ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

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Access to the profession

Work Group Professional Qualifications Directive (PQD)

ACE Position on the EC Public Consultation on the PQD

Final

Architects' Council of Europe (ACE) Position on the European Commission's Public Consultation on the Professional Qualifications Directive (PQD)

Foreword
The following is the position of the **Architects' Council of Europe (ACE)** concerning questions and issues raised in the CONSULTATION PAPER BY DG INTERNAL MARKET AND SERVICES ON THE PROFESSIONAL QUALIFICATIONS DIRECTIVE dated 07 January 2011 (MARKT.D.4 D(2010)), referred to in this submission as "The Consultation Paper".

The ACE welcomes the opportunity to submit its views in the Public Consultation on the Professional Qualifications Directive (PQD). It should be noted, however, that individual professional bodies and competent authorities – even from within the ACE – may make their own submissions, and that these may reflect varying views.

The Commission consultation on the PQD is one of a bewildering multitude of disjointed and overlapping consultations – also on related Directives, policies and on a plethora of related initiatives like the Commission's "Single Market Act (SMAct) Communication" of 11.11.2010. The quantity and scope of Commission consultations is too much for citizens and consumers ("the public" in Commission parlance), or even for professional and governmental bodies at national and EU levels, to respond to. If the objective had been to confuse and disable constructive public participation in Commission consultations and initiatives, such overload would be perfect. It is hardly more excusable if the Commission's ad hoc and disorganised approach is instead the unintended result of its own confusion. The Commission's succession of consultations distracts EU and national bodies and citizens from implementing the Professional Qualifications and the related Services Directives (SD), and from promoting understanding of the Directives among consumers and providers of services.

As regards the EU-Commission's PQD evaluation, is unclear what caused it to change from a systematic evidence-based evaluation of the PQD, in documents published on 22nd October 2010, to an apparent deregulatory crusade which EU-Commissioner Barnier began four days later in the EU-Parliament in the name of "growth and jobs", surrounded by an encyclopedia of vague dogma unrelated to the Commission's own evaluations, three years and one year (respectively) after the PQD and SD became law. Necessary work to implement the Directives at national level is suspended to participate in the consultations, so as to resist the EU-Commission's unsettling threat to undermine those Directives in unspecified ways. Consultation fatigue has set in, even before the extensive work related also to national positions has begun, and before further initiatives promised in the Consultation Paper.

The ACE's asks **whether the EU-Commission's consultation is a political and bureaucratic smokescreen to conceal predetermined outcomes** regardless of the following:

a. Damage to EU consumer protection by permitting standards of architects' qualifications lower than those prevailing inside and outside the EU,

b. The views of the profession, e.g. on the likely lack of value of a European professional architect's card (Questions 11 to 14 – four out of the 30 questions asked in the Consultation Paper – relate to this topic alone, suggesting that the Commission may see such a card as a *fait accompli*),

c. EU architects' disadvantage in international trade in providing their services due to EU minimum standards being lower than the world minimum standard for architects of five years training is an issue and a sector disregarded in Question 22;

d. Continued discrimination (see reply to Question 2 below) against recipients of architects' services by electronic means, compared with those receiving services by telephone, post or in person from architects who are registered under Title II or Title III of the PQD, and who are subject to obligations under Chapter V (Articles 22 to 27) of the SD;

e. That a simple alteration to bring all such services into the PQD would avoid the need for a special initiative as envisaged in Proposal 4 of the SMact, at least in this area;

f. EU-Commission lip service to Professor Monti's view that "*a single market needs to enjoy the support of all the market players: businesses, consumers and workers*". The EU-Commission showed this assumption is false in relation to architects: architects clearly are not among the *"small businesses and other creative spirits"* which the EU-Commission's November 2010 SMAct document see as "*players in the single market who need funding to innovate, increase their competitiveness and create jobs."*

While the EU-Commission says it wants "*in particular to ensure greater convergence of the rules and standards in force on the different world markets",* it clearly wants to do so selectively, so as to **exclude architects, for whom convergent rules and standards already exist across the world and across EU-Member States – almost everywhere except in Article 46 (1) PQD, where the EU-Commission refuses to make the simple change to replace the four years minimum training for architects to five years.**

As a first conclusion we state that most parts of the PQD, except for the architects' education and practical experience stipulations - explained and reasoned in the following - do not need the radical changes, which are envisaged by the EU-Commission.

Some questions in the Consultation Paper are badly framed (like those at b. above), in a manner indicating that the EU-Commission has predetermined answers – or at least predetermined parameters for answers – to problems imagined by the EU-Commission, instead an openness to listen to the actual problems experienced by professionals, by consumers and by other citizens; and to listen also to suggested answers.

Chapter 1: Introduction

An example is in Chapter 1 of the Consultation Paper, where the EU-Commission defines "three major challenges for the future", but does not ask questions until Chapter 2, with the result that the public is not invited to agree (or disagree) that these are the relevant challenges to be addressed. Subheading 1.1 asks whether the freedom to establish (or "gain employment") and to provide services in another Member State is *"Success story or untapped potential for the Single Market?"* But this question seems to be rhetorical, since there is no invitation for respondents to say whether it is a success or an untapped potential.

The third paragraph under 1.1 says that "*mobility remains low in the EU: in 2009 only 2.4% of the European Union's population (12.5 million out of nearly 500 million) live in a Member State other than that of their nationality. In the last thirteen years, about 200.000 citizens took advantage of the acquis in seeking recognition of their professional qualifications*". Architects ask whether residency is the only criterion with which to measure mobility. Mobility can also be measured by other criteria; e.g. by income or fees earned in a host country rather than in the home country. We are not told if the 2.4% includes (for example) persons who changed nationality after they graduated, or who have dual nationality.

A Sector Study "*The Architectural Profession in Europe 2010*" was commissioned by the Architects' Council of Europe, in which 23 Member states participated. This shows that 7.7% average of architects' fees across Europe derived from outside the architect's home country (Table 3-10 of the *ACE Sector Study 2010*). This figure shows a level of earnings from export or services three times higher than the average cited on page 3 of the Consultation Paper. Perhaps this shows that architects are especially good at finding ways of moving around, and/or it may show that automatic recognition is generally better than the general system at facilitating mobility; and/or that the statistical basis for the Consultation Paper is unreliable or incomplete.

1.2. The first challenge: simplification for individual citizens

Experience shows that architects have good access to information about mobility processes through direct access to their registration and other competent authorities, especially in their home States. Experience shows too that architects rarely enquire to Article 57 PQD contact points nor involve the SD Points of Single Contact. Instead they go directly to the competent authority, sometimes via the professional body in the home or host state. Consequently, the architects' competent authorities and professional organizations need to publish information addressing applicants from second and third countries (step-by-step-guides). The websites of the ACE and of the European Network of Architects' Competent Authorities (ENACA) offer platforms where registration information for foreign applicants should be publicly available.

