Guidance on Transnational Education Regulation in the EU

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INTRODUCTION

About this note

This note sets out points of guidance for UK universities who engage in higher education transnational education ("TNE") in other EU territories. It aims to provide practical guidance in respect of the likely issues arising from the UK leaving the EU without a negotiated agreement (no-deal Brexit), to support UK universities with contingency planning in respect of EU TNE.

The focus of this note is on matters of education law (and the impact of EU law upon it, in different Member States). A consideration of issues around immigration rules and freedom of movement, right to work, data protection, EU grant funding and other more general legal aspects of Brexit which might impact on TNE at a practical level, are beyond the scope of this note. The information provided is also, by necessity, reasonably high level. It is intended to provide useful signposts rather than definitive legal advice on any points raised, and should be treated accordingly.

The note comprises two main parts: this introductory section setting out some general principles and information, particularly related to the impact of directives 2005/36/EC (on the recognition of professional qualifications) and 2006/123/EC (on services in the internal market), and an Appendix containing country-level information on the main domestic laws which govern TNE activity in nine of the top 10 EU destinations for UK TNE activity: Greece, Ireland, Cyprus, Germany, Spain, Malta, Romania, Austria, and Italy.

Due to the broad range of activities which sit under the banner of TNE and given that domestic legislation across different EU Member States (although harmonised, to a degree) differs in each Member State, it has been necessary to take some decisions as to the content sought and provided.

The note focuses on two key principles relevant to TNE, potentially put in jeopardy for UK providers in the event of a no-deal Brexit:

- Freedom of establishment – the right of a UK higher education institution to establish an academic centre teaching UK degree awards in a particular Member State; and
- Freedom to provide services – the right of a UK higher education institution to provide education services (for example via validated or franchise provision) across the EU.

In many of the Member States in which country-level advice has been sought, the domestic legislation is such that a no-deal Brexit would not immediately (as a matter of domestic education law at least) prohibit UK TNE providers from offering TNE programmes. But there are some territories in which the fact that the UK is no longer an EU Member State could be problematic and require further action to enable continuing provision.

As set out in the Appendix, the law in Greece specifies that authorisation to provide TNE will only be granted to natural persons permanently residing within an EU Member State, or a legal entity whose registered seat is in the EU. In Austria there is a difference in treatment of entities from EU and non-EU states seeking to participate in TNE.
activity, however this difference is not prohibitive. In Cyprus, whilst the domestic legislation specifies that any natural person establishing TNE activity must be a citizen of an EU Member State, any overseas provider (EU or non-EU) may incorporate a Cypriot company for this purpose. In Germany, domestic legislation in this area is decentralised, as such different states have implemented the directives in different ways. As noted in the country-level report, Bavaria has taken a particularly hard line in this regard.

If the UK leaves the EU without a deal, there is scope for discrimination against UK TNE providers, should the national educational authorities and legislature choose to follow that path.

**TNE activity in Europe**

UK universities are world leaders in higher education TNE.

In the academic year 2017/18, 693,695 students were studying for an award of a UK university.

In the academic year 2017/18, UK TNE activity was reported throughout the EU, with a heavy reliance on collaborative models (validation, franchise and supported distance learning).

Regulation of TNE activity in EU countries is complex and dependent on the type of delivery in the host country or territory, since EU countries retain exclusive competence to regulate education.

A survey conducted in 2013 for the European Commission (“EC”) found substantial disparities between the regulatory approaches to TNE in different Member States, from territories that prohibit franchising and validation agreements (Lithuania) to others that have minimal regulation of inbound TNE (the Netherlands) [Brandenburg et al 2013]. The report found that only three countries differentiated between EU and non-EU provision when regulating cross-border educational provision.

**What are EU directives?**

EU directives are legislative acts that set out a goal that all EU Member States must achieve but leave them free to choose how to do so. Directives are intended to help achieve the so-called “fundamental freedoms”, including freedom of establishment and freedom to provide services.

EU Member States must adopt measures to ensure that the directives are, ultimately, incorporated into national law. They must communicate these measures to the European Commission.

**EU directives versus EU regulations**

For the purposes of analysis of the impact of the UK leaving the EU on TNE, and considering the issues in this note, it is important to distinguish between EU directives and EU regulations. Directives are just that – they direct Member States to ensure that their own domestic legislation is harmonised (subject to agreed derogations). EU regulations (such as the General Data Protection Regulation (“GDPR”) have “direct effect” within Member States (i.e. form part of the law of the Member State, without the need for any implementing legislation).

**What is the EU Services Directive [2006/123/EC]?**

The Services Directive covers a wide range of different types of service provision, most importantly here training and education services.

The EU Services Directive:

- aims to realise the full potential of services markets in Europe by removing legal and administrative barriers to trade;
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- aims to make it easier to establish a business; to provide cross-border services; to simplify procedures and formalities;
- aims to remove obstacles for recipients wanting to use services supplied by providers established in another EU country;
- aims to improve the regulatory environment for service providers who want to engage in cross-border activities; and
- allows Member States to impose additional requirements provided they are non-discriminatory, justified for reasons of public policy, policy security, public health or the protection of the environment and do not go beyond what is necessary to achieve their objective.

**What is the Recognition of Professional Qualifications Directive [2005/36/EC]?**

The Recognition of Professional Qualifications Directive contributed to the expansion of TNE throughout the EU. Prior to its implementation some Member States sought to protect their own higher education systems by imposing strict requirements regarding the recognition of professional qualifications obtained across the EU. The implementation of the directive meant Member States were obliged to move towards standardising their approach.

Specifically, the directive:

- sets the rules for temporary mobility, enabling professionals to work in another EU country on the basis of a declaration made in advance;
- enables an individual to establish themselves as a professional in particular fields in another EU country; and
- enables the recognition of professional qualifications within the EU, including doctors, nurses, midwives, dental practitioners, pharmacists, architects, veterinary surgeons and also regulated professions unless otherwise stated (non-exhaustive list).

There are three systems of recognition:

- Automatic: for professions with harmonised training conditions, for example nurses, midwives, doctors, dental practitioners, pharmacists, architects and veterinary surgeons.
- General: for other regulated professions, such as (but not limited to) teachers, translators and real estate agents.
- Professional experience: recognition of the basis of experience for certain activities, such as carpenters, upholsterers, beauticians etc.

There are certain professions to which the directive expressly does not apply, including (but not limited to) lawyers, sailors, insurance intermediaries and aircraft controllers.

**Brexit: The impact on TNE**

The extent of the effects of a no-deal Brexit on TNE provision will vary by country/region and by type of provision.

In principle, the protection granted by the directives through EC monitoring and Court of Justice of the EU (CJEU) rulings will cease in the event of the UK exiting the EU without a deal, i.e. there will be no recourse in the event of discrimination against UK higher education institutions based on their home territory.

It is important to remember, however, that the EU Services Directive is guidance only – rather than an EU regulation which has direct effect. The current applicable domestic legislation in each Member State would not in itself be affected by a no-deal Brexit.
The main impact will be as follows:

**EU Services Directive and TNE in practice**

Prior to this point, the Services Directive has, in theory at least, (since the full implementation of a common market for services is still a ‘work in progress’ as acknowledged in the Single Market Strategy), provided a degree of protection against unlawful discrimination against UK higher education institutions delivering programmes as private providers through arrangements in EU countries both in cases of free movement of services (e.g. validation arrangements) and through the exercise of the freedom of establishment (e.g. branch campuses or other physical academic centres).

