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RECOGNITION OF FOREIGN ADMINISTRATIVE ACTS IN THE BALTIC STATES AND DIGITALISATION PERSPECTIVES

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ABSTRACT

The recognition of foreign administrative acts has been well studied in the Nordic countries, but has received little attention in the Baltic legal literature. This article identifies the main concepts of recognition of foreign administrative acts under international and European Union law, and analyses the recognition in the context of the Baltic States. The article elaborates on possible opportunities and conditions to enhance mutual recognition of foreign administrative acts beyond the recognition mechanisms under European Union law, as well as to broaden the perspectives of digitalisation in the recognition of foreign administrative acts in the Baltic States.

KEYWORDS

Foreign administrative acts, administrative decisions, recognition, mutual trust, the European Union, Baltic States, digitalisation perspectives.

INTRODUCTION

The interest of states in regulating individual situations and introducing specific levels of protection can be realised through individual administrative acts. An administrative act is a regulatory mechanism used by state authorities in the public law domain to

address individual situations between the private individuals and the state, thereby implementing the law. The interests that different administrative acts seek to protect may vary according to the area of law:¹ driving licences are intended to protect road safety; marketing authorisations for medicinal products are intended to protect consumer safety; export licences for cultural goods are intended to protect national treasures of artistic, historical or archaeological value; pilot licences are intended to protect air safety, etc.

However, even if the interests sought to be protected by the different countries may be similar and coincide, the public power that the administrative acts express is normally limited to the territory of each sovereign country.² This, on the other hand, has a limiting effect on the cross-border mobility of private individuals as well as can weaken the protection sought by countries individually.

Consequently, the core problem of this research is: how administrative law and legal science can extend the effects of administrative acts beyond the borders of a single country, specifically using the cross-border recognition of individual administrative acts mechanism (also referred to as "recognition of foreign administrative acts" or "transnational administrative acts"). The author analysed the key concepts involved in the recognition of foreign administrative acts, such as recognition clauses and levels, and recognition mechanisms and domains, with a particular focus on the Baltic States, thus contributing to a deeper understanding of the regional perspective and current state of development. This is particularly important given that the recognition of foreign administrative acts has been extensively researched in the Nordic countries³ but has received little attention in Baltic legal literature. The methodologically this article is focused on the international and the European Union law perspective, with a particular focus on the Baltic States as Member States of the European Union.

Research on the recognition of foreign administrative acts can cover various procedural elements of recognition, however, this article has research limitations: it is not intended to cover the grounds for refusing recognition as well as the consequences of such a refusal; supervision of administrative acts on foreign territory; the article does not intend to provide an exhaustive list of all types of foreign administrative acts, but rather to provide insight into the topic.

The organisation of this article is the following. Section 2 will clarify the most important concepts of foreign administrative acts and the notion of recognition. Section 3 will illustrate two distinctive recognition regimes that exist between sovereign countries in the field of administrative law. Section 4 will focus on the recognition regimes between the Baltic States in the 21st century, as the member states of the European Union. And finally, section 5 will discuss the opportunities for the Baltic States. This is the first article specifically dedicated to the Baltic States, and will hopefully lead to further discussion on the subject.

¹ Luca De Lucia, "From Mutual Recognition to EU Authorization: A Decline of Transnational Administrative Acts," *Italian Journal of Public Law* 8 (2016), 105–107.

² Matthias Ruffert, "Recognition of foreign legislative and administrative acts": point 6; in: Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2015).

³ See, for example, Henrik Wenander, "The Treatment of Foreign Administrative Decisions in Swedish Law: Acceptance in Legislation, Limited Elaboration in Case Law," *European Public Law* 31 (2025); Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self Determination, and Individual Rights," *Heidelberg Journal of International Law* 71 (2011).

1. A THEORETICAL EXPLANATION OF THE MAIN CONCEPTS OF THE RECOGNITION OF FOREIGN ADMINISTRATIVE ACTS

In legal literature, there is a common understanding that the administrative law is, by its very nature, a part of national law, strictly related to the exercise of national public power within the borders of the country and its legal system.⁴ Whereas the administrative act is the most common tool used by national or municipal authorities to address individual situations in administrative law. This leads to the point of departure that any administrative act, as an expression of state power in administrative law, is normally limited to the specific territory falling within the competence of the respective state or municipal authority (or in other words, the public power of one country (in administrative law) ends where the power of another country begins). Under international law, this relates to the principle of sovereignty, which includes the maxim that all states are equal,⁵ and the principle of territoriality, which provides states with an exclusive jurisdiction over their territory, government and population.⁶

However, in a globalised world, where cross-border business and mobility are becoming the norm rather than the exception, administrative acts as an expression of state power and a measure of the state to implement certain controls and standards with their administrative acts, is looked upon with a more pragmatic approach. Therefore, states tend to derogate from the absolute nature of the principle of territoriality and principle of sovereignty, and introduce recognition regimes for administrative acts. Recognition clauses may be included in international treaties, EU secondary legislation and the national legislation; some of the examples will be presented later in this article.