Architects are therefore puzzled at how the Consultation Paper states as fact that *"A professional seeking to move to another Member State is subjected to various requirements which together create a complex jigsaw of procedures. This can be a barrier to efficient matching of labour supply and demand within the EU . . . Simplification of the framework for recognition of qualifications between Member States will become more and more important."*

It seems to the ACE, on the contrary, that among architects there are few procedural barriers under the PQD to matching supply and demand for their services: architects have always moved around. In most countries, architects are required to be registered under national law; and most of what the PQD requires when they move is that they repeat a small part of the home State procedures in the host State, since Articles 7 and 50 PQD restrict what the host State may demand. There may indeed exist for the immigrant architect a complex jigsaw of procedures in the host State, but this does not relate to recognition of qualifications, but has to do with tax, social security, insurance, banking, planning and building control laws etc. The PQD processes by contrast are already simple enough to be easily understood, and are no more than architects recognize are necessary to make them accountable to recipients of their services and to competent authorities for the profession.

1.3. The second challenge: integrating professions into the Single Market

The Consultation Paper notes "*two innovative tools which could be developed by the professions to facilitate mobility: professional cards and common platforms. The related projects, however, have not led to concrete deliverables. Do we need fresh thinking . . .?"* In the case of architects, professional cards have been considered since long before the PQD, and the reason a European card "*has not been delivered*" for architects is because the profession and the competent authorities see such a card as the solution to a problem which does not exist for architects, thanks to the PQD system for automatic recognition, which is also why architects do not need a common platform under the PQD general system.

Section 1.3. then describes as a "*major innovation in the 2005 Directive"* its Title II provisions *"to facilitate temporary mobility for professionals".* But it says that these "*obviously trigger a reflex in Member States to maintain checks of qualifications as far as they can. This has led to a declaration system which is not easy to implement."* For architects, this is not the case. States whose competent authorities publish an online list of the architects who have made declarations make it simple for architects and clients alike. The greatest obstacle to mobility is often in the area of insurance, but that is more a weakness of the EU and of its insurance companies than of national competent authorities or

of the PQD. Perhaps the Consultation Paper confuses, in the last sentence of 1.3, the declaration system with pro-forma registration, on which we comment further below.

In any case, contrary to what the heading at 1.3. indicates, the profession of architect is already integrated into the Single Market.

1.4. The third challenge: Injecting confidence into the system

With its third challenge as with the first two, the ACE fears that the Commission is again inventing a problem (or perhaps a confusion of problems), which does not actually exist.

The Consultation Paper quotes the history and growth of the EU and of the *acquis*, i.e. the body of law governing the EU, and implies that the combination of 27 Member States, of educational reforms, and of scientific and technological progress has made "*maintaining mutual confidence more challenging"*. The experience of the ACE is quite the contrary. The acquis, and especially the PQD, has helped to build confidence. In particular, the emphasis in the PQD on administrative cooperation, and in the SD on electronic means, has allowed (and determined) the 27 Member States to learn from and about each other. In the case of architects, the unifying effect of the PQD seems to be reinforced by a shared sense across the Member States of professional ethical standards, and of duty to the client and consumer, which exists regardless of the many differences in law and practice at national level.

One problem which Section 1.4. correctly identifies is the risk that professionals who are disbarred or suspended "*for serious professional misconduct [will use] free movement rules to start practising again in another Member State".* But this use (or, more correctly, abuse) of the rules could be prevented more easily if the Commission can improve its own "Internal Market Information (IMI)" system, so that the system of alerts between CAs about misconduct (or fraudulent attempts to register) under the SD-IMI are extended to the PQD-IMI, to include principals and directors of firms disbarred or suspended under the SD-IMI.

The ACE agrees that there are challenges to be met in relation to the PQD but, in relation to architects, the challenges are not those identified in 1.2 to 1.4 of the Consultation Paper. And as regards injecting confidence into the system, the ACE considers that the worst thing to do would be to change the system before it has been properly implemented and assessed, as DG-Markt seems determined to do regardless of its many consultations. Please put resources into implementing the PQD, and not into an unsettling proposal to change it.

In summary, the introduction to the Consultation Paper does not provide a clear basis for answering its own question about "*untapped potential for the Single Market*" in the PQD.

Chapter 2: A Call for Simplification

The introductory paragraph begins by noting "*declining working population and potential skilled work force shortages"* and goes on to say that "*market forces alone could drive a simplification of procedures for recognition of qualifications*". In fact the ACE Sector Study already quoted above shows continuing expansion of the number of architects within the 27 Member States. A continuing trend towards increased consumer protection through regulation of architects is also evident in many States, so that the situation (both for architects and for consumers) is more "*fully satisfactory*" than the Consultation Paper says.

2.1. Why Simplification

Q.1 Do you have any suggestions for further improving citizens' access to information on the recognition processes for their professional qualifications in another Member State?

Access to information is a key matter in the stipulations of the SD (article 7 and article 22 SD), which complements the PQD in EU and national law and regulations concerning architects. Many

professional bodies and competent authorities are working hard to fulfill (and/or help their members to fulfill) these obligations, work which will be disrupted if the Directives and processes themselves are changed as the EU-Commission envisages.

The last paragraph of 2.1. says that "*The Commission services sought feedback on how citizens assess the functioning of the system. The outcomes of these enquiries point to the same conclusions: professionals encounter difficulties in identifying the competent authorities, the procedures to follow, and the documents to submit. They also report problems with providing translations, presenting original documents and incurring significant costs."*

Data missing from the Consultation Paper: The ACE has tried to check the feedback from citizens which is referred to here, based on footnotes in the Consultation Paper. But the documents referred to do not answer the following questions:

a. How many architects report difficulties in identifying their competent authorities?
b. Which procedures and which documents are proving difficult for architects to identify under the PQD? Or does the problem exist only in the PQD general system?
c. Why/how is translating into the host State language a problem for architects, bearing in mind that their competent authorities are within the IMI system, and that competent authorities in the ENACA freely provide translations to each other when requested by a host competent authority?
d. What significant costs (if any) are incurred by architects under the PQD?
e. Why was any relevant feedback from architects, and the problems which it identified, not communicated by the Commission to the architects' competent authorities in the ENACA at three meetings the Commission had with the ENACA in 2010? The main problem highlighted by the Commission is delay by Member States in notifying new and amended diplomas, a deficit recognised by the professional bodies and CAs in the ACE, on foot of which they are working to expedite notifications.
f. As regards original documents sought from architect applicants, is it not true that a host state competent authority which has doubts about authenticity of copy documents can often check this with the home state competent authorities, either via the IMI or via the ENACA?