There have, in recent times, been instances where EU legislation and judiciary rulings have contributed to the liberalisation of TNE provision in certain Member States where domestic legislation previously discriminated in favour of local providers.

This protection will cease.

**Recognition of qualifications**

In the event of no-deal there would be no mutual recognition of qualifications for registered professionals, and students studying subjects such as medicine, dentistry, nursing or architecture. These students may find that they are unable to practice in some EU countries, as recognition will revert to national policies.

[https://www.universitiesuk.ac.uk/International/news/Pages/No-Deal-Feels-Real-Now.aspx](https://www.universitiesuk.ac.uk/International/news/Pages/No-Deal-Feels-Real-Now.aspx)

**Requirements that the TNE provider be based in an EU Member State**

Where national legislation or regulatory policy prohibits or restricts non-EU higher education institutions from undertaking TNE, a workaround will need to be found (for example, consideration of whether interposing a local legal entity may help), or the activities will need to be continued in breach of the applicable national law (having considered legal consequences), delivered in an alternative manner, and/or wound down.

**Risk mitigation / practical steps**

In order to reduce the risks in a no-deal Brexit scenario, TNE providers can consult the guidance provided in the Appendix to this note on a country-by-country basis regarding local regulatory requirements. This will, we hope, provide a foundation to enable immediate individual planning activity at individual institution / individual partnership level.

Providers should consult and ensure they have an understanding of the relevant domestic legislation.

Providers should remain flexible where possible and continue to monitor changes as they happen.

Providers may need to prepare an ‘exit plan’ in cases where provision is no longer viable. It may be necessary to explore less risky options such as distance learning or validation instead of franchise, or to consider relocation to other territories where possible.

Individual advice should be sought as to whether TNE arrangements can be restructured to remain in compliance (for example by interposing a local subsidiary).

Early and regular contact with the relevant authorities who regulate TNE activity is also advisable.

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1 This applies if the UK leaves the EU with or without a deal.
Opportunities

The sector should also focus on the opportunities. TNE in the EU can continue to provide a springboard to:

- help enhance collaborative research across Europe (and eventually facilitate access to EU funding);
- mitigate the risk of reduced income from direct recruitment of EU students (i.e. students can study in their home country instead of moving to the UK); and
- help enhance and diversify the provision of UK institutions through balanced collaborative ventures (e.g. dual or joint degrees).

UK institutions can also benefit from the new regulatory environment to re-think strategically their engagement with EU partners, based on a long-term vision for mutual benefit.
AUSTRIA

**Issue 1: Rights for overseas providers of higher education to establish an academic centre in Austria**

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Austria offering undergraduate and/or postgraduate study?

Yes.

However, in general, Austrian law differentiates between study programmes offered by domestic institutions of higher education and study programmes offered by foreign institutions of higher education for example where a UK university wishes to offer taught degree programmes (leading to a UK degree award) via a branch campus or academic centre in Austria.

Besides that, there is a possibility for domestic providers of higher education to participate in the offering of "joint study programmes", where graduating students receive both UK and Austrian degree awards.

Joint study programmes are those which are offered jointly on the basis of agreements between one or several universities, university colleges for teacher training, providers of university of applied sciences programmes, private universities or foreign recognised post-secondary educational institutions in the form of a joint, double or multiple programme.

**What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Austria?**

(i) As regards study programmes offered by foreign providers for higher education:

The applicable law is the Act on Quality Assurance in higher education (Hochschul-Qualitätssicherungsgesetz, HS-QSG).

Pursuant to section 27 HS-QSG, foreign providers of higher education must undergo a notification procedure prior to offering (foreign) degree programmes in Austria. Therefore, foreign providers:

- must be recognised as post-secondary educational institutions in their country of origin or country of domicile (meaning an educational institution which offers study programmes lasting for at least six semesters for which admission requires the general university entrance qualifications and which is accredited as a post-secondary educational institution according to the legal rules of the country in which it is domiciled); and
• should offer only degree programmes which are comparable to Austrian degree programmes and academic degrees.

Following a successful completion of the notification procedure, foreign providers of higher education may commence offering degree programmes in Austria. However, please note that with the notification decision of the foreign degree programmes no equivalence with Austrian degree programmes and corresponding Austrian academic degrees is connected. The degree programmes and academic degrees are considered to be those of the foreign educational institution’s country of origin or country of domicile.

(ii) As regards joint study programmes:

Joint study programmes are subject to the following domestic legal regulations:

• University Act 2002;
• Private University Act;
• University of Applied Sciences Study Act; and
• University colleges for teaching education pursuant to the Higher Education Act.

According to the University Act 2002 providers of higher education (e.g. a university) participating in a joint study programme must conclude an agreement governing the implementation of the joint study programme, in particular which tasks have to be fulfilled by students participating in this joint study programme at which participating institution (§ 54 (d) University Act 2002).

In such agreement, the providers should also agree on the academic degrees to be awarded to students (such degree should be acknowledged in all countries in which the participating providers of higher education have their country of origin or domicile); (Recommendation of the Federal Ministry for Education, Research and Science dated 1 February 2019).

If a student successfully completes a joint study programme comprising up to 120 European Credit Transfer and Accumulation System (“ECTS”) credits of which at least 30 were obtained under the auspices of a partner institution, or more than 120 ECTS credits of which at least 60 were obtained under the auspices of a partner institution, a document may be issued jointly with the partner institution or partner institutions in addition to the award of the academic degree (§ 87 (5) University Act 2002).

**Does the applicable domestic legislation in Austria give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?**

(i) As regards study programmes offered by foreign providers for higher education:

Yes, the HS-QSG differentiates between the notification procedure for providers of higher education from the EU/EEA or third countries.

As regards EU/EEA-countries, these providers are required to submit documents regarding:

• the acknowledgement as provider of higher education;
• the acknowledgement of the study programme and degree in the country of origin or country of domicile;
• information regarding the offer of study programmes in Austria including curricula, study degrees and Austrian cooperation partners (if applicable);
• confirmation of the provider of higher education that the study programme, admissions, content fulfils the requirement of the country of origin or country of domicile; and

• guarantee of the provider of higher education that all students may finish their studies in case of envisaged closure of the degree programme.

(ii) As regards third countries, providers of higher education must undergo an external evaluation and submit the following documents:

• the acknowledgement as provider of higher education;

• the acknowledgement of the study programme and degree in the country of origin or country of domicile;

• information regarding the offer of study programmes in Austria including curricula, study degrees and Austrian cooperation partners (if applicable); and

• guarantee of the provider of higher education that all students may finish their studies in case of envisaged closure of the degree programme.

The external evaluation is held by the Agency of Quality Assurance and Accreditation Austria and comprises:

• quality assurance of the degree programme and provider;

• assurance of performance (financing, infrastructure, personal); and

• study organisation and information for students.

(ii) As regards joint study programmes, there is no such differentiation under the HS-QSG.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Austria?