The notion of recognition of foreign administrative acts generally covers situations where the administrative act is treated as valid in another country,⁷ even though it was initially issued by another sovereign.⁸ To illustrate the recognition process, the author provides the following simplified example: a natural person acquires an administrative decision in Estonia, which allows him or her to exercise a certain economic activity. However, if the individual wishes to exercise the same activity in another country, for example, Lithuania, he or she must present the original decision to the authorities in Lithuania, who will examine the documents and recognize the original Estonian decision as valid in Lithuania as well. The recognition of foreign administrative acts is comparable (but not identical) to the recognition and enforcement of foreign judgments in private international law.

In this article, the author uses the following cumulative criteria to qualify foreign administrative acts or so-called translational administrative acts: firstly, the

⁴ See, for example, Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self Determination, and Individual Rights," *Heidelberg Journal of International Law* 71 (2011): 756; Dirk Wiegandt, "Recognition of administrative acts": 1487; in: Jürgen Basedow, Giesela Rühl, Franco Ferrari, Pedro Alberto de Miguel Asensio (eds.), *Encyclopedia of Private International Law* (Cheltenham: Elgar, 2017); Meinhard Schröder, "Mutual Recognition of Driving Licences in the EU—Current State of Integration and Perspectives," *Review of European Administrative Law* 13, No. 3 (2020): 38.

⁵ James Crawford and Ian Brownlie, *Brownlie's principles of public international law* (Oxford University Press, 2019), 433.

⁶ *Ibid.*, 192-194.

⁷ Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self Determination, and Individual Rights," *Heidelberg Journal of International Law* 71 (2011): 758; see also: Vallo Olle and Rauk Triinu, "Foreign Administrative Acts: The Case of Estonia": 105; in: Jaime Rodríguez-AranaMuñoz (ed.), *Recognition of foreign administrative acts* (Springer International Publishing, 2016).

⁸ Paris M. Timothée, "La reconnaissance des actes administratifs étrangers au droit français": 117; in: Jaime Rodríguez-AranaMuñoz (ed.), *Recognition of foreign administrative acts* (Springer International Publishing, 2016).

administrative act must be issued by another country (not the international organisation⁹ or the country that has ceased to exist); secondly, the type of administrative act must have a recognition clause in the legal system of the country that did not initially issue the administrative act (hereinafter - the host country) that allows it to extend the validity of the act to the host country.¹⁰

2. RECOGNITION MECHANISMS: TWO EXAMPLES

To put previously mentioned concepts into perspective, the following chapter: (i) analyses two distinct recognition mechanisms, which methodologically are intentionally presented as contrasting methods; (ii) concludes by explaining how the two mechanisms differ in terms of recognition intensity and; (iii) analyses digitalisation as an emerging trend in order to understand its current state of development.

The wording of the recognition clauses can vary considerably: they may refer to the mutual recognition or validity of the license or the registration, such as: "licences issued by Member States shall be mutually recognised";¹¹ "shall be valid and recognised in all Member States, without further requirements or evaluation";¹² "Registration under this Article shall be valid in the entire territory of the Union".¹³ They may refer to the prohibition to request alternative authorisation, such as "Host Member States shall not require authorisation or endowment capital for branches of credit institutions authorised in other Member States".¹⁴ However, the most crucial aspect is the intention of the legislator or the contracting party to confer cross-border validity upon the administrative act and to extend its initial validity beyond national borders of one country. While it is true that the concept of an administrative act may differ from one country to another, it is the recognition clause established in the law or treaty that will determine the actual recognition outcome, regardless of different national approaches.

At present, none of the three Baltic States has introduced universal rules for the recognition of foreign administrative acts in its administrative procedure codes. Therefore, all three Baltic states share a common tradition of relying on special legal provisions governing the recognition of administrative acts in their respective fields (for example, special provisions for the administrative recognition of foreign diplomas or qualifications).

To illustrate, two examples are analysed: driving licences under the Vienna Convention on Road Traffic¹⁵ (hereafter - Vienna Convention) (section 3.1.) and recognition of diplomas and qualifications under the Convention on the Recognition of Qualifications concerning Higher Education in the European Region¹⁶ (hereafter - Lisbon Convention)

⁹ See for example Marek Jaskowski, "Administrative Acts of the European Union," *Polish Review of International and European Law* 6, No. 2 (2017): 35–64.

¹⁰ Aleksandrs Potaičuks, "Pārrobežu administratīvais akts Latvijā un Eiropas Savienībā". Doctoral thesis at the University of Latvia (2020): 19.

¹¹ Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, OJ 403, Article 2.

¹² Regulation 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, OJ 212, Article 67.

¹³ Regulation 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, OJ 115, Recital 36.

¹⁴ European Parliament and of the Council of the European Union. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, OJ 176, Article 17.

¹⁵ United Nations Economic Commission for Europe, *Vienna convention on road traffic*, United Nations (1968).

¹⁶ Council of Europe and UNESCO. *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*. Signed in Lisbon on the 11th of April 1997, Council of Europe – European Treaty Series No. 165.

(section 3.2.). This illustration of the two different mechanisms is also important for demonstrating the different recognition intensities later in this chapter (section 3.3.), as well as for achieving a deeper understanding of digitalisation perspectives (Section 3.4).

2.1. Recognition of driving licences

The Vienna Convention¹⁷ provides for the recognition of driving licences between the countries that are parties to the convention. This allows, on the one hand, drivers to enjoy cross-border mobility without the obligation to obtain a new permit on the territory of the host country and, on the other hand, prevents the host country from imposing any unilateral burden on such permit holders contrary to the wording of the convention.