It is bewildering, in the middle of Section 2.1 on poor functioning of the PQD, to read the quotation from a March 2010 *Eurobarometer* survey that only 4% of the population in Member States feel concerned that, if going abroad, their qualification would not be recognised in another Member State. So does a problem exist at all?

New data and old data: The 4% statistic relates to fieldwork carried out by Gallup for the Commission in early 2009, after the PQD came into force. A much more negative impression is given in the same paragraph of the Consultation Paper by the information that, „*on a Europe-wide average, only 70% of recognition requests reach a quick and successful outcome, whereas the remaining 30% are cases which turn out to be difficult, or in which recognition is denied*." But when the documents referred to in the footnote on page 5 of the Consultation Paper are consulted, it emerges that the 70% statistic (according to the Commission's *Internal Market Scoreboard*) relates to the reporting period 1997-2008; in other words to a period of 12 years, 11 years of which predate entry into force of the PQD.

Because it seems to be in a hurry to change the PQD, the Commission has not waited for reliable comparative statistics. The PQD transposition delays reported in the Commission's *Internal Market Scoreboard* indicate that new PQD deadlines for processing applications for recognition may not have been fully transposed into national laws by early 2009 when the 4% statistic was obtained; so perhaps expectations have improved even further since then. There is too little analysis and too few data in the Paper to verify or challenge its conclusions and inferences.

Misunderstood data - compare the EU with North America: Other questionable aspects of the (outdated) 30% statistic used in the Consultation Paper appear on page 30 of the Commission *Scoreboard*: "*In the 30% of cases which turned out to be difficult or in which recognition was even denied, in 9% of cases, citizens only got access to the profession after having followed so-called compensatory measures (an adaptation period of up to 3 years or an aptitude test offered at best twice a year), in a further 8% of the cases recognition was even refused and finally 13% of all cases are*

reported as not settled because citizens currently follow an adaptation period or lodged an appeal before national courts."

This sentence indicates fundamental misunderstanding by its author of PQD compensatory measures in Articles 10 to 14 (further discussed in our reply to Question 2 below). One may contrast the EU system with that in the U.S. and Canada for an architect with an EU diploma who seeks recognition of his qualifications. The North American system requires every architect to take a comprehensive examination to test the knowledge and skills required (under the worldwide UIA Accord of 2005) by the architects' registration boards or licensing authorities of the country in question (as well as to have the necessary professional experience) notwithstanding that the 2005 UIA Accord sets out knowledge and skills for architects almost identical to the 11 points of PQD Article 46(1). In the PQD general system, by contrast, the competent authority does not set a comprehensive examination, but assesses how much of the knowledge and skills required of an architect under PQD Article 46(1) the applicant can already prove. Provided the diploma is not more than one level lower than the EU level, measured in accordance with Article 11, the authority may set an aptitude test or adaptation period sufficient only to assess and/or to fill the applicant's gap in knowledge and skills – not to prove all his knowledge and skills *de novo* as in the U.S. The PQD compensatory measures are thus a concession to the applicant, not an additional obstacle as page 30 of the *Scoreboard* implies. Such error and misunderstanding of PQD compensatory measures in the *Scoreboard* is worrying. For the error to be repeated as a foundation of public consultation on "modernizing" the PQD seems quite inept.

Difficult cases - more missing data but some evidence: The *Scoreboard* gives no analysis of the "*8% of the cases [where] recognition was even refused*", nor of whatever proportion of the "*13% of all cases*" where "*citizens lodged an appeal before national courts*". So we do not know how many of the refusals of recognition were judged to be lawful, how many were unlawful, or how many appeals were allowed. But 22% (or almost three-quarters) of the 30% of "difficult cases" were in categories where some or all applicants undertook an adaptation period or other compensatory measures. This indicates that these people did overcome difficulties in identifying competent authorities and the procedures to follow etc., contrary to what the last paragraph of 2.1 (quoted above) says.

So the evidence on which the consultation is based seems unclear at best, and false and exaggerated at worst. To improve information for citizens, the EU-Commission first needs to improve information on Article 14 compensatory measures among its own staff who prepare the *Scoreboard*.

Perhaps the EU-Commission and the ACE can be relieved that the 30% of cases in the 12-year period where the *Scoreboard* considers that „citizens encountered major problems" are irrelevant (or around 90% of them are) to an assessment of the PQD, because that 90% predates the PQD. But it is alarming that the EU-Commission is quoting irrelevant statistics in support of its „*modernisation*" of the PQD; not least because that *modernisation* seems likely to worsen the transposition deficit reported in the Commission's *Internal Market Scoreboard.*

Conclusion:
The ACE fears that simplification of current recognition procedures would be impossible without damaging the interests of consumers of services, e.g. by relaxing professional standards. In any case the theoretical benefits to applicants of simplification may be outweighed by the unsettling signal it would send to citizens and Governments that the EU made mistakes in devising the PQD; that the system will be changed in 2012 just five years after it came into force; and that the evidence on which the change is based is so false or flimsy that we may expect more changes in 2017 another five years later.

Q.2: Do you have any suggestions for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence.

Summary of suggestions on automatic recognition and on the general system: The automatic recognition procedures for architects – especially under Article 46 – display little need or opportunity for further simplification, subject to the ACE suggestions to incorporate the worldwide standard for a minimum five years training as noted at Q.1 above, and for a supplementary two years of pre-

recognition professional experience, previously included as Article 23 of the former Architects' Directive 85/384/EEC.

The ACE also suggests a change to the definition of level (e) of Article 11, based on evidence provided below in relation to the general system. Currently the application of qualification levels (d) and (e) is ambiguous, because both levels cover a study period of 4 years. Level (d) covers studies of up to 4 years duration, while level (e) covers studies of at least 4 years duration. It should be made clear that level (e) covers only study courses of more than 4 years duration

Finally as noted on the first page of this submission, the ACE suggests ending discrimination against recipients of architects' services by electronic means, compared with those receiving services by telephone, by post and/or in person from architects who are registered under Title II or Title III of the PQD, and who are subject to obligations under Chapter V (Articles 22 to 27) of the Services Directive. Adoption of that suggestion would bring all such services into the PQD, and would avoid the need or a special initiative as envisaged in Proposal 4 of the SMact, at least in this area.

General system - the attestation: The conditions for recognition of the regulated professions under the PQD general system are generally laid down in Article 13 PQD, which thus regulates the recognition of architects who are not subject to the automatic recognition regime. This article stipulates that the host Member State, which demands the possession of specific professional qualifications for access to or pursuit of a regulated profession, shall permit access to and pursuit of that profession to applicants from another EU Member State under the same conditions that apply to its nationals. The foreign applicant must possess the required attestation of competence or formal qualifications of another Member State in order to gain access to and pursue that profession. This attestation of competence must attest a level of professional qualification at least equivalent to the level immediately prior to (i.e. lower than) that which is required in the host Member State. This system applies also in cases where the profession is not regulated in the other Member State (country of origin). If so, the Competent Authority must attest that the holder (applicant) has been prepared for the pursuit of the profession in question. According to the Directive the "professional training" in both the home and the host Member States must not differ materially but be "adjoining" in the sense of Article 11 PQD. Only when there exist differences between the professional training in the country of origin and the host Member State, may compensation measures apply.