(i) As regards study programme offered by foreign providers for higher education:

Agency of Quality Assurance and Accreditation Austria.

(ii) As regards joint study programmes:

Depending on the domestic provider of higher education (e.g. at universities: the senate of the university drafting the curriculum).
**Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements**

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Austria through a degree validation or franchise-type arrangement (e.g. students receive UK degree or academic credit)?

Yes, please see the response under Issue 1 (study programmes offered by foreign providers of higher education).

What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Austria?

Please refer to the response under Issue 1 (study programmes offered by foreign providers of higher education).

Does the applicable domestic legislation in Austria give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

Please refer to our answer to Issue 1 (study programmes offered by foreign providers of higher education).

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Austria?

The Agency of Quality Assurance and Accreditation Austria.

**Acknowledgments**

With thanks to Wolf Theiss, Vienna, for providing country-level information.
Issue 1: Rights for overseas providers of higher education to establish an academic centre in Cyprus

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Cyprus offering undergraduate and/or postgraduate study?

Yes. Overseas higher education providers are permitted to establish an academic centre in Cyprus through a private company that is registered in the Republic of Cyprus. In other words, provided that the founder of the academic centre is a company registered in Cyprus, it is permissible for the shareholders of the company to be third country nationals.

Specifically, with respect to the establishment of universities, only legal persons (i.e. corporate bodies) registered in the Republic of Cyprus can be founders (section 7(a) of the Establishment and Operation of Private Universities Law N. 109(I)/2005 as amended (the “Private Universities Law”)).

With respect to the establishment of private institutions of tertiary education, both natural and legal persons can be founders, but it is noted that a private institution cannot be established and operate in Cyprus by a non-citizen of either the Republic of Cyprus, or of an EU Member State. Also, a person that is under the service of a foreign government or organisation is not permitted to establish and operate a private institution (section 14(2) of the Establishment and Operation of Private Institutions of Tertiary Education Law N. 67(I)/1996 as amended (the “Private Institutions Law”)).

What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Cyprus?

- The Private Universities Law
- The Private Institutions Law
- The Quality Assurance and Certification of Higher Education and the Establishment and Operation of a Body on Related Issues Law N. 136(I)/2015 as amended (the “Quality Assurance Law”)

Does the applicable domestic legislation in Cyprus give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

With respect to the establishment of private universities, the legislation does not give preferential treatment to entities from EU countries versus third countries, since the founder of the university must be a legal person registered in the Republic of Cyprus.

With respect to the establishment of private institutions of tertiary education by legal persons, section 14(2) of the Private Institutions Law provides for the following:

*No private institution can be incorporated and established in the Republic by –

(a) a non-citizen of either the Republic or a Member State;

(b) a person that has been convicted of an offence of moral turpitude or an offence involving lack of honesty;
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(c) a member of the public service of the Republic or of the public educational service of the Republic or public organisation;

(d) a person in the service of a foreign government or organisation;

(e) a private company registered in Cyprus or an EU Member State, at which any of the persons falling into the categories mentioned in (b), (c) or (d) above is a shareholder or director."

Further to the above, it is our understanding that the law implies that a founder of a private institution can be a legal person registered either in the Republic of Cyprus or in an EU Member State. However, we have been informed by the Minister of Education and Culture of Cyprus (the “MOEC”) that in practice, all legal persons that apply for such licences are Cypriot companies and that foreign entities do not apply directly, but instead incorporate Cypriot companies for this purpose.

With respect to the establishment of private institutions by natural persons, the law clearly provides that the natural person must be a citizen of either the Republic of Cyprus or of an EU Member State.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Cyprus?

With respect to the establishment of universities, the application for registration in the register of universities is submitted to the MOEC. The MOEC then forwards it to the Cyprus Agency of Quality Assurance and Accreditation in Higher Education ("CYQAA") in order to examine it.

After the examination procedure is completed, the CYQAA will make a recommendation to the Council of Ministers (via the MOEC) as to the acceptance, rejection or postponement of the decision for registration. The Council of Ministers then decides on the acceptance or rejection of the application to register. If the application is accepted, further requirements must be met, and additional procedures must be followed. The Council of Ministers then may grant an initial licence of operation (with a duration of four years), and, subsequently, a final licence of operation (subject to re-evaluation every five years).

With respect to the establishment of private institutions of tertiary education, the application for registration is submitted to the MOEC. The MOEC refers the application to CYQAA, which examines the relevant documentation and decides whether to recommend the registration or not to the MOEC. Upon the submission of the recommendation of CYQAA, if the MOEC is satisfied that the relevant declaration is compliant with the provisions of the Private Institutions Law, it includes the name of the institution in the relevant register.

Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Cyprus through a degree validation or franchise-type arrangement (e.g. where students receive UK degree or academic credit)?

Yes. Section 11 of the Quality Assurance Law provides for the offering of undergraduate and/or postgraduate education by overseas higher education providers in Cyprus through a degree validation or franchise-type arrangement.

Specifically, it provides that any educational institution in Cyprus (i.e. a university, a university branch or an institution of tertiary education) may award degrees from EU Member States or UK educational institutions
through validation, or provide the possibility to EU Member States or UK educational institutions to award their own degrees within the Republic of Cyprus through a franchise-type arrangement, provided that the following conditions are met (which are assessed by the CYQAA):

- the educational institution of the EU Member State or the UK is recognised in its country and is properly authorised and accredited to provide the relevant courses and award the relevant degree using the methods in which these are offered;
- the field of study that results in the degree within the Republic of Cyprus has been officially certified by the authorised and accredited relevant body of the EU Member State or the UK, from which the degree is awarded;
- the degree that is awarded is the same as the one that would have been awarded had the course been provided entirely in the relevant EU Member State or the UK, from which the degree is awarded;
- the degree, in case it certifies a professional qualification, provides for the same professional rights in the EU member state or the UK, from which the degree is awarded; and
- the degree that was issued within the Republic of Cyprus provides for the same professional rights with those that apply for the EU Member State or the UK, from which the degree is awarded.

Also, section 14(3) of the Private Institutions Law provides for the above specifically with respect to private institutions. The relevant section of the law further provides that Brexit will not affect current agreements/partnerships (existing at the time of Brexit) between private institutions in Cyprus and UK educational institutions for the award of degrees of the UK institutions by the Cypriot institutions, and for the award of degrees by the UK institutions of their own degrees in Cyprus, as well as any future franchise agreements or other agreements for the renewal, replacement or amendment of current agreements/partnerships.

What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Cyprus?

- The Quality Assurance Law
- The Private Institutions Law

Does the applicable domestic legislation in Cyprus give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

Yes, but the applicable legislation has been amended accordingly in light of Brexit in order to provide for entities from the UK in addition to entities from EU countries (see answer to the question above).

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Cyprus?

Programmes or departments offering programmes in the context of TNE are assessed and must be approved and certified by the CYQAA (section 10(1) of the Quality Assurance Law). Before an educational institution can offer a programme which results in a degree, the educational institution must inform the CYQAA of the following:

- all relevant reports and evaluations conducted by the educational institution whose degree will be awarded;
• full details of educational facilities and services that will be offered by the educational institution, as well as by the educational institution whose degree will be awarded;

• full details of admission, assessment and graduation criteria which will be applied by the educational institution, as well as those applied by the educational institution whose degree will be awarded;

• a catalogue of the members of the educational staff and their relationship with the educational institution, as well as certificates of the academic and professional qualifications of the members of the educational staff, both from the educational institution that will offer the programme, as well from the educational institution whose degree will be awarded; and

• all relevant agreements between the institutions.

