive (77/452/EEC) that covered nurses did not apply. The petition was therefore forwarded to the *Commission on Legal Affairs and Citizens' Rights.* However, the petitioner reapplied, and her case was reopened on December 16–17, 1991.

On July 22, 1991, the commission replied to the European Parliament and noted that the subject had received a 2-year diploma as a state nurse and a 1-year training certificate as a pediatric nurse. Under EC law, Directives 77/452/EEC and 77/453/EEC did not apply because the subject had received only 2 years of training, and her 1-year certificate in pediatric nursing was not related to the work of an *infirmière graduée hospitalière,* which was what she sought. The commission underlined this point by reminding the European

[34] COP, reply, February 16, 1993.

Parliament that the new general Directive 89/48/EEC contained no provision on acquired rights along the lines of Article 4 of Directive 77/452/EEC. The only recommendation it could make was to examine the case law of the European Court of Justice.[35]

Case 6: Bureaucratic Loopholes

Case 6 underlines the bureaucratic difficulties of securing recognition. "Elaine," an Irish national who sought to gain recognition of her Irish and Canadian diplomas to work in France as a speech therapist, spent almost 4 years negotiating with authorities in France, Ireland, and in the European institutions.

On May 18, 1992, the French authorities informed her that she would need to sit for an aptitude test or undergo an internship in five areas.[36] Elaine was then asked to choose an internship site from one of four centers in Alsace, Orleans, Besançon, and Marseilles organized by the local health authorities, known as the DRASS (Direction Régionales des Affaires Sanitaires et Sociales). All of the sites were a considerable distance from Paris and Elaine's current place of work, and given that she had sole custody of two small children, it would have been impossible for her to carry out her internship so far away.

Based on the advice of Irish M.E.P. Mary Banotti, Elaine appealed to the European Parliament's Committee on Petitions. The Parliament, having sought clarification from the commission, responded that there were no grounds to consider this a matter of discrimination or a violation of EC law. According to the commission, until November 1992, there were only 90 requests for recognition made by speech therapists in France. Of these requests, 12 percent were incomplete, and 85 percent received authorization enabling them to practice immediately. Only 3 percent received a decision requiring further training. In total, only three persons were required to undergo an adaptation period or test.[37] The commission therefore concluded that there was little justification for more training centers and that the French authorities had returned a reasonable answer. Unhappy with this response, Elaine continued to apply pressure through the European Parliament with the hope of convincing the DRASS to make an exception to her case.

Over 3 years, the DRASS, European Parliament, and European Commission all cooperated to resolve Elaine's dilemma. Given so few applicants in

[35] COP, reply, July 22, 1992.

[36] The five areas were: laryngectomy; reeducation of the hard-of-hearing child; detection of speech and language problems in the multihandicapped child; remediation of speech and language problems related to mental retardation, visual handicap, hearing deficiency, emotional disturbance, and physical handicap; and French education.

[37] See n. 35 above.

the past and the fact that Elaine was the first person to file a request asking to be admitted to retrain at a different institution, this otherwise straightforward issue was complicated by layers of national bureaucracy. Even though the French Ministry of Health and Social Services had authorized the regional DRASS to admit Elaine to a local institution, the Inspecteur-Médecin in charge of the DRASS Île de France had not been informed beforehand.[38] There was no one in the local DRASS who knew of the different services and who should be addressed. The lack of communication between the national and local French authorities was the major reason why Elaine's case dragged on as long as it did. During this time, the Committee on Petitions moved twice to close the case. Again, this was due to a lack of communication between the institutions and actors involved. After 3 years, Elaine was finally permitted to retrain at La Salpetrière, part of the University of Paris near her home, and the case was closed.

Analysis: Four Problems

These case studies offer an insight into the negotiations over recognition and the practical difficulties European citizens have encountered. One can discern four key problems from the above discussion.

First, there is the issue of deliberate noncompliance that is highlighted in the case of Greece. Although the above discussion records uniform disapproval among the European institutions on Greece's use of nationality as a criterion for admission to key professions, the fact that the commission filed Article 169 proceedings and ultimately referred the case to the European Court of Justice undermines the principle of mutual recognition that is central to the original EEC plan.