General system - the five levels: The PQD stipulates five levels of professional qualifications in order to classify the professional qualifications of foreign applicants with regard to their equivalence to the qualifications of national professionals. If the applicant possesses a professional qualification of a level immediately prior to (i.e. lower than) that of national professionals, compensation measures can be required. If the applicant's level of qualification is two or more levels below that of national professionals, the application is to be rejected. In that case, compensation measures are not possible. The EU Member States retain the right to lay down the minimum level of qualification required to gain access to and to pursue the profession in their territory (see also Recital 11 PQD). These procedures permit rejection of all unqualified applicants and raising under-qualified ones to the level of qualification of the host Member State's national standard.

Several competent authorities within the ACE have experience of the general system in registration of other professional branches like interior architects, landscape architects and town-planners, because the latter regulated professions are not subject to the system of automatic recognition. Such CAs thus use the five levels laid down in article 11 PQD quite regularly. Likewise some competent authorities employ them regularly to process applications from holders of diplomas not yet notified. So the current recognition procedures under the general system have stood the test of use.

Most potential applicants inform themselves about the procedures, and are well capable of evaluating their own professional qualifications against the five levels of Article 11 and, if not sufficiently qualified, usually do not apply for recognition. Consequently it would not make sense to abolish the Article 11 PQD qualification levels on the grounds that applicants hardly ever possessed unequal qualifications, because this would deny the preventive impact and current operation of the regulations.

For the time being, further harmonization for example with the European Qualifications Framework System (EQF), is not necessary. On the contrary, the PQD should be given an opportunity to settle down, after the considerable efforts and investments by Member States to implement it, especially for professions (like architect) not previously in the general system.

2.2. Making best practice enforceable

Q.3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

The non-binding character of the Code of Conduct should remain so. It helps to promote administrative cooperation while necessarily allowing flexible standards for the recognition procedures, which – regarding the great variety of regimes for the various regulated professions and activities – differ considerably in their details and extent. To safeguard legal certainty, legally binding stipulations, for example concerning the documents which can lawfully be requested for the recognition process, should be set down in the Directive only, as Annex VII already does.

Various Commission reports, including the *Scoreboard* referred to above and the *Staff Working Document* of October 2010, show that even Treaty obligations to transpose the PQD were not achieved on time by any Member State. So it is far from certain that making the Code of Conduct binding will secure more consistent PQD implementation across the EU/EEA.

The ACE notes that the text in 2.2. of the Consultation Paper says that "*The Code draws on the case law of the European Court of Justice in respect of the Directive and the relevant provisions of the Treaty on the Functioning of the EU."* The ACE does not have specific suggestions (or reasons) for amending the Code, seeing these as a matter for the Article 56 Group of National Coordinators. But it finds the Commission's information regarding case law in relation to the PQD quite unsatisfactory, as explained at Q.6 below.

2.3. Mitigating unintended consequences of compensation measures

Q.4: Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?

Architects' have increasing experience of compensation measures, both of tests and of adaptation periods. Compensation measures serve two objectives: the interests of clients and those of the service providers. The interest of clients is to deal with service providers who have a certain minimum level of professional qualification. To serve the aspiration of applicants to gain access to a profession despite having a substandard level of professional education, compensation measures are an indispensable instrument to compensate for substantial differences in the professional education of the service providers. This applies in particular to adaptation periods, which need (except in countries which have a derogation under Article 14) to be completed only if the applicant decides not to sit the aptitude test prescribed to make up for substantial differences in professional education or if he fails that test. The duration of the adaptation period depends on the degree of the substantial differences to be compensated for. The maximum duration of three years is seldom needed, but should remain available for special cases.

The ACE supports the concessions to under-qualified architect applicants under PQD Articles 10 to 14, notwithstanding the big workload that it imposes on competent authorities in tailoring individual tests and adaptation periods. And ACE support will be even stronger provided that the concessions are set against the worldwide five-year minimum period of training for architects, instead of the currently substandard four years in Article 46 (1).

Q.5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

Architects agree with the EU-Commission that the development and implementation of individual aptitude tests and adaptation courses put the resources of the registration bodies and institutions under strain. European Codes of Conduct for the relevant professions could well enhance confidence between the European registration bodies and further the exchange of information between them, leading to more consistent standards in the long run. However, the development of non-binding Codes of Conduct should be done independently of any revision of the Directive.

The ENACA has already begun to network and to cooperate among architects competent authorities just as the third paragraph of 2.3. of the Consultation Paper envisages. This is likely to lead initially to better mutual understanding, and perhaps eventually to convergent practices. The ACE supports such administrative co-operation, and not a mandatory code as Q.3 above envisages. EU-Commission proposals to change the PQD risk deterring the development of such cooperation or codes during the next year or two.

Q.6: Do you see a need to include the case-law on "partial access" into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

No, in answer to the first part of the question. As regards the second part of the question, „Partial access" to a regulated profession means that the person concerned is not allowed to exercise the full range of tasks a professional in this field usually does. The example quoted by the Commission on page 8 of the Consultation Paper is ECJ case C-330/03: Collegio de Ingenieros -v- Administracion del Estado concerning the Italian hydraulic engineer Sr. G M Imo. He was granted registration as a civil engineer in Spain, but Spain's Council of Engineers argued that the works (and hence the professional services) covered by Sr. Imo's curriculum was much narrower than the wider curriculum (including roads and harbors) covered by Spanish civil engineers. The ECJ ruled that Mr Imo was entitled to partial access. Keeping in mind the interests of consumers /clients, it is difficult to envisage a comparable circumstance arising for architects even in special instances. We know of no general criteria which would allow codification of such cases with sufficient legal certainty in the Professional Qualifications Directive. Persons with partial access cannot gain professional experience with those tasks they are not authorized to exercise, which means that their ways to achieve full access are those which the Directive already includes:

- successful completion of a diploma course listed in Annex V.7.1, bearing in mind that the automatic recognition system already permits in Article 47 (2) a recognition of prior learning etc.; and
- successful completion of compensation measures.

Architects are perplexed as to why the EU-Commission, after having generated a transparent and reliable law code in Directive 2005/36, is keen to open up a discussion of this codified law by reference to older case law. It ought to be the duty of the EU-Commission as co-legislator to ensure that its Directives either embody or supersede all earlier case law. It is unfair to citizens that all the case law on the EU-Commission PQD website at the end of 2010 predates 2005 when the PQD was adopted.