The CYQAA may communicate any concerns to:

• the educational institute whose degree will be awarded;

• the appropriate authorities and assessment bodies in the EU Member State or the UK, to which the educational institution is subject for assessment and control purposes; and

• the Cyprus Council of Recognition of Degrees (KYSATS).

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**GERMANY**

**Issue 1: Rights for overseas providers of higher education to establish an academic centre in Germany**

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Germany offering undergraduate and/or postgraduate study?

The relevant regulations can be found at federal level in the German Higher Education Framework Act (Hochschulrahmengesetz, “HRG”) and are substantiated by the respective Higher Education Acts of the 16 Bundesländer (“Federal States”).

A licence is required to establish and operate a higher education institution from other EU Member States and can be obtained from the relevant Ministry in the respective Federal State. The licence will be issued if:

- the overseas higher education provider is recognised in its country of origin;
- its degrees are recognised in its country of origin; and
- its quality is assured through its country of origin.

Regulation for cross-border services are only clearly regulated for the following Federal States: Hessen, North-Rhine Westphalia, Mecklenburg-Vorpommern.

According to the regulations in the Free State of Bavaria, being used as an illustrative example, an overseas higher education provider is not permitted to establish an academic centre offering undergraduate and/or postgraduate study in Bavaria unless:

- it is state approved according to Art. 76 Bavarian Higher Education Act (Bayerisches Hochschulgesetz, “BayHSchG”);
- its entitlement is established according to Art. 86 para. 1 BayHSchG; or
- it has permission according to Art. 86 para. 2 BayHSchG.

**What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Germany?**

As noted above, the relevant regulations can be found at federal level in the HRG and are substantiated by the respective Higher Education Acts of each Federal State.
As an illustrative example, a high-level overview of the legal situation in the Free State of Bavaria is as follows. In the Free State of Bavaria, the BayHSchG contains the state regulations regarding academic matters, and a distinction must be drawn between each of the authorisation procedures referred to above.

In accordance with Art. 86 para. 1 BayHSchG, the [Bavarian State] Ministry may authorise an overseas higher education provider to carry out higher education programmes and examinations. This may depend on whether the overseas higher education provider is listed in an agreement of the Federal Republic of Germany with other EU Member States on equivalence in the higher education sector. The acceptance of higher education examinations may be permitted if programmes are equivalent to those offered at state universities in the Free State of Bavaria. Further details are set out in Art. 86 para. 2 BayHSchG.

If approval is given pursuant to Art. 86 para. 1 or para. 2 BayHSchG, only degrees recognised in the country of domicile can be awarded.

According to Art. 76 BayHSchG, state recognition of the higher education institution is possible, and specific degrees can be awarded, but there are stricter requirements. State recognition may be granted according to Art. 76 para. 2 clause 1 BayHSchG if:

1. the financial circumstances of the higher education institution can be expected to provide the necessary resources for the operation of the higher education institution and for a permanent level of education equivalent to that of a state university;

2. there is provision for a number of courses leading to a first professional qualification; this does not apply if, within a field of study, the establishment of a plurality of courses is not suggested by the scientific development or the corresponding field of professional activity;

3. only persons who meet the requirements for admission to a corresponding state university are permitted to study at the higher education institution;

4. the teaching duties of the higher education institutions are predominantly carried out by full-time teachers and the teachers fulfil the recruitment requirements required for corresponding activities at state universities;

5. the economic and legal status of full-time teachers is secured;

6. the members of the higher education institutions participate in the organisation of the studies by applying the principles applicable to state higher education institutions; and

7. it is ensured that the institution fulfils its tasks within the framework of the state order guaranteed by the Basic Law and the Constitution of the Free State of Bavaria.

Does the applicable domestic legislation in Germany give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

This depends on the type of authorisation mentioned above:

- State approval in accordance with Art. 76 BayHSchG does not differentiate according to the country in which the overseas higher education provider is located.

- The assessment procedure pursuant to Art. 86 para. 1 BayHSchG is only possible for higher education providers originating from EU Member States and EEA states.
• Art. 86 para. 2 BayHSchG does not differentiate according to the country in which the overseas higher education provider is located, but requires an agreement with the Federal Republic of Germany.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Germany?

In the Free State of Bavaria, the Bavarian State Ministry of Science and Arts (Bayerisches Staatsministerium für Wissenschaft und Kunst) is responsible for assessing/approving a request by an overseas higher education provider to establish an academic centre in Germany, (see Art. 76 para. 1, 86 para. 1 and 86 para. 2 BayHSchG). This is also the supervisory authority for non-state universities pursuant to Art. 85 para. 1 BayHSchG and other higher education institutions pursuant to Art. 86 para. 3 clause 2 BayHSchG.

Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Germany through a degree validation or franchise-type arrangement (e.g. where students receive UK degree or academic credit)?

Yes.

Several Federal States (Baden-Württemberg, Bavaria, Berlin, Brandenburg, Niedersachsen, North-Rhine Westfalia, Saarland) have specific regulations for study programmes offered at independent higher education institutions in Germany without university-status that are franchised or validated by higher education providers from abroad.

Requirements for Ministry licensing vary and may range from analogous treatment with the academic centre of the foreign higher education provider (similar to authorisation to set up an academic centre), to requirements to obtain accreditation for the franchised/validated programme from an agency authorised by the German Accreditation Council.

The German Council of Science and Humanities (Wissenschaftsrat) published recommendations in 2017 that called for stronger regulation and quality assurance by German authorities of study programmes offered, franchised or validated by foreign higher education providers from non-EU countries, especially if offered through an entity without higher education institution status in Germany.

According to Section 2 para. 5 of the HRG, one of the tasks of higher education institutions is to promote international and European cooperation and exchange between German and foreign higher education institutions.

Additionally, Art. 2 Para. 4 BayHSchG states that universities are tasked to promote international cooperation and, in particular, European cooperation in the higher education sector as well as exchange between German and foreign universities. Universities and higher education institutions should consider the special needs of foreign students. They should promote student mobility and work towards the mutual recognition of academic and examination achievements.

What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Germany?
The legal framework exists on federal level as well as on state level (Bundesländer). However, the Hochschulrahmengesetz - Higher Education Framework Act (“HSchG”) and the BayHSchG only mention the conversion of study structures in accordance with European agreements generally. Detailed regulations are left to the study and examination regulations of each higher education institution.

Bavarian law governing higher education makes only a few statements on European and international cooperation. Art. 3 Para. 4 BayHSchG considers it one of the fundamental tasks of higher education institutions.

Art. 55 para. 2 section 1 BayHSchG states that the content and form of the programme, as well as professional methods of teaching and learning, must always be seen in the context of international developments. Section 2 points out that the emergence of a European Higher Education Area also requires corresponding study structures at universities in Bavaria. These include, among other things, a tiered study system with bachelor's and master's degrees as well as an internationally compatible credit point system for examinations (Art. 57 Para. 2 and Art. 61 Para. 4 BayHSchG).

