TRADE IN SERVICES NEGOTIATIONS

BACKGROUND PAPER

MUTUAL RECOGNITION AGREEMENTS FOR PROFESSIONAL SERVICES

1. **Background**

The Committee of Minister of Trade (CMT) at their 30th Meeting held on 23 July 2018, in Pretoria, South Africa directed the Secretariat to initiate work on the mutual recognition of qualifications and other relevant matters in priority sectors for discussion in the TNF-Services in a manner consistent with the regional qualifications framework (see decision 3(ii)(a)). The CMT decision is in line with Article 7(1) of the SADC Protocol on Trade in Services (PTIS), which requires "TNF-Services to establish necessary steps for the negotiation of an agreement providing for the *mutual recognition of requirements, qualifications, licences and other regulations*, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by State Parties for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services". Also, Article 7(2) of PTIS states that in the development of such an agreement, and any other possible arrangements or initiatives, account shall be taken of relevant processes and mechanisms under other SADC Protocols.

Taking into account the CMT decision, this paper has been prepared by the Secretariat to guide TNF-Services in the development of Mutual Recognition Agreements (MRAs) for professional services in SADC. It provides an analysis SADC Protocols relating mutual recognition agreements and the progress thereof, draws lessons from international experiences, and recommends steps to be taken towards the negotiations for SADC MRAs in the context of Article 7 of PTIS.

2. **SADC Protocols on mutual recognition of qualifications**

There are two SADC Protocols, i.e. PTIS and the Protocol on Education and Training (SPET), that provide for mutual recognition of qualifications in the SADC region.

The objective of SPET is to enhance access to education, educational standards and co-operation with regards to qualifications and education; and ultimately achieve equivalent, harmonised, and standardised education and training systems in the region. In Article 7(3) of SPET Member States agree that "in order to prevent costly

repetition of courses taken at universities within the region and to contribute towards the *mutual recognition of qualifications* throughout the region, universities shall be encouraged to devise mechanisms to facilitate credit transfer from one university to another within the region".

PTIS promotes regional market integration through progressive liberalisation of trade in all commercial services, *inter alia* professional services, on the basis of equity, balance and mutual benefit with the objective of achieving the elimination of substantially all discrimination between state parties, and a liberal trading framework. As mentioned, PTIS provide for *mutual recognition of requirements, qualifications, licences and other regulations,* for authorising, licensing and/or certifying service suppliers and, in particular, professional services.

Although, both PTIS and SPET provide for mutual recognition of qualifications, the objectives are different. MRAs under PTIS aim at facilitating the authorization, licensing or certifying professional practices based on "qualifications" obtained in another country while SPET aims at facilitating academic credit transfer in order to facilitate mobility of students and academic staff in the region. It is important to note that credit transfer itself does not equate to the mutual recognition of qualifications, but it encourages progress towards portability and comparability of academic qualifications. Recalling that Article 7(2) of PTIS provides that any such agreements shall be in conformity with Article VII of the General Agreement on Trade in Services (GATS) which provides for recognition of *education* or experience obtained, requirements met, or licences or certifications granted in another country, SPET MRAs would partly support the achievement of the recognition objectives of PTIS.

3. **SADC qualification framework**

The SADC qualification framework (SADC QF) was developed in the context of Article 7 of SPET and adopted in 2011. It sets minimum standards for quality assurance and to facilitate the recognition of qualifications in the SADC region. It is comprehensive providing ten-level descriptors for general education; technical and vocational education and training; and higher education, and out-of-school or non-formal education, including various modes of learning. SADC QF provides a mechanism for comparability and facilitate mutual recognition of *learning qualifications* in all Member States. It will help SADC citizens to navigate within and between complex national systems of education and training and thus support their lifelong learning. The development of the SADC QF took place alongside the simultaneous development of national qualification frameworks (NQFs) and where NQFs existed Member States are expected to align to the SADC QF.

Since the adoption of the SADC QF, progress has been relatively slow due to limited human and financial support. However, some progress has been made in implementation as follows: a pilot project involving self-assessment in six countries to the alignment of NQF to SADC QF; and establishment of a regional Qualifications Verification Network in order to ensure credible and trustworthy information sharing

among qualifications authorities. Ongoing implementation activities include quality assurances assessments, and development of guidelines for recognition of prior learning, articulation and credit accumulation and transfers.