Namely, Article 41 (2) of the convention includes the recognition clause extending the validity of these administrative acts beyond the issuing state: according to Article 41 (2) "Contracting Parties shall recognize: (a) any domestic permit drawn up in their national language or in one of their national languages, or, if not drawn up in such a language, accompanied by a certified translation; (b) any domestic permit conforming to the provisions of Annex 6 to this Convention; and (c) any international permit conforming to the provisions of Annex 7 to this Convention; as valid for driving in their territories a vehicle coming within the categories covered by the permit, provided that the permit is still valid and that it was issued by another Contracting Party or subdivision thereof or by an association duly empowered thereto by such other Contracting Party."

For this type of foreign administrative act, recognition is quite automatic and, in fact, recognition follows from the rule in the convention (a normative act). Over the past years, also the European Union has introduced a more detailed and advanced mutual recognition system for driving licences.¹⁸ Namely, the secondary legislation (Directive 2006/126/EC) provides that "driving licences issued by Member States shall be mutually recognised",¹⁹ thus together with other provisions creating an even closer framework for the recognition of drivers licences.

Very similar system of automatic recognition of foreign administrative acts is also used for residence permits for third-country nationals; visas; the European fire-arms pass; the registration of European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF), which allows collective investment schemes to be offered in the Member States of the European Union; pilot licences and pilot medical certificates, etc.

2.2. Recognition of diplomas and qualifications

The Lisbon Convention²⁰ provides for the recognition of foreign educational qualifications (diplomas) with a view to access to educational or employment activities. This allows private individuals to move between the countries that are parties to the convention and to have access to educational and / or employment opportunities without the

¹⁷ United Nations Economic Commission for Europe, *Vienna convention on road traffic*, United Nations (1968).

¹⁸ Meinhard Schröder, "Mutual Recognition of Driving Licences in the EU – Current State of Integration and Perspectives," *Review of European Administrative Law* 13, No. 3 (2020): 59.

¹⁹ *Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences*, OJ 403, Article 2.

²⁰ Council of Europe and UNESCO, *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, Signed in Lisbon on the 11th of April 1997, Council of Europe – European Treaty Series No. 165.

burden of having to requalify or re-obtain the same qualification anew on the territory of the host country. Whereas the host countries are obliged to provide transparent, coherent and reliable procedures and criteria for the assessment and recognition of qualifications.²¹

Namely, the section VI of the convention provides recognition clause for such higher education qualification: "To the extent that a recognition decision is based on the knowledge and skills certified by the higher education qualification, each Party shall recognise the higher education qualifications conferred in another Party, unless a substantial difference can be shown between the qualification for which recognition is sought and the corresponding qualification in the Party in which recognition is sought."

Unlike driving licences, this type of administrative acts includes 1) actual assessment: a formal acknowledgement by a competent authority of the value of a foreign educational qualification (assessment) and, as such, 2) acquires its legal effect and validity in the host country after the host country has adopted a formal decision. The case-by-case nature (assessment) type of the recognition here is also clear from the wording of the recognition clause as well as the other provisions of the Convention that set out criteria for the procedure itself and the stages of recognition.

Similar approach is introduced in the European Union, where secondary legislation (Directive 2005/36/EC) provides a framework for the recognition of professional qualifications. However, given the principle of mutual trust between member states of the European Union, member states have introduced an even closer framework for the recognition, thus creating even automatic recognition of qualifications.²²

Although such type of recognition regime is common for the recognition of qualifications and diplomas, it is similarly also used for the recognition of a marketing authorization for medicinal products for human use;²³ authorisations of a biocidal product;²⁴ etc.

2.3. Recognition intensity

As it was mentioned before, in order for an administrative act to be considered a foreign administrative act and to be recognized in another country, it is necessary to identify a recognition clause included in an internationally binding treaty or other normative act binding between the host country and the issuing country (hereinafter – home country) (this is specifically analysed in relation to the Baltic States in Chapter 4.1.). However, as it was illustrated above, recognition clauses in general, and thus the mode of recognition, may vary in the intensity of recognition. Namely,

- 1) some types of administrative acts are subject to more automatic recognition without any explicit review of the documents that served for the adoption of the administrative act; an example of such a type of administrative act, as described before, is a driving licence that is valid in other countries without explicit recognition;
- 2) whereas some types of administrative act are subject to more explicit recognition, requiring the host country authority to perform actual equivalence assessment and thus to adopt national decisions (acknowledgement) on

²¹ *Ibid.*, Article III.2.

²² *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification*, OJ 255, Article 21.

²³ *Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use*, OJ 311, Article 28, 29.

²⁴ *Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products*, OJ 167, Chapter VII.

equivalence; an example of such a type of administrative act, as described before, is the recognition of diplomas, which generally requires a formal acknowledgement by a competent authority of the value of a foreign educational qualification.²⁵

Thus, from a methodological point of view, the Swedish professor Henrik Wenander has distinguished and generalised two regimes to explain the recognition of foreign administrative acts. The first type of the recognition regime mentioned above he called the 'single licence recognition',²⁶ whereas the second type of the recognition regime was called the 'explicit recognition'.²⁷ For the first type, the validity of the act follows from "a rule or principle in the legal system of the host state, without any decision in the individual case",²⁸ whereas for the second type the foreign administrative act "achieves its legal effect through a formal decision by the host state".²⁹ In this context, the Baltic States operate within the framework of European Union and international law, and methodologically their administrative practices do not diverge significantly from other EU member states in this regard.