Branches of EU universities in Bavaria are subject to an authorisation or permit requirement pursuant to Art. 86 para. 1 BayHSchG. This requirement is accompanied by obligations to provide evidence, which predominantly concern state recognition in the state of origin, graduation law at the foreign seat of the university and quality assurance in accordance with the requirements of the state of origin.

Franchise and validation models in connection with universities from third countries as well as branches of such universities are also standardised in Bavaria under Art. 86 BayHSchG. The BayHSchG provides for analogous notification and verification obligations as for branches of universities with their headquarters within the EU.

The coordination of European mobility and research partnerships is primarily carried out by the German Academic Exchange Service (http://www.daad.de and http://www.kowi.de) as well as by the EC Coordination Office of Science Organisations in Germany.

**Does the applicable domestic legislation in Germany give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?**

Yes. If a course of study in Germany is conducted by the establishment of a state or state-recognised higher education institution domiciled in the European Union or an associated third country, then the state recognition of the country of origin also extends to the establishment in Germany, provided that the quality of the courses offered is assured in accordance with the regulations applicable in the country of origin.

On the other hand, more extensive control powers exist for domestic legal supervision by the Federal State if a foreign higher education institution cooperates with a non-university educational institution in Germany, that is legally independent of it, in order to offer franchise study programmes or validated programmes. This is also the case if the foreign higher education institution awarding the degrees has its registered office outside the European Union.

If the degree-awarding university is located in another Member State of the European Union, the powers of the Federal States to exercise legal supervision over, and regulate, cross-border cooperation are considerably limited by EU law requirements. The same applies to educational imports from associated countries participating in the internal market of the European Union.

The restrictions on legal supervision and regulation justified by EU law do not apply to higher education providers that are located outside the European Union. When regulating domestic branches and partner institutions of higher education institutions from non-EU and non-EEA countries, the Federal States must take into account any
restrictions under international law that may arise from bilateral or multilateral agreements. Consequently, in the legal supervision of structurally and functionally identical cooperation programmes, the Federal State must distinguish whether the higher education institution awarding the degree is based in Germany, another EU country or a non-EU country.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Germany?

In the Free State of Bavaria, the Bavarian State Ministry of Science and Arts (Bayerisches Staatsministerium für Wissenschaft und Kunst) is responsible for assessing/approving a request by an overseas higher education provider to degree validation or franchise type arrangements, as set out in Art. 86 BayHSchG.

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (“KMK”) addresses national and international franchising in its resolution of 18 September 2008. However, franchising is not a substitute for graded courses and examinations which require recognition.

Acknowledgments

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Greece

Issue 1: Rights for overseas providers of higher education to establish an academic centre in Greece

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Greece offering undergraduate and/or postgraduate study?

Yes. Overseas higher education providers are entitled to establish an academic centre in Greece offering undergraduate and/or postgraduate study under the conditions mentioned below.

What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Greece?

• Greek Constitution:
  According to Article 16, Paragraph 5, “higher education shall be provided exclusively by institutions which are legal fully self-governing entities governed by public law. These institutions are under the control of the State and have the right to be financially supported by the State”.

• Law 3696/2008 as amended by Law 4093/2012 and Law 4111/2013:
  According to Chapter Thita.3 (in Greek Θ.3), Article 1., Case (a) of Law 4093/2012, the authorisation for the establishment of a college is granted to natural persons, legal entities and associations of persons and legal entities governed by public law (in Greek NPDD), by means of a decision of the Minister of Education which is published in the Greek Government Gazette (in Greek FEK).

  The authorisation for the establishment of a college is subject to the prerequisites and provisions of Articles 5 and 8 of Chapter Thita.3 (in Greek Θ.3) of Law 4093/2012.

Does the applicable domestic legislation in Greece give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

According to Article 4 of Chapter Thita.3 (in Greek Θ.3) of Law 4093/2012, among the conditions provided by the law for the authorisation granted to a natural person to establish a college is that such natural person is permanently residing in the territory of a Member State of the EU.

According to Article 5 of the same chapter such authorisation is granted to a legal entity which has its registered seat in the territory of a Member State of the EU.
Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Greece?

According to Article 1 Paragraph 2. of Law 3696/2008, the establishment and operation of colleges by natural persons, associations of persons or legal entities shall be subject to state control exercised by the Minister of Education.

According to Article 1 (a) of Chapter Thita.3 (in Greek Θ.3) of Law 4093/2012, the license to operate a college is granted to natural persons, associations of persons or legal entities by means of a decision of the Minister of Education.

Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Greece through a degree validation or franchise-type arrangement (e.g. students receive UK degree or academic credit)?

According to the definitions in Paragraph 1 of Law 3696/2008 ("Establishment and operation of colleges and other provisions" as amended by Article 1 of Law 4093/2012 and Article 30 of Law 4111/2013), colleges are providers of post-secondary education, which exclusively provide studies under validation and franchising agreements with foreign higher education institutions recognised by the competent authorities based in their residing country, which lead to the acquisition of a first ("bachelor's") degree of at least three years of studies or a "post-graduate" degree.

In addition, providers of post-secondary education are also included in the category of colleges whose programmes lead to the acquisition of a master's degree, provided that these specific programmes are accredited by international accreditation organisations. A decision of the Minister of Education determines the competent international accreditation bodies.

What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Greece?

Law 3696/2008 as amended by Law 4093/2012 and Law 4111/2013. For further detail, please see the response to the previous question.

Does the applicable domestic legislation in Greece give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

According to Articles 1 and 10 of Law 3696/2008, as amended and currently in force, there is no preferential treatment in favour of entities from EU countries versus third countries when determining whether degree validation or franchise agreements can be offered.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Greece?

According to Article 1 Paragraph 2. of Law 3696/2008, all aspects of both the operation and activities of a college shall be subject to state control exercised by the Minister of Education.

Acknowledgments

With thanks to Zepos and Yannopoulos, Athens, for providing country-level information.
Issue 1: Rights for overseas providers of higher education to establish an academic centre in Italy

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Italy offering undergraduate and/or postgraduate study?

Yes. Overseas higher education providers are permitted to offer undergraduate and/or postgraduate study by means of the establishment of subsidiaries (i.e., “filiazioni”) in Italy. This is exclusively governed by Article 2 of Law no. 4 dated 14 January 1999. The Italian legislator limits the programmes that the subsidiary may offer to “subject matters” that are already part of the teaching or research programmes of the foreign institution. Therefore, establishing a subsidiary allows foreign universities to ‘decentralise’ (i.e. teach in Italy) only a part of their programmes, not the entire degree course.

The Italian Ministerial Decree details the types of teaching activity for each degree programme, including the ‘qualifying’ (or ‘characterising’) educational objectives and essential learning activities for each field of study.

For the time being, the Ministry has authorised the establishment of subsidiaries only for those programmes that have a strong connection with the Italian territory, cultural heritage and Italian national history and that are not deemed to be qualifying or characterising subject matters of the degree course to which they relate.

What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Italy?