Second, the fact that the Parliament and commission must continually remind member states of EC legal precedents, such as directives and European Court of Justice case law, also raises questions over the application of mutual recognition. This was illustrated in the discussion of case 2 where the commission reminded the member states that, even in the absence of a directive, they should take acquired experience into consideration when evaluating foreign nationals' qualifications. While recognition may be achieved, as it was in the case of the French teacher in Germany, it is important to underline that there is still a wide gulf between recognition and the provision of professional equivalence. Indeed, even securing some acknowledgment that an individual's preparation may be recognized is a significant feat and one that distinguishes the case of the language teacher from the Belgian sports instructor who had worked in his profession for over 12 years. In this case,

[38] Dr. Jacqueline Lemeunier, interview by author, Paris, March 22, 1996.

acceptance of the principle of mutual recognition, and the fact that acquired knowledge should also be considered, had yet to evolve into a customary practice.

Third, cases 3 and 4 underline the importance of national supremacy over EC laws regarding recognition. While the introduction of directives such as 89/48 indicate a willingness to cooperate with the aim of mutually recognizing professional diplomas, the Committee on Petitions and the commission both acknowledge that member states reserve the right to determine minimum national standards and administer entrance examinations according to their own traditions. Indeed, Directive 89/48/EEC explicitly records the possibility for exclusion and additional requirements stipulated by national authorities. As the above studies demonstrate, teachers seeking to work in different states may still be affected by these exclusions since member states ultimately may determine minimum standards. This fact was also confirmed in the *Article 11 Reports* as discussed in the previous section.

Fourth, there are gaps in administrative practice and EC law that complicate the successful application of mutual recognition. For administrators who must now consider foreign qualifications and their relevance to their own national systems, there is still much uncharted territory to cover. For the French nurse whose obsolete diploma could find no equivalence in Belgium, there was little the European Parliament could do. In the case of Elaine, however, the constant pushing by the Committee on Petitions, and specifically M.E.P. Mary Banotti sustained her campaign. While Elaine was eventually granted the right to retrain in Paris, her success was due to extensive cooperation between the European Parliament, commission, and French authorities who agreed to solve this exceptional case.

Directive 89/48: A Marginal Success

From the commission's data, it would appear that the popular directive 89/48/EEC is actually helping relatively few people. Moreover, we note that the failure to collect a comprehensive sample of data on 89/48/EEC from the member states is itself a reason for criticism. The problems identified by the commission underline the possibility of noncompliance. Some states simply dragged their feet and refused to transpose the directive into law in a speedy fashion.

Where this directive has entered into force and the legal problem has been solved, there is still an administrative question: is it being used to help those seeking work in another member state? The case of Elaine demonstrates that securing recognition in practice is an uninviting process. If the directive is having little practical effect in terms of mobilizing many people and if it can only be applied through time-consuming lobbying of bureau-

cratic institutions, we should question why the commission has reminded the Committee on Petitions of its value on so many occasions.

The essential problem is that Directive 89/48/EEC, and indeed the whole system of directives, leaves implementation in the hands of member states. In recent years, the commission has relied on the principles of mutual trust and subsidiarity—as statements of good will—to promote cooperation and facilitate recognition. However, as the figures from table 1 bear out, few people are benefiting from this system. Although the European Parliament may intervene on behalf of citizens, and in the process invite the commission's participation, the net effect has been to preserve the status quo except in a handful of cases. For these few individuals, the European Parliament and the commission have indeed served a booster function. Overall, however, it would be fair to say that neither the institutions nor the legislation has created a "rapid response" to expectations of EU nationals who wish to pursue their profession in another member state, as the 1988 directive intended.

Integration: Between Theory and Practice

The cases discussed above reveal that the ideal of professional recognition and the practice of accepting training and experience gained in another member state are quite distinct. European Community law in itself does not ensure that one's professional qualifications will be admitted and that one's basic freedoms of movement and settlement will be satisfied. As the commission's report to the Parliament and the council recalls, Article 52 of the EEC Treaty is interpreted to require states to "examine to what extent the knowledge of qualifications obtained by the person concerned in his country of origin correspond to those required by the rules of the host State."[39] States have considerable room to maneuver, but the fact that individual citizens *can* secure recognition—albeit through a lengthy and complicated process—is evidence that mutual trust is not a fiction and that integration is possible. It is important to note that those whose diplomas were recognized, like Elaine, often benefited more from personal advocacy than from the legal merits of their cases. Indeed, Elaine's case reveals not only that *engrenage* is not simply a theoretical concept (i.e., high-level communication across institutions may produce integrationist gains) but also that interinstitutional cooperation is costly, time-consuming, and very complex.