The EU-Commission ought to update its website not only with all relevant cases, but also with an opinion (and as many caveats as may be necessary) on the application of each case in 2011; e.g. as to how it is embodied in the PQD or of why, if it is not embodied in the PQD, that was not done.

2.4. Facilitating movement of new graduates

Q.7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

Yes, the ACE does consider it important, and suggests that PQD Article 1 should be clarified so as to give effect to its apparent intentions. Architects agree with the EU-Commission that graduates not yet qualified for full access to the profession experience a gap when they "*are no longer students but not yet fully qualified professionals either*". The ACE agrees they should have a chance to accomplish their practical professional education in another Member State, as many already do, and the ACE supports this in relation to architects. The opportunity is greatest where both Member States require a comparably similar practical professional experience element. The ACE has a policy unanimously agreed among its members to promote convergence around a curriculum of five years of university training and two years of professional experience. To deal with variations between practical experience in different EU countries, the ACE knows that the European Network of Architects' Competent Authorities (ENACA) is hoping to develop sample cases.

A graduate with a notified diploma, listed in column 2 of PQD Annex V.7.1, will seek to obtain the "accompanying certificate" in column 4 of the said annex, so as to qualify for full automatic recognition. But other approaches ought to be possible, if the full qualification is not yet achieved by the applicant. A means could be established for the holder of a notified diploma, unable to fulfill the related column 4 requirement in his home country, to apply for individual evaluation of his practical professional experience by a host country competent authority.

This will most be especially needed when the applicant has acquired this professional experience in more than one EU Member State (as the EU-Commission Paper encourages him to do) and consequently is in difficulty to fulfill the registration conditions of the country where the diploma was obtained. Sample cases should be given as best-practice models in the non-binding code of conduct, after having been discussed with the EU-Commission.

Q.8: How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons.

Please see the answer to question 7.

2.5. Facilitating movement between non-regulating and regulating Member States

Q.9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

Question 9 is linked to the issue of movement between non-regulating and regulating Member States. This is only apparent in the sub-heading above question, i.e. *Facilitating movement between non-regulated and regulated countries,* and not from the question itself. Is this Question relevant or not for architects, as architects' qualifications seem to be treated (more or less) in the sectoral part of the PQD? The system of the sectoral regime for architects is generally speaking linked to Annexes V.7.1 and VI of the PQD listing diplomas which, with or without a listed accompanying certificate, thus give access to the market. The additional certificates refer in most cases to an additional professional practice period as a precondition for eligibility to register in a professional list. However, there are many cases where architects cannot avail of the sectoral regime and so from automatic recognition. Therefore the ACE offers its opinion on this question 9 and on the following question 10.

Question 9 refers to Article 13 PQD with special emphasis on Para 2 Subpara 1, which stipulates that applicants from a country where the profession is not regulated intending to establish themselves in a country where the profession is regulated must deliver proof of at least two years of professional practice within the last ten years. Furthermore the text leading to the question indicates that there are existing professions that are eo ipso "cross-border by nature" so that there is a supposed need for special treatment. As also architects in some branches are very mobile (hotels, industrial plants i.e.), this distinction of "cross-border by nature" or "not-cross-border by nature" professions is not helpful. There is no connection to the question whether or not the pursuit of the profession is per se of a cross-

bordering character – whereas the EU Commission's consultation paper deems this issue an important one.

The stipulations of Article 13 have caused no difficulty, because practically all qualified applicants who could provide proof of a regulated education had not to prove their professional experience, and so were accepted. Nevertheless the existing regulations can be improved.

For various reasons the ACE proposes that a clause should be inserted to deal with practical experience, just as Article 23 of the former Architects Directive 85/384 EC did. *"If in a Member State the taking up of the activities under the title of architect is subject, in addition to the requirements to the possession of a diploma, certificate or other evidence of formal qualifications, to the completion of a given period of practical experience, the Member State previous residence stating that appropriate practical experience for a corresponding period has been acquired in that country."* This requirement should be limited to a maximum of two years and should be of non-discriminatory character. The experience of the architects' competent authorities shows that practical experience of two years need not hinder access to the market of another European member state. On the contrary, it creates trust in the eyes of clients in the host member state. Additional practical experience of two years therefore ought to be supported by the PQD.

Q.10: How could the concept of regulated education be better used in the interest of the consumers? If such education is not specifically geared to a given profession, could a minimum list of relevant competences attested by a home Member State be a way forward?

This question is also under the same sub-heading 2.5, concerning movement between non-regulating and regulating Member States. It raises several sub-questions.

In the first part of the question, the term *consumer* is unclear: is it the student or the recipient of a service? It may be that it asks whether regulated education alone can lead to professional qualifications and thus (perhaps) whether it can replace or abolish burdensome procedures, like the notification of architectural diplomas.
In this context it must be stated that universities in most Member States are free - sometimes protected by constitutional guarantee - to generate their curricula. So many Member States are prohibited from interfering in study courses, even to ensure compliance with the needs of a regulated professional qualifications.

Therefore national subsidiarity and academic freedom prevail regardless of voluntary convergence at the root of the Bologna process. The negotiation of a minimum list of relevant competences (as this question envisages) would require a great deal of resources, which should instead be dedicated to expanding the system of automatic recognition, which already exists for architects, and for whom the 11 points of knowledge and skill in Article 46 (1) continue to appear robust after 20 years of use.

Having said this, regulated education (under PQD Annex IV) often means something different from regulated exercise of the professions under Annexes V and VI. These professions, regardless of the competences required for them to serve the needs of consumers in a particular Member State, are entitled to establish and/or provide services in all other Member States, subject to the discipline of their profession in that host State.

So regulated education cannot replace a common multinational system of agreed standards. So it seems to make sense for the PQD

a. to support the existing and functioning regime of article 46 for the architectural profession and
b. to extend the system of automatic recognition into related branches like the interior architects, landscape architects and town-planners, instead of creating lists of minimum competences for exchange between the Member States. Such an extension seems preferable to a 28th regime as Question 15 envisages.

PQD Article 46 (1) accommodates nationally distinct architectural history and heritage, planning and building controls etc. The ACE has prepared a list of competences relating to the 11 points of Article 46 (1), and the competent authorities of several Member States have done likewise. So the system of attestation of minimum training conditions already co-exists with the system of competences within the automatic recognition system.

Chapter 3: Integrating Professionals into the Single Market

3.1. A European Professional Card

Q.11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase the transparency for consumers and employers? Should it enhance confidence and forge close cooperation between a home and a host Member State?