4.   Understanding MRAs for professional services

4.1.   Meaning, rationale and benefits

4.1.1. MRAs are contractual arrangements between two or more countries' standards agencies or professional organizations, such as licensing bodies, in which they agree to recognise the equivalence of another country's conformity assessment procedures or technical regulations and in the case of natural persons, their academic or professional qualifications. The objective of MRAs is to ensure that professional licences and certificates given by one jurisdiction are considered to be valid in the other jurisdiction and thus provide a proof of professional qualifications and experience in the particular field, in line with the requirements of the issuing jurisdiction. They establish the conditions of equivalence where a body of foreign rules and requirements, including the procedures for verifying compliance, will be recognised by the parties to the agreement, for the purpose of assuring market regulators and consumers in the importing or host country that imported products or service suppliers from another MRA signatory are safe or meet accepted minimum expectations in terms of integrity and quality assurance.

4.1.2. Professional regulatory bodies have the role of authorising, certify or licensing professional practice after academic and professional background verification, to establish competency, based on set criteria and procedures. Often, the procedures and criteria for regulatory professional conformity may restrict market entry or discriminate against foreign professionals and are often costly to fulfil. Professional and standard regulatory bodies have opted to sign mutual recognition agreements (MRAs) to provide for mutual acceptance of equivalence of each other's conformity assessment procedures or technical regulations and/ or professional qualifications standards. Therefore, MRAs are particularly necessary in facilitating movement of professionals by reducing market access. MRAs serve as trade facilitation instruments for recognising professional qualifications or standards in supporting skills mobility in line with market liberalisation commitments, by ensuring that the process of authorizing foreign qualified professionals to practise in another market are not duplicated in the single market. Most MRAs are between neighbouring countries or follow former colonial ties implying linguistic and possibly educational similarities and largely reflect, in more general terms, the intensity of trade relations between parties.

4.1.3. MRAs for professional services promote cooperation between the professional regulatory authorities and competition among professionals due to increased market access and thus wider consumer choice based on quality and affordable services. They provide legal certainty for recognition of foreign qualifications, reduce cost and quicker processing of applications for membership registration with the professional

body or association, and licensing in the receiving country. It also enhances transparency and achievement of harmonized standards or equivalency recognition qualifications by stating whether there is a requirement or no requirement for re-qualification and thus guarantees either automatic or conditional recognition if eligibility criteria are met.

4.2. Recognition process

4.2.1. The process of verifying foreign qualifications involves a comparison of foreign academic certificates with the value and content of corresponding domestic qualifications for the purpose of appraising holder's competency in particular profession. It may result in declaration of equivalence of a qualification, implying acceptance that the process (training and practical experience) to obtain such foreign qualification is equivalent to that required to obtain the host country's qualification, and to the qualifications corresponding to a certain area or field and thus *automatic recognition*. Others could be based on the principle of equivalence, but complemented with some mutually agreed standards for education and experience requirements as minimal requirements i.e. *conditional recognition*. MRAs may allow members of a party to take some tests e.g. examination and/or panel interview or prepare a technical report or supervised work to achieve reciprocal qualifications for admission to a training institution or professional body.

4.2.2. **Authorizing profession services** is the process of establishing whether a person has the required skills and competence for public practice in a particular profession. This may involve an assessment of the training course, in which case one must be at least a holder of an appropriate level of education and for some professions, in addition to formal training, it is necessary to have completed a period of supervised practice and to pass a professional test/interview and/or fulfil other industrial and regulatory requirements. Figure 1 illustrates the verification process for authorising professional practice. The process of certifying and or licensing professionals involves checking of the academic background for knowledge assessment and skills through professional experience attained through supervised practice and whether a foreign professional had been recognised i.e. licenced or certified to practice in the sending country and must have knowledge of domestic market. Also, in professions such as legal services, public practice may be through a legal entity and not individual.