Law no. 4 of 14 January 1999 governs the establishment of subsidiaries of foreign universities in Italy. More specifically, such subsidiaries may be established only if certain requirements are met:

- decentralisation (i.e. teaching in Italy) is limited only to those subject matters that are part of the teaching or research programmes of the foreign university or higher education institution that is seeking to establish its subsidiary in Italy; and

- teaching is given only to students who are enrolled already at the foreign university or higher education institute.

Authorisation of the establishment of a subsidiary in Italy by foreign universities is regulated by the Ministry of Universities through a specific Directive dated 23 May 2000. It should be noted that the recognition of the establishment of a subsidiary does not imply any automatic accreditation of the foreign institution in the Italian university system.

Additionally, the administrative case-law (Tar Lazio, judgment no. 2651/2013) states that, “it cannot be considered a subsidiary pursuant to Article 2 of Law no. 4/1999 where a foreign university transfers most of the qualifying classes of one or more degrees on the national territory, while subjects that do not characterise the degree course remain to be taught in the country of origin only, demanding that the degree obtained may be deemed, in all intents and purposes, as a foreign qualification”.

**Does the applicable domestic legislation in Italy give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?**

No. The law refers to foreign universities in general.

**Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Italy?**

Permission to establish a subsidiary may be requested from the Ministry of University and Scientific and Technological Research, the Ministry of the Interior and the Ministry of Foreign Affairs. The activity is authorised by decree of the Minister of University and Scientific and Technological Research.

Article 2, paragraph 2, Law no.4 of 14 January 1999 sets out the procedure for authorisation. The opinion of the following bodies could also be requested: “ANVUR”, (the Italian National Agency for the Evaluation of the University and Research Institutes), “CUN” (the National University Council), and “CRU” (the Regional Coordination Committee for Universities).

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**Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements**

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Italy through a degree validation or franchise-type arrangement (e.g. where students receive UK degree or academic credit)?

Yes, there are two possibilities under the regulatory provisions:

(a) A foreign university institution may, theoretically, institute an entire degree course in Italy (including a course of study for which the Italian legal system provides for access). This is subject to fulfilling certain requirements provided for in Article 2 of Ministerial Decree 214/2004, and to the analysis of the application submitted in compliance with the provisions set out in Article 3 of Ministerial Decree 214/2004. This procedure is executed in accordance with the provisions of the Lisbon Convention. It should be noted, however, that this is an option that has not been widely applied in Italy, and the extent of implementation of this option is therefore unclear.

(b) It is also possible, on the basis of special agreement between a foreign university and an Italian university, to issue a “joint” degree title or “double” degree titles that have a double validity in both countries (Italy and the foreign country) pursuant to Article 3, paragraph 10 of Ministerial Decree 270/2004. For further details, please see below.

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**What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Italy?**

The application legislation is the Decree of 22 October 2004, no. 270. As for the decentralisation of an entire degree programme:

(a) Foreign institutions of higher education, in order to obtain the recognition of degrees issued by them, shall apply to the Ministry, in accordance with the procedures set forth by the relevant Ministerial Decree. In order to be recognised, these institutions must meet certain requirements, including the qualification as higher education institutions of particular importance at the international level, the qualification as recognised institutions within the higher education system of their respective country, etc., as set out under Article 2 and Article 3 of Ministerial Decree 214/2004. Reference shall be made also to the
“Convention on the Recognition of Higher Education Qualifications in the European Region” also known as the Lisbon Convention.

(b) With regard to the grant of a so-called double degree, the courses of study (or joint curricula within a course of study) are designed by an Italian university and one or more foreign universities and developed in a single or several locations and include a period of mobility of all students (usually one semester or a year). With regards to the project, such courses include:

- a formal agreement (convention) signed between the universities participating in the design and implementation of the training course;
- a joint definition of learning outcomes and training activities to be offered in the various venues (already existing or to be specifically implemented);
- the use of languages of the various countries or of a vehicular common language;
- a joint selection of students to be enrolled; and
- the granting of a joint or double or multiple degree. Furthermore, a specific model of diploma may also be envisaged in cases where a joint title is issued.

Does the applicable domestic legislation in Italy give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

There is no preferential treatment for EU countries.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Italy?

With regards the recognition of a degree awarded by a foreign institution, the foreign institutes must submit the request to the Ministry of University and Scientific and Technological Research, to the Ministry of the Interior and to the Ministry of Foreign Affairs. Such a request, accompanied by all the necessary documentation within 60 days, must be sent by the person in charge of the procedure to the Regional Coordination Committee responsible for the territory. ANVUR and CUN are also involved in the decision-making process. The opinion of the Regional Coordination of the university could also be requested.

With regards double degree programmes, it is sufficient to submit a request to the Ministry of Universities. This takes in consideration the opinion of the CUN and ANVUR, and the planned course of study between the two universities. Decisions are made annually between October and March.

Conclusions

In light of the clear purpose of this guidance, it is believed that it is possible for British universities to use the current context of standards (Lisbon Convention, Community Directives on the subject, Italian legislation) to continue to issue degrees with legal value in Europe even after Brexit.

The most practical, effective and certainly “linear” solution is represented by the “double title” (Article 3, par. 10, Ministerial Decree no. 270/2004 of the Italian legislation) route.

The advantages are related to the timing, certainty of the result, the low cost of the process and transparency.

The implementation of such project is quite fast because it is sufficient for a UK university to enter into an agreement with a legally recognised Italian university aimed at the granting of a degree whose has similar quality or standard as the UK degree.
Basically, the two universities will reciprocally ensure their academic programmes by ensuring that the double degree is approved by its respective Ministry.

The UK university shall not establish any degree course in Italy taking into account that it shall only approve the degree course of the Italian university. This may require it to supervise with appropriate means in order to ensure the quality and vice versa. Moreover, there may be exchanges of professors and whatever else is necessary for the best integration of the respective programmes.

Academic and contractual relations between the two universities may be freely negotiated between the parties.

The final result will be that the UK university will practically continue to provide degree courses at its ‘home’ campus even if the related degrees will be automatically recognised in Italy and, therefore, will fall within the validity of the EU. Such procedure has a material relevance for bachelor courses with a restricted access (medicine and all other healthcare professions, architecture, etc.) which, by virtue of European Directive 2005/36/EC and subsequent amendments, are automatically recognised throughout the EU.

In a nutshell, therefore, thanks to the fact that with the double degree the UK university will automatically issue a degree recognised by Italy in compliance with the European directive, the degree issued by the UK university will be recognised in the EU Member States.

The only problematic aspect relating to such working assumption is represented by the need to identify an Italian university recognised by the State that may quickly and efficiently achieve a double degree with one or more UK university. It seems that, with the information available so far, it would likely be impossible to reach an agreement with a public university due to the complexity of the decision-making process as well as the bureaucracy that could extend the term expected to implement a double degree. Equally, almost all of the recognised private Italian universities have, over time, assumed bureaucratic characteristics similar to those of the public sector.

The strongest solution would be to enter into an agreement with a private Italian university, able to rapidly execute a protocol of understanding. Such agreement could be developed through the partial or total acquisition of such a university. Of course, it must be noted that there are not many opportunities in the market to do so.

In this respect, Legance (author of this country-level report) has begun market research identifying the university suitable for the aforementioned purposes and has developed a range of solutions which Legance would be glad to share upon request.