Conclusion: On Institutions and Leaders in the Integration Process

The theoretical literature informing this study includes the claims that institutions shape politics, are bound by historical customs, and yet may

[39] *Application Report,* p. 4.

achieve ends that sometimes elude traditional actors, including states. This article seeks to evaluate the role of two institutions that have been entrusted with the goal of facilitating the mutual recognition of processional qualifications: the European Commission and the European Parliament's Committee on Petitions. As this article records, citizens can secure recognition through both these routes by constantly invoking the legitimacy of EC law and reminding member states of the existence of European legislation.

The most common means of invoking EC law is through the application of EC sectoral and general directives, including EEC 89/48. This directive is distinct from previous types of legislation because it paved the way for the institutionalization of the principle of mutual trust that has proved critical to the success of applicants seeking recognition of their professional qualifications. Although the data on Directive 89/48 are incomplete, making it difficult to generalize too extensively, states are recognizing the educational and professional qualifications of a small pool of EU citizens. By relying on this type of directive, the European Commission has therefore been able to shape politics and secure results that have previously been denied to member states and other actors. Indeed, Unesco has been appealing to its members to apply the principle of "mutual recognition" for several decades now but to no avail. In the case of the European Union, however, it is the combination of having institutions capable of enforcing EC law, the legitimacy of which is accepted by member states, and the monitoring of this law by a supranational commission and Parliament that makes the application of mutual trust and the recognition of professional qualifications possible.

The process according to which the commission and the Parliament's Committee on Petitions have been able to promote mutual recognition have broader implications for theorists of integration. In the introduction of this article, I posed the question, can cooperative efforts by national governments actually lead to integration? My study sought to answer the question by uncovering evidence of spillover and *engrenage* and evaluating federalist claims that the application of supranational law may serve as a blueprint for European integration.

Spillover is identified in the creation of directives and institutions, such as the Committee on Petitions. The very introduction of educational and training issues into the EC framework, which were ignored in the Rome Treaty, is itself evidence of spillover. As noted in the first part of this article, the motivation to address the issue of mutual recognition emerged from the economic objective of creating a highly skilled labor force that could move freely in an integrated labor market. It was the interpretation of the EEC Treaty, applied in the creation of directives regarding professional mobility, that made the institutionalization of this practice possible. The history of EEC 89/48, the establishment of a Committee on Petitions, and the extension of the commission's powers of oversight thus confirm the relevance of

Haas's model of functional integration and the utility of spillover as an analytical device for detecting integration.

The concept of *engrenage,* which assumes that over the course of high-level communication, officials in different member states will tend to work through institutions toward common European objectives, is also borne out in this study. Evidence of *engrenage* is found in the degree to which officials in national agencies, the European Parliament, and the Euopean Commission have been able to agree on the few cases for which recognition was granted. The personal advocacy efforts that aided Elaine in her battle to have her qualifications recognized reveal that *engrenage* is indeed a useful concept. Applying the logic of Lindberg's analysis, it is important to record that institutions such as the Committee on Petitions were able to mediate successfully between state ministries, the commission, and the local institutions in the Paris region to solve Elaine's dilemma, which was essentially a practical problem for one individual. In contrast to the pure federalist explanation of integration, this article documents that it is not the normalization of EC legislation per se but rather the constant examination and reinforcement of Community law by institutions and political leaders that can produce a "booster effect." As Mary Banotti, the M.E.P. who advocated so strongly on behalf of Elaine, stated, those who persevered in the quest for recognition succeeded. Although *engrenage* is a complicated and time-consuming approach to integration, it can indeed work.

This article contributes to the literature on European integration and institutional theory in two key ways. First, it affirms Robert Putnam's belief regarding the instrumental value of institutional vehicles for political change. Second, by applying the concepts of spillover and *engrenage* to the inner workings of the European Commission and European Parliament's Committee on Petitions, it challenges the conventional wisdom that integration is an end product rather than a process, and that is borne out in the competition between national and supranational agencies. This article concludes that international cooperation, when mediated by dedicated institutions and politicians, can promote integration following Lindberg's model. This study of professional recognition and the institutional processes by which it is accorded demonstrates that mutual trust can foster greater cooperation and provide the seeds for supranational integration.