Figure 1:Verification of qualification for authorizing professional practice
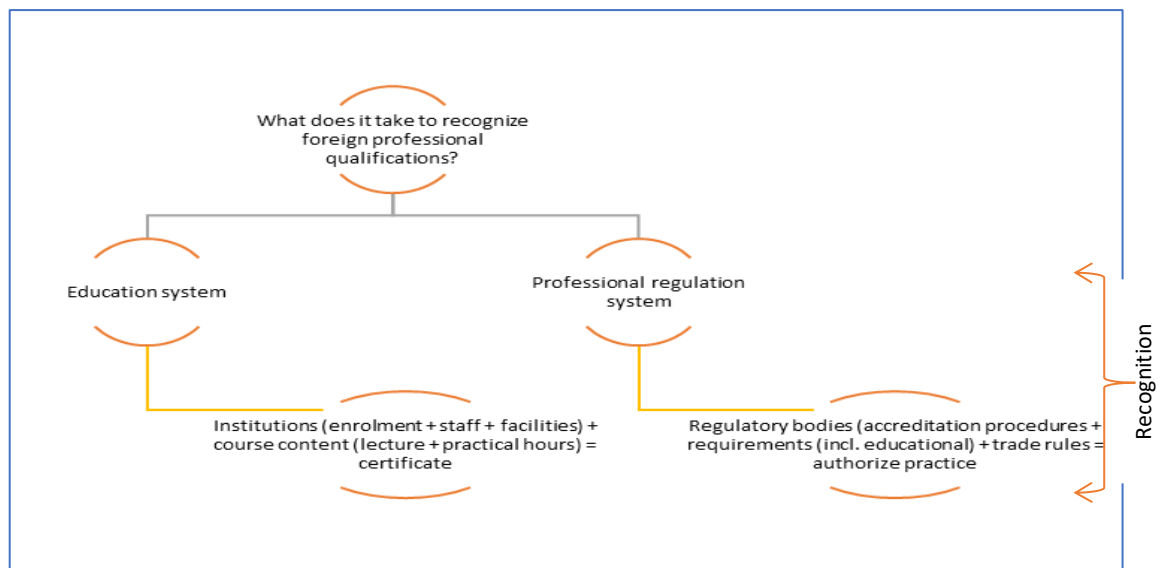
4.3. Types of recognition

4.3.1. **Unilateral recognition mechanism** – Ad hoc, measuring value of a qualification i.e. knowledge, skills and competencies against occupational standards identified by the National Qualification Framework (NQF). This is common used where the country awarding the qualification has no any formal agreement or arrangement with the receiving country. NQF are used to access knowledge and competency based on the results (certificate) of a formal learning to indicate the value of qualifications and the ability for the holder to perform certain employment duties.

4.3.2. **Mutual Recognition Agreements** - seek to allow for a professional's qualification in one economy to be recognized at the same level in another through establishing substantial equivalence across existing qualifications systems (APEC, 2017). It involves a legal instrument that is formally agreed between sending and receiving countries' competent authorities. It may take the form of a memorandum of understanding between standard and regulatory bodies in which they agree to recognise each other's' quality assurance, standards and assessment procedures and results thereof; implying automatic acceptance upon proof of prior certification or authorisation by signatory authorities.

4.3.3. **Regional Integration Agreements –** agreements among members of regional economic blocs aim at creating a single market which encourages development of mutually acceptable standards across members. Sometimes, regional integration agreements may agree to harmonise education and labour policies and laws, based on a Regional Qualifications Framework (RQF) in which case once achieved the recognition of learning results obtained in the region would automatically be accepted in a member country. For example, the EAC QF allows transferability of academic credits within the common EAC higher education area. Also, the European professional card allows assessment and acceptability of European professional qualifications in the respective field across the region.

5.   **Developing MRAs for professional services**

5.1.   **Approached used other trade agreements**

5.1.1. **European Union single market**: Cross-border supply of professional services such as with the European Union (EU) is governed by Directive 2005/36/EC, amended by Directive 2013/55/EC, however, other professions, such as lawyers or sailors, fall under the scope of different legislation. Generally, there are no MRAs developed in the context of the EU single market other than the provisions contained in the directives. There are three systems of recognition of professional qualifications in the EU:

- **automatic recognition** for professions with harmonised minimum training conditions (nurses, midwifes, doctors (general practitioners and specialists), dental practitioners, pharmacists, architects and veterinary surgeons);
- **general system** – for other regulated professions such as teachers, translators and real estate agents; and
- **recognition on the basis of professional experience** - for professional activities such as carpenters, upholsterers, beauticians etc.; knowledge of languages and professional academic titles.