The objectives listed in this question - for speed, transparency, confidence and cooperation - are very desirable. However, a professional card will not speed up the recognition process, at least not for architects, whose competent authorities have now put all or most of the application processes online, and all of which are within the IMI system. On the contrary, there is a contradiction between the encouragement of online processes under the PQD and Services Directive on the one hand, and the possible encouragement of card-holders to visit a competent authority in person to produce their card on the other hand, which can be inconvenient both for the card-holder and for the authority; duplicating online and personal facilities.

The ACE has, as already noted above, discussed a professional card. A card makes sense only if it makes the recognition process according to the PQD easier, more transparent and user-friendly. The practical realization of these requirements must be discussed in detail. One crucial necessity is the obligatory application of the IMI (see also answers to the questions 12 – 14), requiring many improvements and greater consistency between PQD-IMI and SIM-IMI; for example as regards alerts. **It is currently difficult for the architects' competent authorities to see any added value that a professional card could add to the current automatic recognition system.** There is a great danger that such a card will create expectations which citizens will feel are not fulfilled, and cause confusion for holders of cards, for their professional bodies and for competent authorities.

Q.12: Do you agree with the proposed features of the card?

The features of a professional card as proposed in the Consultation Paper deserve a detailed evaluation:

a. **Feature 1**: Card issued by Competent Authorities
The ACE agrees with the Consultation Paper that professional cards can be issued only by competent authorities of the home State (country of origin) so as to give the necessary credibility to professional cards. Potential clients or employers should be able to obtain on the card enough information to permit them to verify the identity of the holder of a qualification, as a basis for further enquiry.

b. **Feature 2**: Additional support by electronic exchange via the IMI-PQD:
The ACE also agrees with the Commission's Consultation Paper that, if there is a European card for a profession, it should only be issued by competent authorities which are registered in IMI and therefore able to exchange information electronically and confidentially with competent authorities in other Member States. However, the Commission should note that only the IMI-PQD is a reliable support for the architects' competent authorities, because IMI-SD suffers from many flaws.

c. **Feature 3**: Optional for the card-holder
The ACE agrees with the EU-Commission that, in professions where the introduction of a professional card seems appropriate, it ought to be optional for professionals to obtain such a card. Professional cards should not, in any circumstances, be obligatory for the professional. An obligation on those pursuing a regulated profession to hold or to present a professional card would be an additional burden, clearly so on citizens whose countries are already developing an all-embracing national card for all citizens such as Estonia and Portugal.

d. **Feature 4**: Optional or binding for the competent authorities?
In Q.11 ACE has pointed out contradiction between the encouragement of online processes under the PQD and SD on the one hand, and the possible encouragement of card-holders to visit a competent authority in person to produce their card. In the first bullet on page 11 of the Consultation Paper, the Commission says that “once issued, the card should be binding on the competent authorities”, but what can that mean?

- That an applicant must be met in person?

- That, once the card is presented, the competent authority may read the card by eye and/or electronically, but is forbidden to use the IMI (which all competent authorities for architects have) to verify that information on the card is still up to date?

- Or that the competent authority is forbidden to check whether the card is forged?

So the card should not, at least in these respects, “be binding once issued”.

And just as important is a cost effectiveness-valuation, especially for the CA of a profession which sees little added value in the professional card, as architects do. The ACE fears that a compulsory card reader or card-maker may find little or no demand for its use in dozens of the architect competent authorities across Europe. It would bring about unnecessary administrative burdens on Member States and on the competent authorities. The lowest initial estimate of installation and set-up costs for a reliable system to produce and check cards is € 50,000.00, and other initial estimates are more than twice that. In addition the Member States must implement adequate mechanisms to police and to prosecute fraud or misuse of cards.

In any case, if the card is optional for the car-holder, it is vital for the further discussion to understand that procedures must remain available within competent authorities for migrants in Europe who possess no card.

e. **Feature 5**: Availability of the card to all interested professional
Even if the issues at d. can be resolved, the universal availability of the card depends in part on its agreed contents. The necessary precondition for one card to be available to all professionals of one profession is that everybody fulfils the same qualification standards and therefore the same rights to exercise the profession. In many Member States this is not the case; e.g. professionals who bear a title similar to “architect” but do not have PQD rights of automatic recognition across Europe because their qualification does not conform with the minimum Article 46 PQD training standards.

f. **Feature 6**: Facilitating temporary mobility
A card could, in professions where its introduction seems appropriate, give access to data about whether the holder’s profession is regulated in the home Member State, about the holder’s regulated professional education, and/or about whether he possesses two years of professional practice experience. It can first and foremost provide the competent authority of the host country with the necessary information on the holder of the card (authentication is a major issue). However, the card cannot replace "prior declaration", which imposes under the existing regime the very important task on the migrating service provider to hold professional indemnity insurance to meet legal requirements of the host country. Prior declaration ought to permit the service provider to be listed in the public area

of the website of the host competent authority, and so to be checked against a corresponding entry in the website of the home competent authority. This is in the interest of consumers, and is a simpler and cheaper system, to allow the consumer check that the professional is registered.

g. **Feature 7**: Simplifying the recognition procedure
Professional cards cannot prejudge the host Member State competent authority's decision on recognition of a professional qualification. Furthermore, professional cards cannot replace or dispense with the submission of the information required for the recognition process. However, if appropriate, the host Member State could base the evaluation of a foreign applicant's qualifications on detailed and standardized documentation of the holder's professional education and experience accessible via the IMI; via the ENACA website or via a European professional card specific to that profession in his or her home Member State, provided it is based on a single EU–wide standard for content and technology. It seems that, for authentication of an applicant, professional cards, which hold an electronic signature, are of value in making identification more reliable. However, there is no reason to believe that registration procedures will be quicker using a professional card than it is now using a certificate from the competent authority. There is also no reason to expect recognition cases under the General System to obtain any special gain.

Finally, if the "European skills passport" mooted in the Single Market Act is pursued, it would be foolish to have two separate European cards competing to help lifelong mobility of European citizens in the closely related areas of training and of qualifications.

Q.13: What information would be essential on the card? How could a timely update of such information be organised?

If there are to be European Professional Cards (despite the skepticism of the ACE in that regard noted at Q.11), they should follow a consistent design all over Europe and contain a photo of the holder and other features to safeguard it from falsification. Professional cards intended for cross-border services and those for the sectoral professions subject to the automatic recognition regime should give access for competent authorities via the IMI system to information which verifies that the holder fulfills the requirements stipulated in the Directive, perhaps in the form of the e-certificate shown in the Commission's presentation to the professional bodies on 29 October 2010.

