

## WORKSHOP 3 PRESENTATION

*The Decision “Germain Dondelinger” - Decision of the Benelux Committee of Ministers on mutual automatic generic recognition of the level of higher education degrees M(2015)3 of 18 May 2015<sup>1</sup>.*

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## SYNTHESIS

On May 18, 2015 the five Ministers in charge of Higher Education in Belgium, the Netherlands and Luxembourg agreed on a Benelux Decision on the mutual automatic generic recognition of higher education degrees in the Benelux. Its full name pays tribute to the personal contribution to its realisation by the late First Governmental Counsellor, Germain Dondelinger, who was the representative of Luxembourg in the initial negotiations. The Decision guarantees the legal right to each citizen to automatic degree recognition of any officially recognised Bachelor or Master degree obtained in the three countries of Benelux. Such degrees will be immediately recognized as of equivalent – Bachelor or Master - level, without mediation of any recognition procedure in the entire Benelux territory. This new legal instrument builds on earlier partial bilateral agreements that have now been expanded to a collective arrangement for the Benelux region as a whole. It can therefore be considered as the formal expression of the mutual trust of the Benelux authorities in each other's higher education systems and, in particular, in

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<sup>1</sup> *BESCHIKKING van het Benelux Comité van Ministers betreffende de automatische wederzijdse generieke niveauerkenning van diploma's hoger Onderwijs/DÉCISION du Comité des Ministres Benelux relative à la reconnaissance mutuelle automatique générique de niveau des diplômes de l'enseignement supérieur. M(2015)3, Bulletin Benelux Publicatieblad 2015/2, pp. 5-15.*

the quality assurance mechanisms underpinning them. Despite the limitation to *generic* and *academic* recognition, it remains the first concrete regional achievement, both in the European Union and the entire European Higher Education Area, to the common goal of automatic international recognition of degrees and qualifications. For the Benelux countries this Decision is, however, only a first step towards a genuine Benelux Higher Education Area, for which further obstacles will have to be cleared in the near future.

## 1. Benelux: an introduction

The term Benelux, abbreviation for Belgium, Netherlands and Luxembourg, is a well-established geographical term referring to a particular region in Western Europe. Due to reasons of vicinity and shared history a variety of more or less structured policy cooperation modalities have always existed between the three relatively small countries.

This type of *ad hoc* cooperation is, however, to be clearly distinguished from the Treaty-based Benelux cooperation in the framework of the Benelux Union as an international organisation.

In the latter context the juridical term “Benelux” referred initially to a customs agreement concluded in 1944 and evolving towards a general economic cooperation framework from 1958 onwards. Since 2010 the Benelux changed its name in “Benelux Union”, reflecting the expansion of its competences from economic cooperation to matters of sustainable development, justice and interior affairs. Its mission statement – that explicitly refers to the Benelux as testing group for European integration - clearly demonstrates the ambition of the Benelux countries to take an initiating role in furthering and deepening European cooperation.

## 2. The Benelux Higher Education Landscape

It has to be observed that the Benelux region shows a relatively scattered landscape in terms of higher education with its five separate higher education systems.

The federalisation of Belgium has entailed full devolution of the competence of education to each of the three (linguistic) Communities of Belgium, which explains the existence of three separate (higher) education systems in that country since 1989. Moreover, the differences of size between the systems across the Benelux region are significant. The Netherlands, but also the Flemish and French Community of Belgium, have relatively large higher education systems with a wide variety of universities and university colleges, which stands in sharp contrast with Luxembourg and the German-speaking Community of Belgium at the other side of the spectrum, counting not more than a handful of higher education institutions.