Acknowledgements

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IEIRELAND

**Issue 1: Rights for overseas providers of higher education to establish an academic centre in Ireland**

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Ireland offering undergraduate and/or postgraduate study?

Yes.

Higher education providers may need to have their programmes approved by the Quality and Qualifications Ireland (“QQI”) before establishing an academic centre in Ireland offering courses recognised under the National Framework of Qualifications. The QQI was established under the Qualifications and Quality Assurance (Education and Training) Act 2012 (“QQI Act”) and it has developed protocols to assist providers in the fulfilment of their legal obligations in this regard.

The Quality Assurance Agency for Higher Education, United Kingdom and the QQI entered into a Memorandum of Understanding (“MOU”) in December 2018 to promote understanding of the quality and reputation of higher education in Ireland and the UK. The Code of Practice for Provision of Programmes of Education and Training to International Learners 2015 provides that any providers running programmes for international students must comply with the Code if they want to have those programmes approved by the QQI.

QQI programme validation is carried out to determine if QQI validation can be offered regarding providers’ programmes of education and training.

The Qualifications and Quality Assurance (Education and Training) Amendment Act 2019 (the “2019 Act”), which has been enacted but not yet fully commenced, will amend and extend the 2012 Act.

This provides for the following key changes:

- allows QQI to list awarding bodies such as professional bodies or international awarding bodies and include their qualifications in the NFQ;
- provides a legal basis for QQI to examine the corporate fitness of providers, including compliance with national employment law;
- introduces an International Education Mark (IEM) for the higher education and English Language Education (“ELE”) sectors;
- establishes a national scheme for the protection of enrolled learners (“PEL”) in the event of a sudden closure of a provider;
- empowers QQI to prosecute forms of academic cheating;
- establishes Institutes of Technology as autonomous awarding bodies; and
- establishes a pathway for private institutions to use the title of university (the section relating to this provision is the only section of the 2019 Act that has been commenced).
The type of legal structure chosen to deliver higher education programmes may vary depending on the nature and scope of programmes to be provided, however, in assessing providers, QQI may have regard to the extent of the presence that the provider has in Ireland and/or the EU.

**What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Ireland?**

- Higher Education Authority Act, 1971
- Universities Act, 1997
- Qualifications and Quality (Education and Training) Act, 2012 (as amended)
- The Code of Practice for Provision of Programmes of Education and Training

**Does the applicable domestic legislation in Ireland give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?**

Generally the answer is no, although there are differences in treatment under the immigration provisions relating to non-EEA students set out in the May 2015 Government Policy Statement referenced above.

Broadly these differences relate to:

- **Enrolment:** non-EEA nationals coming to study in Ireland must be enrolled in a full-time course on the Interim List of Eligible Programmes (“ILEP”).
- **Casual employment:** this is limited for non-EEA students to 20 hours per week part-time work during the academic term or 40 hours per week during holiday periods.
- **Working in Ireland:** non-EEA students have no long-term rights to stay in Ireland, and must transfer to a different type of status if they wish to live and work in Ireland.
- **Fees:** Ireland has free university fees for persons resident in Ireland/the EU for three of the previous five years. However, non-EEA students will have to pay non-EEA fees.
- **Nature of Awarding Body:** in relation to higher education programmes, non-EEA students may only be recruited on to programmes which are accredited by recognised Irish awarding bodies.

The introduction of the International Education Mark, provided for in the 2019 Act but not yet in effect, may have some impact on some of the above provisions when fully implemented.

Additionally, as outlined above, QQI may have regard to the level of presence that a provider has in Ireland and/or the EU in conducting its validation assessments of providers. Non-EU providers may be limited from participation in certain research programmes and funding that are administered on an EU basis.

**Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Ireland?**

The Higher Education Authority – the statutorily established body responsible for the governance and regulation of higher education institutions and the higher education system; and

Quality and Qualifications Ireland (QQI) - the statutorily established quality assurance body for higher education in Ireland.
**Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements**

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Ireland through a degree validation or franchise-type arrangement (as described above – students receive UK degree or academic credit)?

Yes.

Validation or franchise arrangements with existing approved providers of higher education in Ireland are typically established by contractual/MOU arrangements between the two institutions concerned.

However, there is a requirement under the QQI Act (section 48) for providers and/or awarding bodies to notify QQI prior to entering into any arrangement to provide an award made by an awarding body (other than QQI) but that is to be recognised under the National Framework of Qualifications in Ireland.

**What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Ireland?**

Same answer as in Question (2) under issue 1.

**Does the applicable domestic legislation in Ireland give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?**

Same answer as in Question (3) under issue 1.

**Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Ireland?**

Same answer as in Question (4) under issue 1.

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MALTA

Issue 1: Rights for overseas providers of higher education to establish an academic centre in Malta

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Malta offering undergraduate and/or postgraduate study?

Yes.

However, they need to do so through a body corporate incorporated in Malta and would need to acquire a licence. In order to acquire a license and thereby operate in Malta, the overseas higher education institution would need to acquire provider accreditation and programme accreditation.

What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Malta?

The Malta Qualifications Framework for Lifelong Learning Regulations (S.L. 327.431); the Further and Higher Education ( Licensing, Accreditation and Quality Assurance) Regulations (S.L. 327.433), and their parent Act, The Education Act (Chapter 327 of the Laws of Malta).

Does the applicable domestic legislation in Malta give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

No.

However, one needs to evidence that the foreign qualifications are validated according to standards equivalent to those applied by the National Commission for Further and Higher Education.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Malta?

The National Commission for Further and Higher Education.

Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Malta through a degree validation or franchise-type arrangement (e.g. where students receive UK degree or academic credit)?

Yes.

A license as a higher education Institution is granted to providers who deliver programmes or modules that are self-awarded or otherwise and that have been formally accredited at Level 5 or higher of the Malta Qualifications Framework (or a foreign qualification at a comparable level).
What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Malta?


See also - the Manual of Procedures for Provider Licensing and Programme Accreditation (“the Manual”).

Does the applicable domestic legislation in Malta give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

No.

However, one needs to evidence that the foreign qualifications are validated according to standards equivalent to those applied by the National Commission for Further and Higher Education.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Malta?

The National Commission for Further and Higher Education.

Acknowledgments

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Issue 1: Rights for overseas providers of higher education to establish an academic centre in Romania

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Romania offering undergraduate and/or postgraduate study?

Yes. Higher education providers, legally recognised as such in the state of origin (regardless of whether EU or non-EU country), may incorporate subsidiaries in Romania, either alone, or in partnership with an accredited higher education provider in Romania (acc. to art. 116 align (2) of the Education Law No. 1/2011, published in the National Official Gazette no. 18 of 10 January 2011, as subsequently amended and supplemented).

What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Romania?

The relevant domestic regulations are:

- The Education Law no. 1/2011, published in the National Official Gazette no. 18 of 10 January 2011, as subsequently amended and supplemented. This provides the legal conditions to establish and operate an academic centre in Romania.


- Order of the Ministry of National Education no. 6154/2016 regarding the approval of the methodology for regulating the activities carried out on the territory of Romania by the quality assurance agencies from abroad, registered in the European Register for Quality Assurance in Higher Education (“EQAR”), published in the National Official Gazette no. 14 of 6 January 2017.