2.4. Digitisation in recognition procedures

While the single license recognition is automatic and therefore generally does not require any intermediate decisions or additional interaction with foreign authorities, the explicit recognition involves procedures and formalities that are condition for a permit or authorization to be valid in another country, thus involving distance, mobility and additional time. This, in turn, prompts a consideration of how the EU has used the potential of digitalisation to ease recognition procedures.

In response to this, the author observes a new trend within the European Union to support European legislation (directives and regulations) with additional provisions which *express verbis* encourage national authorities to benefit from remote procedures and electronic means.

One of the examples is recognition of diplomas and qualifications: Article 57a (1) of the Directive 2005/36/EC states that "Member States shall ensure that all requirements, procedures and formalities relating to matters covered by this Directive may be easily completed, remotely and by electronic means, through the relevant point of single contact or the relevant competent authorities."³⁰ Meanwhile Article 56 (2) and (3) obliges the competent authorities to exchange information via electronic communications (the Internal Market Information System), but Article 57 underlines the importance of making information available online, thus making the recognition of professional qualifications easier and more transparent.

Another major move is digitalisation of recognised administrative decisions (permits, certificates) – documents that certify the existence of specific rights, such as the European Professional Card³¹ which is an electronic certificate for the recognition of

²⁵ It should be noted, however, that there is a tendency to introduce automatic recognition of professional qualifications when there is continued trust between certain countries.

²⁶ Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self Determination, and Individual Rights," *Heidelberg Journal of International Law* 71 (2011): 759.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification, OJ 255.

³¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification, OJ 255, Article 4a.

qualifications. Namely, the Article 3 (1)(k) of Directive 2005/36/EC defines the 'European Professional Card' as an "electronic certificate proving either that the professional has met all the necessary conditions to provide services in a host Member State [...] or the recognition of professional qualifications for establishment in a host Member State". These documents could seemingly fill the future EU Digital ID wallet.³²

However, at this stage of development, digitalisation seem to be rather fragmented. While, for example, education systems in general³³ and the Directive 2005/36/EC on professional qualifications has undergone digital transformation, comparable recognition mechanisms do not offer the same opportunities. For example, Directive 2006/126/EC on driving licences has yet to introduce electronic licences. Next, while the Directive 2011/24/EU on the recognition of medical prescriptions³⁴ does not mention the recognition of e-prescriptions, nevertheless, there is a strong movement among Member States to recognise e-prescriptions,³⁵ even in the absence of an explicit provision on electronisation in the directive.

However, digitalisation is not expected to occur solely at EU level. In the case of Latvia, Article 99 of the Law on the Structure of the State Administration specifically promotes digitisation, stating that "the state administration shall provide state services electronically where possible and feasible".³⁶ Thus, the national administration is obliged to self-digitise even in absence of specific requirements of national law or European Union law.³⁷

From a methodological perspective, the digitalisation of different recognition procedures or credentials (whether concerning paper-based diplomas or plastic licences) seem to appear on three levels: 1) the EU level, 2) the regional level (the case of e-prescriptions), and 3) the national level. However, while national digitalisation incentives of the recognition mechanisms should be encouraged domestically, national legislators and administrative authorities must be careful internationally: it is important to bear in mind that such initiatives should not undermine existing mechanisms under European Union law. This is particularly important when considering Article 326 of the Treaty on the Functioning of the European Union.

This leads to the conclusion that, while recognition of foreign administrative acts has long been seen as the mechanism to extend the validity of administrative acts in a structured manner beyond the borders of one country and to facilitate cross-border mobility for people and businesses, today these mechanisms are now undergoing a new stage of transformation: digitalisation. This chapter concludes that the digitalisation of the recognition of foreign administrative acts has a potential at various stages. These include making the necessary information for recognition available online for transparency purposes; communicating and exchanging information with people and businesses remotely; exchanging information between different authorities within

³² Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework, OJ 1183.

³³ Aušrinė Pasvenskienė, Paulius Astromskis, "The Future of Legal Education: Do Law Schools Have the Right to Be Conservative?" *Baltic Journal of Law & Politics* 13 (2020): 200.

³⁴ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, Article 11.

³⁵ eHealth Network, *ePrescription and eDispensation of Authorised Medicinal Products: Guidelines on the Electronic Exchange of Health Data under Cross-Border Directive 2011/24/EU (Release 3.1)* (Budapest: eHealth Network, 2024).

³⁶ Law on the Structure of the State Administration, Official Gazette (2002, No. 94), Article 99.

³⁷ See more: Aleksandrs Potaičuks, Anastasija Kaplane, "Latvia": 118; in: Hanne Marie Motzfeldt (ed.), *Public Digitalisation in a legal perspective: Status, challenges and opportunities for Nordic-Baltic cooperation* (Copenhagen: Nordisk Ministerråd, 2024).

information systems; as well as digitising paper or plastic credentials. However, at the current stage of development, digitalisation of recognition procedures appears to vary considerably across sector-specific European legislation, resulting in a fragmented and inconsistent approach.