The existence of separate higher education systems across the Benelux region did not prevent automatic recognition to be already firmly rooted in existing bilateral agreements, legislative provisions and other established practices. A fine example is the (amended) *Treaty between the Kingdom of the Netherlands and the Flemish Community of Belgium regarding the accreditation of study programmes in Dutch and Flemish higher education*<sup>2</sup>, on the basis of which, since April 1, 2014, holders of accredited Dutch or Flemish Bachelor or Master qualifications are considered to hold an equivalent respectively Flemish or Dutch accredited degree. Moreover, the Luxembourg Government grants semi-automatic recognition to higher education qualifications which are recognised by the EU country of origin. In Belgium automatic recognition of the higher education degrees across the three Communities is realised by means of the so-called

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<sup>2</sup> *Verdrag tussen het Koninkrijk der Nederlanden en de Vlaamse Gemeenschap van België inzake de accreditatie van opleidingen binnen het Nederlandse en het Vlaamse hoger onderwijs*, 3 September 2003 (Belgisch Staatsblad, 12.11.2004; Nederlands Tractatenblad, 2003, nr. 167) as amended by the *Protocol of 16 January 2013* and put in force on 1 April 2014 (Belgisch Staatsblad, 18.03.2014; Nederlands Tractatenblad, 2013 nr. 35)

“omnivalence” of degrees and qualifications guaranteed by the Belgian Constitution.

This new legal instrument could therefore build on earlier partial bilateral agreements and expanded them to a collective arrangement for the Benelux region as a whole. It can therefore be considered as the formal expression of the mutual trust of the Benelux authorities in each other’s higher education systems and, in particular, in the quality assurance mechanisms underpinning them.

Moreover, the Decision is an important step towards administrative simplification and more efficient use of resources. The abolishment of expensive and sometimes lengthy recognition procedures are indeed expected to benefit both individual graduates as well as public authorities in charge of recognition.

Finally, the Decision can be seen as a clear expression of the ambition of the Benelux Ministers in charge of Education to play a pioneering role in contributing to the common European goal of automatic recognition of higher education degrees, as put forward by European Ministers in charge of higher education at their meeting in Bucharest in April 2012 in the context of the Bologna Process<sup>3</sup>.

### 3. Scope of the Decision

#### 3.1. Benelux Decision

<sup>3</sup> EHEA Ministerial Conference, *Making the Most of Our Potential: Consolidating the European Higher Area, Bucharest*, 27 April 2012, p. 5: “support the work of a pathfinder group of countries exploring ways to achieve the automatic academic recognition of comparable degrees”.

[http://www.ehea.info/uploads/\(1\)/bucharest%20communique%202012\(1\).pdf](http://www.ehea.info/uploads/(1)/bucharest%20communique%202012(1).pdf)

*The Decision "Germain Dondelinger"* is the first Benelux *Decision* in the field of education.

The Committee of Benelux Ministers has several legal instruments at its disposal: recommendations, decisions, directives and agreements. For the automatic recognition of higher education degrees they took the option of a Decision. Benelux Decisions give effect to the provisions of the Benelux Treaty, whereby the terms of the Treaty must be observed. They are binding for the Member States. In order to be binding for the citizens of the three countries Benelux Decisions should be implemented in national regulations.

According to the subsidiarity principle education-related matters are expected to be subject to Benelux Recommendations at the first place. Nevertheless, for the realisation of automatic recognition of higher education qualifications across the Benelux countries, the Ministers in charge of Higher Education, without any hesitation, opted for a Benelux Decision. This type of legal instrument was considered to be the only way to guarantee the right to all citizens to automatic recognition of their higher education degrees. In addition it provided the practical advantage of avoiding a heavy Parliamentary procedure, typically required for Benelux Agreements.

### 3.2. Reference to the late CDPPE Chair

In the political negotiations leading to the adoption of the Benelux Decision, the late First Counsellor to the Luxembourg Government, Germain Dondelinger (1953-2015) played a pivotal role. The Benelux partners have therefore expressed their acknowledgement by attaching his name to the Decision as a collegial tribute to his personal and irreplaceable contribution to the citizens of the Benelux region as well as to his commitment to the European Higher Education Area.

### 3.3. Content of the Decision

The Decision guarantees the legal right of each citizen to automatic degree recognition of any officially recognised Bachelor or Master degree obtained in the three countries of Benelux. Such degrees will be immediately recognised as of equivalent – Bachelor or Master - level, without mediation of any recognition procedure in the entire Benelux territory.