Professional cards could also contain a chip offering an extensive and standardized documentation of the holders' professional education and practical experience. But this would make it more the "skills passport" mentioned at the end of 12 above; would make it more expensive than (say) a bar code needed for a competent authority to interface with the IMI; would also make it necessary to have periodic updates (at least annually); and could impose a burden on CAs to take responsibility for the holder's post-registration CV in a way which is beyond their legal powers, and further complicates and adds to the cost of the card system. It may also complicate matters by requiring some information obtained from (or via) the card to be only accessible by CAs, while other information (e.g. the "skills passport") may need to be accessible to prospective clients or employers.

The period of validity of a card should be limited to guarantee regular updates of this information, and to limit harm done in the event that it is stolen or falsely used . For architects, the low demand for a professional card, and the even higher costs for competent authorities to establish the infrastructure necessary for a chip-based card, mean that the Commission should not make it compulsory; since it seems certain that such infrastructure will be little (if ever) used.

Q.14: Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?

The title "professional card" is the appropriate one, because the term „professional passport" may mislead professionals into thinking that even the electronic application procedures under the SD, which

extend also into the PQD, are no longer necessary. If there is a card there should be a card that also covers e-commerce services.

3.2. Abandon common platforms, move towards European curricula

Q.15: What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to the national requirements? What conditions could be foreseen for its development?

Minimum Curricula are not in the competence of the EU-Commission. In the Consultation Document the EU Commission proposes to develop "European Curricula" based on common sets of competences. The system of automatic recognition in the sectoral professions according to Chapter III of the Directive already operates with "common minimum requirements of professional competences", for example the 11 points (knowledge and skills) stipulated in Article 46 PQD. So for architects who are subject to the sectoral regime, there is no need for a new 28th regime. However, for all other professionals outside the sectoral regulations, like for example interior architects, landscape architects and urban planners, a 28th regime could make sense if a system for automatic recognition is not available to them. If the term "European Curricula" stands for "common minimum requirements of professional competences" on the model of the sectoral professions of Chapter III, a further development of this concept to extend the system of automatic recognition to other professions would be supported by architects, because they consider that a broader system for automatic recognition would help other professions just as it has already helped architects as employees, as employers, and as providers of services to clients in other countries.

The revision of the PQD should be used to lay the foundations for an expansion of the scope of application of the automatic recognition regime to cover such professions, where the development of minimum lists of competences, modeled on the sectoral professions of Chapter III, is feasible.

The EU Commission is right to say that the development of such minimum lists of competences should not depend on the consent of all 27 Member States. **The Competent Authorities who decide on the registration of applicants should be involved in drafting** such lists of minimum competences.

3.3. Offering consumers the high quality service they demand

Q.16: To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

Architects do not see such a risk. The greater risk at present seems to be of fragmenting the regulatory regime through ad hoc changes.

Q.17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?

The current regime serves the needs of the architectural profession and its clients. Among architects, it is frequent that an architect from the client's country of residence works with a colleague architect already based in the host Member State, in line with internationally recognized practices.

3.4. Making it easier for professionals to move temporarily

Q.18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms "temporary or occasional" or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?

There is no unnecessary burden. With regard to regulated professions, a prior declaration of the service provider, who is moving to another country to deliver services for the first time, is indispensable. Otherwise, professional supervision would become impossible. A requirement to publish national or state online registers of architects established under Title III, and national or state lists of declarations received, would (as noted previously above) simplify consumer protection.

Service providers moving into another member State are subject to the professional regulations of that host country (see Art. 5 Para 3 PQD). Service providers who do not move into another state but provide their services there, may be subject only to the e-commerce Directive, but not to the professional regulations of the receiving country. This different treatment of service provision is not justified, because the demarcation between e-services and services by post and by telephone is quite unclear where they are offered in combination as part of a single service, as is usually the case for architects. From the point of view of the architects, it would not hinder their mobility if the e-commerce services were treated in a way similar to temporary or occasional services as laid down in the PQD.

A legal definition of the term „temporary or occasional“ would be helpful to avoid legal uncertainties, instead of the current reliance on a “case by case” basis which lacks transparency and consistency for the migrating professional, and for competent authorities. E-commerce: no distinction between e-commerce and Title II.

Q.19: Is there a need for retaining a pro-forma registration system?

The system of compulsory declaration prior to the delivery of services (Service Declaration) must be maintained. From the architects’ point of view, a pro-forma-registration is not necessary in addition to prior declaration. Consequently, the stipulations of Article 7 PQD should be maintained. However, if they are to remain, the somewhat foggy relation between Articles 6 and 7 PQD should be clarified. A professional card cannot replace the system of prior declaration, but (as previously explained above) an online list of declarations referring to an online register in the country of establishment would be simple for consumers and professionals alike.

Q.20: Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?

With regard to regulated professions with effects on the public health or safety, a prior declaration is indispensable in the interest of the consumers. It must be stated that foreign architects working only "transitional" in a host country are covered by the codes of conduct of this host state. The addresses of those foreign architects who have submitted their prior declarations are listed in the public domains of the competent authorities, so that these are available to the clients or other citizens. In addition these declarations give to the competent authorities the possibility to check the necessary scope of coverage of PII, which is necessary in the host country; this gives certainty to the clients' needs to rely on the PII of their architect. In countries which regulate the professionals (such as architects) who can certify the fire safety of a large building, or who can submit or permit building applications, there is a strong conviction that it might make sense that even e-commerce services should be evaluated with regard to the professional qualifications of the service provider.

Chapter 4: Injecting more Confidence into the System

4.1. Retaining automatic recognition in the 21st century

Q.21: Does the current minimum training harmonization offer a real access to the profession, in particular for nurses, midwives and pharmacists?

The minimum professional requirements for architects are sufficiently harmonized by the 11 points stipulated in Art. 46 and need no revision for the time being.

Q. 22: Do you see a need to modernize the minimum training requirements? Should these requirements also include a limited set of competences? If so, what kind of competences should be considered?

As stated in the answer to Q. 21, and further clarified at Q. 10 above, there is no need to change for architects the eleven requirements of skill and knowledge set out in Article 46 (1). The system for competences to be specified (and mapped to the "11 points") is developing at national level, and a model has also been developed by the ACE.

But the minimum duration of study needs to be revised. Given the growing variety and complexity of tasks architects need to execute in the pursuit of their profession, the current minimum duration of 4 years of academic studies needs to be increased. Since the Architects' Directive came into force in 1985, the architects' professional profile has grown much more complex, so that today basically identical subjects must be taught in much greater depth. This includes issues like sustainability, energy saving, new building materials and planning methods.

In the course of implementing the Bologna process, most (perhaps 95%) of the Architectural Schools in the EU have adapted to these conditions and offer predominantly 5-year courses in architecture.

It seems that in the discussion about minimum training requirements not only some EU-Member States but also DG-Markt are unaware about the implications of this issue, and of the harm it does to architects in negotiations on international trade of services.