3. RECOGNITION REGIMES BETWEEN THE BALTIC STATES

This chapter analyses the recognition of foreign administrative acts in the Baltic countries, as this perspective has not been addressed in any previous literature. This chapter explores (i) the unique historical cooperation between the Baltic States and current recognition networks worldwide; (ii) recognition mechanisms beyond the European Union and (iii) how disputes relating to the recognition of foreign administrative acts have been reflected in court practice.

3.1. Historical perspective and current recognition networks

Historically, the Baltic States have often established and cultivated special relations with each other. This can be seen in the early evidence of recognition of individual administrative acts in the 1920s and 1930s, when, for example, state authorities were entitled to issue so-called border crossing cards (in French - *des cartes de légitimation*), which allowed people to cross / enter the border zone between Latvia and Estonia,³⁸ as well as between Latvia and Lithuania,³⁹ and these special permits were recognised by both countries. There was also a special agreement between Latvia and Lithuania on simplification of passport and visa formalities in mutual traffic between the two countries.⁴⁰ There were also administrative courts established in Latvian and Estonia.⁴¹ These are only a few examples of such administrative acts existing at that period of history.

Today, however, from the perspective of recognition of foreign administrative acts, the Baltic States as many countries in the world, operate in their unique web of recognition obligation and thus have a multiple-layered legal system:

- 1) recognition clauses under international law;
- 2) recognition clauses under European Union law;
- 3) and, as discussed in the legal literature, also unilateral recognition clauses in national law.⁴²

Namely, for the Baltic States, as members states of the European Union, the international law still plays an important role in recognising foreign administrative acts originating outside the European Union, for example, recognising pilots licences under Convention on International Civil Aviation⁴³ or drivers permits under 1968 Vienna Con-

³⁸ Accord entre la Lettonie et l'Esthonie relatif au passage de la frontière letto-esthonienne par les habitants de la zone limitrophe (Agreement between Latvia and Estonia on the crossing of the Latvian-Estonian border by residents of the border area). Signed in Riga on 10.01.1924.

³⁹ Agreement between Latvia and Lithuania on the rules for crossing the Latvian-Lithuanian border in the border zone resident citizens of these countries. Signed in Kaunas on 18.01.1924.

⁴⁰ *Agreement between Latvia and Lithuania on simplification of passport and visa formalities in mutual traffic between the two countries (Nolīgums starp Latviju un Lietuvu par pasu un vīzu formalitāšu vienkāršošanu abu valstu savstarpējā satiksmē)* (Valdības Vēstnesis, 29.12.1930), 4 // <https://dom.lndb.lv/data/obj/file/1014265>

⁴¹ Ieva Deviatnikovaite, Edvins Danovskis, and Ivo Pilving, "Evolution of Administrative Justice in the Baltic States in 1918–1940," *Baltic Journal of Law & Politics* 15, No. 1 (2022): 75 // doi: 10.2478/bjlp-2022-0004

⁴² Compare: Henrik Wenander, "The Recognition of Foreign Administrative Decisions in Sweden": 305; in: Jaime Rodríguez-Arana Muñoz (ed.), *Recognition of foreign administrative acts* (Springer International Publishing, 2016).

⁴³ International Civil Aviation Organization, *Convention on international civil aviation*, Vol. 4. International civil aviation organization, 1969. Signed in Chicago on 07.12.1944 by 52 countries.

vention on Road Traffic.⁴⁴ However, within the European Union, the Baltic States enjoy an increasingly close and diverse frameworks for the recognition of various types of foreign administrative acts. Such recognition exists for driving licences; marketing authorization for a medicinal product; residence permits for third-country nationals; visas; European firearms pass; pilot licence and a pilot medical certificate; air traffic controller licence and an air traffic controller medical certificate; professional qualifications and a wide variety of other recognisable administrative acts.

In addition, as discussed in the legal literature, the Baltic States are not prohibited from introducing unilateral recognition measures to make foreign administrative acts valid on their territory as a host country. Such a situation can happen, for example, if a member state decides to leave the European Union or any other common organisation, but the Baltic country decides to maintain special relations with the leaving member state by recognising its administrative acts in order to protect foreign residents. For example, by recognising foreign driving licences or other foreign administrative acts, provided that this does not conflict with the purpose of the European Union law.

3.2. Attempts for closer recognition mechanisms beyond the European Union

Even though Baltic States generally and increasingly rely on recognition mechanisms within the European Union law and are seen as a country group with the highest level of integration in European Union structures (compared to the Nordic and Visegrád countries),⁴⁵ there are a few attempts for closer regional cooperation beyond the European Union. For example, the Baltic States have introduced the Baltic Educational Space and in 2018th, the government of the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania signed an international agreement to introduce automatic recognition of academic qualifications concerning higher education.⁴⁶ Whereas in 2021 similar agreement was signed with Benelux countries.⁴⁷

Another example is the mutual recognition of electronic prescriptions (e-prescriptions), which goes beyond the existing mutual recognition of prescriptions for medicines or medical devices in the European Union.⁴⁸ Currently, all the Baltic States accept e-prescriptions and are beginning to create a single space for cross-border healthcare. Some other European Union Member States are gradually introducing the recognition of e-prescriptions as well.