5.1.2. **East African common market** – In line with Article 11 of the EAC Common Market Protocol (CMP), countries agreed to harmonise their labour and employment policies, national laws and programmes in order to facilitate the free movement of labour across the region. It provides for mutual recognition of academic and professional qualifications granted, experience obtained, requirements met, licences or certificates granted in other member states; for purposes of facilitating movement of labour and services. A two-fold approach was taken in executing this provision: for mutual recognition of academic qualifications – a) the EAC qualification framework was adopted with the aim of allowing educational credit transfer within the common EAC higher education area (launched in 2015) but also to facilitate movement of workers in the region; and b) development of MRAs for professional services. To date, four MRAs have been signed (the MRAs for accounting, architectural and engineering services were signed in 2011; and veterinary services in 2017). Also, negotiations are underway for MRAs covering land advocates, surveyors and pharmacists.

5.1.3. The development of EAC MRAs for professionals was initiated by representatives of professional associations and or regulatory bodies after a sensitization workshop organised by the East African Business Council in 2010. The negotiations were coordinated by the respective bodies with minimal involvement of Secretariat. The first three MRAs to be signed were prepared without a legal framework to guide their development. In light of some disputes on who should have signed and their legal status as well as variances in the content and scope (some cover Mode 4 only while other cover Mode 3 & 4); EAC countries agreed to develop some guidelines, i.e. Annex VII (Mutual Recognition of Academic and Professional Qualifications)

Regulations 2011. Annex VII establishes a link between the specific MRAs and the CMP, provides for recognition principles, criteria and scope, and established the steps for development of MRAs, negotiating mandates, as well as dispute settlement mechanism. However, to date the draft Annex VII is yet to be adopted due to some divergent legal opinions on some Articles and legal experts are scheduled to convene in March 2019 in order to resolve the outstanding matters. It is understood that the preparation of the veterinary services MRA followed the principles and guidelines contained in draft Annex VII hence its conclusion in 2016.

5.1.4. Assessment of implementation progress of the signed EAC MRAs in 2017 identified some challenges that could be useful lessons for the development of SADC MRAs as follows:

- a legal framework for the development of MRAs is key not only to guide content and negotiations but also useful in ensuring an effective enforcement mechanism;

- the negotiation process should involve assessment and provide solutions to key obstacles in authorisation of regional services suppliers;

- it is necessary to involve key institutions such as ministries responsible for the policy in the respective professional fields as well as labour, immigration and education departments at all stages; and it is important to consider all potential beneficiaries of the MRAs and provide for regional accumulation of continuous professional development (CPD) points or experience; and

- establishment of a regional database of professional could be useful in real time information sharing on professional conducts among regulators.

5.1.5. **Association of South and east Asian Countries (ASEAN)** – ASEAN MRAs were developed in the context of Article 5 of the ASEAN framework Agreement on Services which call for mutual recognition of education or experience obtained, requirements met, or licences or certifications granted in another ASEAN Member State, for the purpose of licensing or certification of service suppliers. The development was initiated by the private sector in 2005 and, so far, there are eight MRAs signed covering regulated professional services except for tourism. These are as follows: engineering services (2005), nursing services (2006), architectural and surveying qualifications (2007); accountancy, medical and dental practitioners MRAs (2009); and tourism professionals (2012). These MRAs do not permit unqualified acceptance of home market credentials for the service provider, but rather recognize some qualifications so that the service provider need not "start at the beginning" to meet the host country professional requirements. For example,

education degrees may be recognized, obviating the need for remedial courses, but passing an examination in the host country language may still be required.

5.1.6. The ASEAN Secretariat indicate[1] that ASEAN MRAs have some variations in each MRA which make standardization difficult within each sector; for example, an engineer holding a licence issued by the regulatory body of the country of origin must also have at least seven years of experience in the field. An application must be processed through the ASEAN Chartered Professional Engineers Coordinating Committee before being permitted to work as a "Registered Foreign Professional Engineer." While for the tourism sector – the MRA allows for automatic recognition for 32 tourism-related occupations. Also, even with the occupations governed by MRAs, horizontal and vertical mobility are limited; visa standards, vary across the region and some countries even have constitutionally barriers for foreigners practising certain occupations. The formulation of clear rules and guidelines in implementation of the foreign reciprocity was seen necessary and the Professional Regulation Council was established as the central body coordinating the different MRA activities.