The scope can be further elucidated under the following angles:

#### 3.3.1. level of degrees

The Decision stipulates automatic recognition of Bachelor and Master degrees only. Doctoral (Ph.D.) degrees and short-cycle (associate) degrees are not included in the scope. Only officially recognised and quality assured degrees pertaining to one of the education systems of the Benelux countries can be automatically recognised across the whole region.

#### 3.3.2. automatic vs procedural recognition

Automatism of recognition is a legal right for the citizen. This implies that no natural or legal person can impose any procedure upon a holder who wishes to make use of the degrees to which the Decision is applicable.

#### 3.3.3. generic vs specific recognition

The automatic recognition is only guaranteed as generic recognition, i.e. regarding the level of the degree. Nevertheless, it is expected that the recognition of the general level of the degree will make a stronger case for the specific recognition, i.e. in a particular study field.

#### 3.3.4. academic vs professional recognition

The Decision is confined to academic recognition of degrees, i.e. seen from the angle of their value as *learning* qualification. It is therefore not targeting the EU regulated aspects of access to professions under the EU Directive on professional recognition<sup>4</sup>. Nevertheless the *Recommendation of the Benelux Committee of Ministers on cross-border labour mobility of 11 December 2014*<sup>5</sup> voiced the expectation that the - at that time forthcoming - Decision on the mutual automatic generic recognition of the level of higher education degrees would enhance the professional recognition and hence the mobility of workers across the Benelux countries.

### 4. Way forward to a genuine Benelux Higher Education Area

The signature of the Benelux Decision on mutual automatic generic recognition of the level of higher education degrees has been seen by the international community as a good practice for the further integration of the European Higher Education Area. Nevertheless in the context of the Benelux region itself, there is a clear awareness that there is a way to go towards the creation of a genuine “Benelux Higher Education Area”.

#### 4.1. Implementation in national legislation

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<sup>4</sup> Directive 2005/36/EG as amended by Directive 2013/55/EU.

<sup>5</sup> Benelux Recommendation M(2014)17: <http://www.benelux.int/files/9714/1829/6650/M201417-FR.pdf> and <http://www.benelux.int/files/8714/1829/6631/M201417-NL.pdf>

First of all, it should be observed that a Benelux Decision is not self-executing. It has to be implemented in the national legislation of all Benelux countries. Although the national regulations can be prepared through light-weight procedures, such as Governmental Decisions, the process of national implementations will probably only be concluded by mid-2016.

#### 4.2. Widening and deepening

The success of the Decision will furthermore depend on the degree in which its scope can be widened and its impact deepened. An expansion of the automatic recognition to the level of short-cycle (associate) degrees and the doctoral (Ph.D.) degrees, seems to be the first logical next step. Tackling the issue of specific recognition, i.e. recognition of qualifications in a specific study field, is another, which could possibly be addressed via the intermediate stage of pilot projects for disciplines which show already a high degree of European convergence.

#### 4.3. transitivity of recognition

But it in the field of *transitivity of recognition* there is still a long way to go, although there are already some good practice at bilateral level, such as the cooperation between the German-speaking Community with the larger Belgian Communities for the screening of the recognition dossiers and in the field of quality assurance, the fact that the Netherlands and the Flemish Community of Belgium share the same accreditation organisation.

The cooperation between the different quality assurance and recognition bodies– should nevertheless be reinforced in order to establish a practice of transitivity of recognition decisions across the Benelux decisions about qualifications from countries outside the Benelux. This would imply that a



(procedural) recognition decision taken in one Benelux country would be automatically valid in the rest of the Benelux.

#### 4.4. Continuing relevance of the Lisbon Recognition Convention

It goes without saying that in the short and middle term, procedural recognition practices will continue to prevail in cases where specific recognition is implied. Under this perspective the Benelux Decision does not replace but rather complements the Lisbon Recognition Convention, of which the correct application is the only means to guarantee the fairness of the procedure.

## CONCLUSION

The new legal instrument is the first regional achievement to the common European goal of automatic recognition of qualifications in higher education, both for the European Union as for the European Higher Education Area as a whole. But most of all its innovative strength resides in the fact that it established a legal right to the citizens, and this not in an autocratic way but with strong support of the academic community.