Similar and even more extensive regional cooperation on the recognition of foreign decisions takes place in the Nordic countries within the Nordic Council of Ministers and the Nordic Council.⁴⁹ For example, in 2004 in Reykjavik, the Nordic countries adopted the Declaration on the Recognition of Qualifications Concerning Higher Education, which established the presumption that "the Nordic countries have established full confidence in the system of higher education in each other's countries and consider

⁴⁴ United Nations Economic Commission for Europe, *Vienna convention on road traffic*, United Nations (1968).

⁴⁵ Hilmar Hilmarsson, *The Nordic, Baltic and Visegrád small powers in Europe: a dance with giants for survival and prosperity* (Routledge, 2023), chapter 3.

⁴⁶ Agreement among the Government of the Republic of Estonia, the Government of the Republic of Latvia, the Government of the Republic of Lithuania on the Automatic Recognition of Qualifications Concerning Higher Education. Signed in Vilnius on 08.06.2018.

⁴⁷ Treaty on the Automatic Recognition of Higher Education Qualifications. Signed in Brussels on 14.09.2021.

⁴⁸ Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, OJ 88, Article 11.

⁴⁹ Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self Determination, and Individual Rights," *Heidelberg Journal of International Law* 71 (2011): 764, 765.

them to be equal regarding recognition of studies and examinations".⁵⁰ In 1985, Nordic countries signed an agreement in Mariehamn on the recognition of driving permits and vehicle registration, which in particular provides for direct contacts between the national authorities.⁵¹

As seen from the above provided examples of the closer recognition mechanisms beyond the European Union, such enhanced cooperation is realised through international treaties. At the same time, when countries belonging to the European Union establish such regional cooperation mechanisms using international agreements, they must ensure that the provisions of such agreements do not conflict with European Union law. This is not allowed under the Article 326 and 351 of the Treaty on the Functioning of the European Union.⁵² Therefore, if a group of Member States has concluded an agreement that conflicts with European Union law, they must take all necessary measures to eliminate the incompatibility.⁵³

However, the founding treaties of the European Union do not exclude possibility for member states to establish regional cooperation mechanisms. Namely, Article 20 of the Treaty on the European Union⁵⁴ explicitly provides for the opportunity and conditions for Member States wishing to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences. Under this provision, at least nine Member States can exceptionally have directives and regulations binding only on them within the framework of enhanced cooperation. Such cooperation must be aimed at furthering the objectives of the European Union, protecting its interests and strengthening its integration process.⁵⁵ However, such cooperation between at least nine Member States can only be used exceptionally if it cannot be achieved within a reasonable period by the European Union as a whole. Thus, it is not only the international law framework that provides the possibility of creating mechanisms for the recognition of foreign administrative acts beyond the European Union, including for the Baltic and Nordic countries, but also, exceptionally and conditionally, the European Union law itself.

3.3. Disputes before the courts

The recognition of foreign administrative acts has also come under the scrutiny of the courts, especially national administrative courts. While the author could not identify any court cases from Estonia or Lithuania, case law from Latvia has shown that disputes concerned very specific and fragmented life situations, that do not undermine recognition of the foreign administrative acts system itself.

The courts have considered disputes regarding the driving licences: as to whether, in a situation where the national licence was invalid but the person held another valid foreign licence, the driver was considered to be driving "without a valid licence"; in these cases, the courts have given priority to the obligation of mutual recognition of foreign licences laid down in Article 2 of Directive 2006/126/EC,⁵⁶ unless the person was

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, 766.

⁵² Manuel Kellerbauer and Marcus Klamert, "Part Seven General and Final Provisions. Article 351–352": 2066; in: Manuel Kellerbauer and Marcus Klamert (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford: Oxford University Press, 2019).

⁵³ *Consolidated versions of the Treaty on the Functioning of the European Union*, OJ 202, Article 351.

⁵⁴ *Consolidated version of the Treaty on European Union*, OJ 202, Article 20.

⁵⁵ *Ibid.*

⁵⁶ For example, judgment of Riga City Court of 23 May 2018 in case No. 1A29005218/21 (Latvia); judgment of Riga Region Court of 22 May 2014 in case No. 133035214 (Latvia).

driving the type of transport not authorised by the valid licence⁵⁷ or unless the licence was in the old format and was therefore issued before the Member State concerned acceded to the European Union (in particular dispute - Lithuanian driving licence).⁵⁸

Another set of disputes concerned the recognition of professional qualifications: whether, in a situation where a company participates in public procurement procedures and wishes to obtain a public contract, it must present the qualification documents of its foreign employees which have already been recognised by the competent national authority. In these administrative disputes, the courts have held that it is the candidate's responsibility to submit the documents required by the tender dossier and thus to carry out the recognition of qualifications in advance.⁵⁹

Currently the most prominent dispute concerns a law degree from Estonian university and subsequent access to judicial positions in Latvia. In this particular case, the applicant applied for the position of judge in Latvia. However, the Judicial Selection Committee considered that the documents relating to her law degree from an Estonian university did not prove that her education can be seen as equivalent to the lawyer's qualification as required by the national law "On Judicial Power".⁶⁰ At the moment, the judgment of the regional court is appealed to the Supreme Court of Latvia. However, it is already possible to claim that this case will set an important precedent on the eligibility of individuals with foreign qualifications for judicial positions and positions belonging to the judicial system in Latvia.