5.1.7. **MRA related initiatives in SADC region -** The are a couple of SADC Member States that are currently taking party in development of MRAs at regional or sub-regional levels. A few such examples are given below:

- Nine Member States have signed and are implementing the SADC QF, i.e. Angola, Botswana, Eswatini, Lesotho, Mauritius, Seychelles, South Africa, Zambia and Zimbabwe.

- SADC Framework for Professional Teacher Standards and Competencies – developed under SPET as step towards mutual recognition of professional teachers 'qualifications across the region.

- Tanzania has signed two of the EAC MRAs i.e. accounting and engineering services, however even though she participated in the negotiations for architects and veterinary services she is yet to sign; and is taking part in the ongoing negotiations for advocates and land surveying services.

- South Africa, Namibia and Zambia have signed MRAs for the Chartered Accountants registered in the respective national Institutes of Chartered Accountants;

- Malawi, Mauritius, Mozambique, Seychelles and Zambia are parties to the Accelerated Programme on Economic Integration (APEI) region –currently negotiating MRAs for accountancy services.

- SADC MRAs for veterinary profession - World Organisation for Animal Health (OIE) and South African Veterinary Council coordinated a regional

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[1] https://www.gfmd.org/pfp/ppd/10303

workshop in 2017, where all SADC Member States relevant bodies were represented – agreed on some activities in preparation for their MRA.

5.2. **Lessons for SADC MRAs**

5.2.1. The process of developing MRAs for professional services in SADC and AfCFTA would be made easier if guided by a general legal instrument i.e. framework agreement such as Annex VII in the case of EAC or for ASEAN that details the processes and the content of MRA, otherwise its enforcement may lead to institution challenges in implementation especially where other departments are involved. A mechanism for the equivalence of profession certification procedures and qualification and where possible regional level certification can be used as a model to facilitate mobility for non-regulated professions, such as the ASEAN tourism profession or the EU Professional card.

5.2.2. A wider stakeholder involvement is key in making sure there is commitment to implement the MRA and ensuring all stakeholder institutions have a buy-in into the process providing supportive environment to support movement, especially where some regulatory reviews are required or development of guidelines to guide operational level activities.

5.2.3. A regional structure to oversee implementation, monitor progress and resolve barriers to the implementation of MRA is key; and the report should be filter through the regional making mechanisms to ensure decision making is done at an appropriate level.

6. **Conclusion**

6.1.1. SADC MRAs for professional services should build on the achievements made in the implementation of the SADC QF in line with the requirement of article 5 of PTIS and take into account lessons from other elsewhere. It is important to note that MRAs envisaged under SPET are only a stepping stone for the recognition of academic qualifications obtained in the member countries and could be useful for non-regulated professions. It should be understood that the objective of Article 7 of the PTIS is to facilitate recognition for purposes of authorising, licensing, operation and certification of service suppliers and, in particular, professional services.

6.1.2. The approach for SADC MRAs could start with a general framework agreement to guide negotiations of MRA for specific professions.

6.1.3. The selection of the professions could be guided by skills that are immediately relevant to support the SADC industrialisation strategy, and stakeholder sensitization interventions could be useful in initiate the work.

6.1.4. Development of specific professional MRAs could be informed by mutual evaluation i.e. mapping of similarities and differences in member states legislations, practices and

procedures of recognising foreign professional qualifications, such as the EU mutual assessment exercise.

6.1.5. The following are key issues for consideration in development of SADC MRAs for professional services:

- When and how to initiate work on specific professional MRAs

- Scope and content of the specific professional MRAs

  - ✓ Mode 3 and 4

  - ✓ Principles and eligibility criteria for recognition

- Negotiating and reporting structure in development of MRAs

  - ✓ Division of roles and participation – trade officials, sector representatives from trade, SADC Secretariat

SADC Secretariat

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