Does the applicable domestic legislation in Romania give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

No. Romanian legislation does not currently discriminate between entities from EU and non-EU countries in terms of how they can establish an academic centre in Romania.
Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Romania?

The relevant Romanian authorities/bodies are:

- The Romanian Agency for Quality Assurance in Higher Education (“ARACIS”). As the national quality assurance agency, and EQAR listed, ARACIS conducts external evaluations and issues pre-approvals for provisory authorisation and accreditation (both institutional and of programmes). ARACIS is also involved in the external evaluation process conducted by other EQAR listed agency.

- The Ministry of National Education initiates, following the recommendation of ARACIS, the legal acts for provisory authorisation and accreditation.

- The Romanian Government, following the ministerial initiative, issues the decision on provisory authorisation for higher education institutions established in Romania as well as the decisions on accredited programmes.

- The Romanian Parliament adopts the law on institutional accreditation of the higher education institution.

**Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements**

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Romania through a degree validation or franchise-type arrangement (e.g. where students receive UK degree or academic credit)?

Yes. Franchise programmes initiated and supported in Romania by higher education institutions accredited abroad are listed among permitted integrated study programmes by the Romanian regulations.

No domestic regulations discuss degree validation agreements.

What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Romania?

The Government Decision no. 1424/2006 approved the framework methodology for organising integrated study programmes, offered by two or more universities, leading to procurement of common degrees, published in the National Official Gazette no. 867 of 24 October 2016.

This provides that an integrated study programme under franchise entails the delegation by a university accredited abroad to a university accredited in Romania of the right to open a subsidiary or a study programme that, after graduation, leads to a higher education degree, awarded by the foreign university in accordance with international treaties.

Does the applicable domestic legislation in Romania give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

No, at least not directly.
For non-EU/EEA providers, some obstacles to cross-border provision of higher education services may occur, since freedom of services as conceived at EU level (to exclude both overt and covert discrimination) will not be applicable.

Even in cases where similar, neutral, criteria to access the market will be settled, one could still expect some administrative burdens for the non-EU providers (e.g. different level of information to be submitted; potential extended terms and higher costs involved by the proceedings).

Also, the differences that may occur further to the regulations concerning the adjoining areas (e.g. taxation, staff mobility, transfer of data) could, ultimately, render less attractive the services of a non-EU provider in comparison with those of an EU provider.

**Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Romania?**

When assimilated to a joint study arrangement, the programme could be subject to authorisation and accreditation requirements under the Romanian law, with the involvement of ARACIS, the Ministry of National Education and the Romanian Government, as explained above.

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**SPAIN**

**Issue 1: Rights for overseas providers of higher education to establish an academic centre in Spain**

As a matter of education law and regulation, are overseas higher education providers (i.e. universities) permitted to establish an academic centre in Spain offering undergraduate and/or postgraduate study?

Yes. The academic centre may be established as:

(a) a branch of the overseas higher education provider offering undergraduate and/or postgraduate studies in Spain;

(b) a separate legal entity, different from a university, in which case the academic centre shall have to enter into an association with and become affiliated to a Spanish university; or

(c) a new university, incorporated under Spanish Law, so that its degree programmes lead to Spanish degree awards.

Offering taught degree programmes (leading to a UK degree award) through a branch campus or academic centre in Spain is subject to prior authorisation. This is granted upon confirmation by the Authorities of compliance with the following legal requirements:

- The undergraduate/postgraduate studies which are going to be offered in Spain must be effectively implemented in the overseas jurisdiction.

- The course curriculum must be the same as those used in the mother academic institution (for example structure, duration and contents).

- The diplomas, certificates or university degrees to be granted must have the same name and validity as those issued in mother academic institution.

- The studies must remain subject to the evaluations, accreditation and inspection controls applicable to the mother academic institution in the origin jurisdiction.

Authorisation is given taking into account the principle of reciprocity (the same treatment for Spanish institutions in the jurisdiction of the overseas higher education provider), if no specific treaties apply.

The degrees awarded under this scheme would solely hold the effects set forth under the overseas jurisdiction’s law and this must be communicated to students prior to registration.

**What is the applicable domestic legislation that governs whether an overseas higher education provider can establish and operate such an academic centre in Spain?**

Organic Act 6/2001, of December 21, of Universities and Royal Decree 420/2015, of May 29, of creation, recognition, authorisation and accreditation of universities and university centres.
Does the applicable domestic legislation in Spain give preferential treatment to entities from EU countries (versus third countries) when determining whether an academic centre can be established?

No.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to establish an academic centre in Spain?

The authorisation for offering taught degree programmes (leading to a UK degree award) through either a branch campus or an academic centre affiliated to a Spanish university must be granted by the Regional Government’s relevant Department (e.g. Consejería de Educación e Investigación in Community of Madrid or Departament de Empresa i Coneixement in Catalonia).

If the establishment consists of a new university incorporated under Spanish law and granting Spanish degrees, endorsement through an Act adopted by the legislative branch (i.e. National Parliament or Regional Parliament) is required.

Issue 2 - Rights for overseas providers of higher education to offer higher education programmes via degree validation or franchise-type arrangements

As a matter of education law and regulation, are overseas higher education providers permitted to offer undergraduate and/or postgraduate education in Spain through a degree validation or franchise-type arrangement (e.g. students receive UK degree or academic credit)?

Yes.

In this case, the academic centre incorporated under Spanish Law through which the undergraduate and/or postgraduate education is offered should be either an academic centre affiliated to a university incorporated under Spanish Law, or a university incorporated under Spanish Law.

Prior authorisation is also required. This is granted upon confirmation by the Authorities of compliance with the following legal requirements:

- The undergraduate/postgraduate studies which are going to be offered in Spain must be effectively implemented in the overseas jurisdiction.

- The course curriculum must be the same as those used in the mother academic institution (for example structure, duration and contents).

- The diplomas, certificates or university degrees to be granted must have the same name and validity as those issued in mother academic institution.

- The studies must remain subject to the evaluations, accreditation and inspection controls applicable to the mother academic institution in the origin jurisdiction.

Authorisation is given taking into account the principle of reciprocity (same treatment for Spanish institutions in the jurisdiction of the overseas higher education provider), if no specific treaties apply.

The degrees awarded under this scheme would solely hold the effects set forth under the overseas jurisdiction’s law and this must be communicated to students prior to registration.
What is the applicable domestic legislation that governs whether an overseas higher education provider (e.g. a UK university) can operate a degree validation or franchise-type arrangement with a local education provider in Spain?


Does the applicable domestic legislation in Spain give preferential treatment to entities from EU countries (versus third countries) when determining whether degree validation or franchise-type arrangements can be offered?

No.

Which regulatory body or bodies would be responsible for regulating this activity, including assessing/approving a request by an overseas higher education provider to degree validation or franchise-type arrangements in Spain?

The authorisation to offer undergraduate and/or postgraduate studies should be granted by the Regional Government’s department charged with Education & University matters (e.g. Consejería de Educación e Investigación in Community of Madrid or Departament de Empresa i Coneixement in Catalonia).

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