In conclusion, it is important to emphasise that the Baltic States have a history of cooperation, enabling today the development of recognition mechanisms that extend beyond the scope of the European Union. As analysed in this chapter, similar to the Benelux or Nordic states, the Baltic States possess a potential for closer regional cooperation; this is evidenced by existing regional recognition mechanisms that complement those established at the European Union level, such as the Baltic Educational Space. Therefore, in the next chapter the author considers possible avenues for enhancing the cooperation.

4. OPPORTUNITIES FOR THE FUTURE BETWEEN THE BALTIC STATES

This chapter considers whether the Baltic States could do more to enhance their cooperation. In initiating such a discussion, first, within this chapter proposals are made regarding the aspects that could be considered for the further development of the recognition mechanism; next, the digitalisation of existing recognition mechanisms is proposed; and finally, a proposal is made identifying the Baltic organisation with the potential to assume a leadership role.

4.1. Introduction of new mechanisms for the recognition of foreign administrative acts

The success of such enhanced cooperation depends on the capability of state representatives to see (and to identify) the opportunities for their citizens and the policymakers' vision of further integration of the Baltic region beyond the European Union. In authors view, when considering further integration of Baltic region in relation to foreign administrative acts, several elements can be separately or cumulatively considered:

⁵⁷ For example, judgment of Krāslava Region Court of 23 December 2015 in case No. 118009015 (Latvia).

⁵⁸ For example, judgment of Administration Region Court of Latvia of 3 June 2011 in case No. A42869009.

⁵⁹ For example, decision of the Supreme Court of Latvia of 10 March 2015 in case No. A420530913; decision of the Supreme Court of Latvia of 15 January 2015 in case No. A420531013.

⁶⁰ Judgment of Administrative Region Court of Latvia of 3 September 2024 in case No. A420096624.

- 1) what are the key areas the Baltic States need to facilitate cross-border professional and non-professional mobility beyond the European Union?
- 2) in what areas do Baltic States already have common regulatory standards and thus the recognition of administrative acts would be easy to introduce?
- 3) how can we enhance the development of the 'Baltic data and digital technologies space', especially where there are licensing requirements already?

Areas that may potentially require introduction of recognition of administrative acts are vast:

- 1) starting from areas that require mobility on land or water: for example, the recognition of simple cycling licences (to make it easier to organise pupil camps or bicycle rides on the territory of another Baltic State) or recognition of licenses for driving motorized recreational vessel (to make it easier for such recreational vessels to travel in between coastal waters of Estonia, Latvia, or Lithuania, thus avoiding requirement to obtain the international certificate for operator of pleasure craft);
- 2) to the recognition of complex licences in the area of digital technologies, finance, data protection and anti-money laundering: for example, licences for the Open Shared Client Research Tool or Closed Shared Client Research Tool Provider (that are introduced for customer due diligence and anti-money laundering purposes; in Latvia, such licences are issued by the Data Protection Inspectorate).

4.2. Digitalisation of existing recognition mechanisms

Another point of consideration is the further digitalisation of already existing recognition mechanisms, either of the administrative acts recognised under the level of the European Union or at the level of international law. The core purpose of the recognition of foreign administrative acts is to facilitate cross-border mobility. However, if, for example, an individual has obtained a professional qualification of dentist in Tallinn, but lives in Vilnius and has to physically travel back to Tallinn to obtain a few documents necessary for the recognition of the qualification in Vilnius, this clearly hinders the recognition and mobility. Therefore, cross-border recognition procedures, as inspired by the new electronic recognition innovations in the Directive 2005/36/EC on the recognition of professional qualifications, can be facilitated, for example, by:

- 1) the introduction of administrative procedures and formalities related to recognition process that can be easily, remotely and electronically completed by private individuals;
- 2) the introduction of more extensive and flexible channels for exchange of trustful information between authorities in the Baltic States, or
- 3) the introduction of the Baltic 'electronic wallet' for private individuals for various administrative acts, driving licences; prescriptions for medicines or medical devices; university diplomas, etc.
- 4) or even testing the use of artificial intelligence in recognition procedures to facilitate the recognition of foreign administrative acts or speed the work of national authorities in this respect; however, here, in the author's view, it is important to ensure that human oversight⁶¹ is guaranteed in these important decisions affecting private individuals.

⁶¹ Compare: Egidija Tamošiūnienė, Žilvinas Terebeiza and Artur Doržinkevič, "The Possibility of Applying Artificial Intelligence in the Delivery of Justice by Courts," *Baltic Journal of Law & Politics* 17, No. 1 (2024): 214 // doi: 10.2478/bjlp-2024-0010

In this context, Baltic universities and higher education institutions should be entitled to issue and store diplomas and qualification certificates in electronic format, thus facilitating cross-border mobility within the Baltic States. The electronic European driving licence could also be an initiative in the Baltic region or the Nordic-Baltic region. This would be particularly pragmatic as the Nordic-Baltic countries differ from the majority of the European Union Member States in that their public sectors rank among the most digitised in the world,⁶² and could therefore provide a good example of regional digital cooperation, especially in cooperation with Nordic countries.