This is can be seen in the EU-Commission's "Single Market Act Communication" of 11th November 2010 in Its misunderstanding of why the EU is "*the world's biggest importer and exporter*", and its misunderstanding of the source of the international competitiveness which (until now) sustained this – at least so far as EU architectural service providers are concerned. The Commission says that Europe must *"work even harder on developing our skills in high-value-added sectors",* presumably including architectural services. Yet the EU-Commission indicated at a Conference on Regulated Professions 3 December 2010 that **the Commission will not raise the minimum duration of training for EU architects**, currently set in the Professional Qualifications Directive ("PQD") at four years, which is one year less than the actual minimum of five years across almost the entire EU, the same five years as applies under the worldwide UIA Accord of 2005 (with two years pre-registration experience). The reality shows that bilateral and multilateral agreements between architects of different non-EU-countries are difficult to advance, because the representatives of non-EU countries consider the four years minimum training of the PQD to be a sub-standard which is not acceptable.

The EU-Commission's view is regardless of the unanimous willingness of the representative bodies for the profession across the EU to agree to match that worldwide minimum. The potential (but so far not publicly declared) opposition of two big Member State governments to the five-year minimum – regardless that most of their own courses are of five years – seems to compound the Commission's implicit belief that the agenda for "**growth and jobs" means *risking unemployment for the growing number of architects qualified to the world standard, and lowering the quality of design and related services to EU citizens, in the hope of more jobs for less qualified persons.***

Q.23: Should a Member State be obliged to be more transparent and to provide more information to the other Member States about the future qualifications which benefit from automatic recognition?

The ACE welcomes the pressure from DG-Markt on EU Member States to fulfil their duties in the area of Chapter III sectoral professions, by notifying both their diplomas and their accompanying certificates for Annex V.7.1 to reflect actual home market access requirements for architects. That pressure needs to continue, but new and further obligations for the Member States to regularly transmit contents, to regularly evaluate study courses or to accredit the Schools of Architecture would overtax their resources disproportionately, and may not have a real benefit for students or graduates. At present in relation to architects, a key task for Member State Governments and for their universities in relation to architecture courses is to expedite overdue notifications of diplomas for inclusion in Annex V.7.1 of the PQD. The ACE and its Member Organisations try to encourage them in this task.

Q.24: Should the current scheme for notifying new diplomas be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.

The reorganization of architectural studies leading to Bachelor and Master degrees according to the Bologna process imposed an additional workload on the notification process. This situation is partly due to bad communication and information on several levels. At the beginning of the so called Bologna Process, most of its authors were national ministries as well as the (architects') schools, who were badly informed about the consequences of their changing the complete university education system. Even today, schools ignore to a high degree their responsibility for the notification process, and especially to young students, because it is ultimately the schools' task to start (and to provide the information for) the notification process. The universities' reluctance to deal with the matter was evident at the common hearing of the EUA - European University Association and the EU Commission in the EU-Parliament building on October 14, 2010 in Brussels. Although most universities do check in advance the compliance of each new architectural study course with the minimum competences stipulated by article 46 of the PQD, there is no guarantee that all newly developed courses respect and fulfill the compliance. So as to create trust in a system of automatic recognition the notification process must be retained, and not unduly overhauled.

However, the ACE agrees that the process of notification is slow. Two reasons are evident:

- The already mentioned poor awareness among universities and at national level on issues concerning the PQD, resulting in a laissez-faire on the side of the universities and
- The procedures to deal with notification in the diplomas subgroup of the article 56 PQD coordinators, which are now on the way to being improved.

On the issues of awareness and information, the competent authorities themselves are trying to help: the ENACA is helping to circulate as a template for successful notification the application for the Bremen diploma from Germany, which was recently added to Annex V.7.1.. On the national level lot of work is done by the Member Organizations of the ACE also, to convince their schools to become active in the matter.

The EU Commission in its consultation paper wonders whether the process could be speeded up if the notifications were made at a much earlier stage; e.g. in the national approval process. This proposal has some weaknesses. In some instances – e.g. where an existing course is being restructured – a notification can be made rapidly. In completely new diplomas, there is a dilemma about whether to expedite a notification when the diploma is not yet awarded by a School, and when the curriculum still constitutes mainly a plan, whose implementation cannot yet be verified by the accreditation authorities and/or competent authorities. This proposal to do things at an earlier stage therefore does not seem really to offer a means to improve things radically.

4.2. Automatic recognition based on professional experience

Q.25: Do you see a need for modernizing this regime on automatic recognition, notably the list of activities listed in Annex IV?

This question does not pertain to the architectural profession.

Q.26: Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?

This question does not pertain to the architectural profession, but rather to those covered by PQD Annex IV.

4.3. Continuing professional development

Q.27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

The obligation concerning continuing professional development stipulated in Art. 22 letter (b) of the PQD is sufficient, because obligatory continuing training and education is not a question of access to the profession, but one of maintenance of the qualification to safely and effectively practice it.

Q.28: Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use of IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions.
ENACA members don't use IMI-SD. The need to improve the IMI was evident at the

"cluster training" event last 8 December on technical IMI issues. The IMI-SD is not user-friendly (reflected in low usage); its alert system does not interface with the IMI-SD; and a recent Court ruling has stopped automatic translation of free text in IMI for (we hear) the next two years. The EU-Commission invited 400 people to a Conference on the IMI-SD on 27 January, and indicated that it plans extend the IMI, but did not indicate any plan to remedy its defects.

From the architects' point of view, IMI has only stood the test for the PQD, and then only (in most cases) as a key supplement to other processes in areas such as escalation in case of delay. The IMI for the SD is rarely used by architects, and (as indicated in previous parts of our answers), the ACE cannot comment on whether its extension to other professions would help.Most of the architects' competent authorities gave positive opinions on IMI-PQD in their experience reports delivered in the process of the PQD evaluation. The revision of the PQD may be a good opportunity to make the utilization of IMI obligatory for all professions. But it also needs to be improved. In particular a proactive alert mechanism is needed, to cover both individual professionals and professionals providing services as directors or employees of companies.
The competent authorities presume that making the IMI compulsory for the PQD will force the EU-Commission to improve it, notwithstanding present shortcomings. It is important for the EU-Commission to verify the competent authorities' presumption in this regard, so as to avoid creating a new compulsory burden which will worsen administrative cooperation under Article 56 PQD.

Q.29: In which cases should an alert obligation be triggered?

It would be very helpful to have a more proactive and more accessible alert mechanism in the IMI, which could be used both under the Qualifications Directive and under the Services Directive. This would assist competent authorities to inform each other about individuals who have, for example, attempted fraudulent applications or have been convicted of professional misconduct; in case those individuals attempt to register in another Member State.

Q.30: Have you encountered any major problems with the current language regime as foreseen in the Directive?

The current language regime set down in the Directive is not a problem for architects. The language test is not part of the recognition process according to the PQD.

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