4.3. More coordination within the Baltic Assembly or the Baltic Council of Ministers

The previous two sections may raise the question of who should be responsible for promoting mutual recognition, its digitalization and common standards in the Baltic States beyond the European Union?

In the Baltic States, such a coordinating role is entrusted to the Baltic Assembly and the Baltic Council of Ministers which were established based on the model of the Nordic Council and the Nordic Council of Ministers respectively.⁶³ The Baltic Assembly is an institution for parliamentary cooperation among the Baltic States, established on 8 November 1991, with coordinating and advisory powers.⁶⁴ Whereas the Baltic Council of Ministers is an institution for intergovernmental cooperation between the Baltic States, established on 13 June 1994, which promotes broad and substantial mutual cooperation.⁶⁵

In the author's view, the proper development of recognition mechanisms for administrative acts requires:

- 1) some common (but not necessarily identical) standards between countries;
- 2) demand for cross-border professional and non-professional mobility;
- 3) a spirit of cooperation within the region, such as the Baltic States.

If the second and the third criteria depend on economic and moral assumptions, the first criteria are highly dependent on the initiative of governments and legislators. In the author's view, the Baltic Assembly and the Baltic Council of Ministers, among the Baltic public organisations, are in the best position to promote the harmonisation of standards and foster the cooperation in the recognition of foreign administrative acts, thus expressing the spirit of cooperation between the Baltic States.

While this chapter does not intend to provide concrete results, but rather points for discussion, the author in conclusions suggests viewing the recognition of foreign administrative acts within the Baltic States as the mechanism that can promote competition and cross-border mobility without the need for absolute harmonisation of legislation and standards. In this way, each country can preserve its regulatory, political and cultural uniqueness while at the same time promoting the mobility of individuals,⁶⁶ which is the core research object of this article: how administrative law can extend the effects of administrative acts beyond the borders of a single country.

⁶² Hanne Marie Motzfeldt, *Public Digitalisation in a legal perspective: Status, challenges and opportunities for Nordic-Baltic cooperation*, ed. Hanne Marie Motzfeldt (Copenhagen: Nordisk Ministerråd, 2024): 13.

⁶³ Hilmar Hilmarsson, *The Nordic, Baltic and Visegrád small powers in Europe: a dance with giants for survival and prosperity* (Routledge, 2023), chapter 3.

⁶⁴ Ministry of Foreign Affairs of Latvia, *Co-operation among the Baltic States*, (May 2023) // <https://www.mfa.gov.lv/en/co-operation-among-baltic-states>

⁶⁵ *Ibid.*

⁶⁶ Aleksandrs Potaičuks, *Pārrobežu administratīvais akts Latvijā un Eiropas Savienībā*, Doctoral thesis at University of Latvia (2020): 30, 44–48.

CONCLUSIONS

The Baltic States are now fully integrated into the European Union's mechanisms for the recognition of foreign administrative acts and thus share the same method and intensity of recognition of foreign administrative acts: including the single licence recognition and explicit recognition where required by the legislation. While today the majority of recognition procedures within Baltic States are based on European Union law, international law mechanisms remain important in matters beyond European Union law.

As evidenced by the Baltic States treaties of the 1920s and 1930s, the Baltic States share some common and historical traditions of recognition of foreign administrative acts. Whereas today, as this article shows, the close approximation and mutual mobility allows the Baltic States to be forth runners of new initiatives for the mutual recognition of foreign administrative acts, such as introducing the Baltic Educational Space or digitalising already existing administrative recognition procedures.

At present, digitalisation can be marked as the new trend in legislation on the recognition of foreign administrative acts. And this seems logical, since the recognition of foreign administrative acts and the digitalisation of administrative procedures serve the same objectives: to reduce the administrative burden on individuals, to promote cross-border mobility and business, to improve the decision-making process while safeguarding the public interests pursued by each type of administrative act. In this article, the author has discussed the possibilities of digitisation in the Baltic States in relation to the recognition of foreign administrative acts. The Nordic and Baltic States are particularly privileged in this respect, as this region is currently considered to be different from the majority of the European Union Member States in that their public sectors rank among the most digitised in the world.⁶⁷

While the doctrine of recognition of foreign administrative acts and the recognition clauses in legislation appear to be straightforward, the case law shows that the Achilles' heel in the majority of disputes before the courts is the question of whether the foreign administrative act should be considered valid in specific circumstances: either where individuals have presented parallel administrative acts such as driving licences, or where the individuals have not provided sufficient evidence of equivalence of administrative acts, i.e. has not completed the administrative recognition procedure.

When considering the further development of new recognition mechanisms, particularly in the Baltic States, beyond European Union law, it is important to bear in mind that such mechanisms should not undermine already existing mechanisms under European Union law. In particular taking into account Article 326 of the Treaty on the Functioning of the European Union. However, in the case of the intention to establish new recognition mechanisms, the Baltic Assembly and the Baltic Council of Ministers seems to be in the best position to promote the harmonisation of standards and cooperation in the recognition of foreign administrative acts in the Baltic States, thus expressing the spirit of cooperation between the Baltic States.

⁶⁷ Hanne Marie Motzfeldt, *Public Digitalisation in a legal perspective: Status, challenges and opportunities for Nordic-Baltic cooperation*, ed. Hanne Marie Motzfeldt (Copenhagen: Nordisk Ministerråd, 2024), 13.

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