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Re: ACE position on the Communication “An SME Strategy for a sustainable and digital Europe”

The Architects' Council of Europe (ACE) welcomes the initiative of the EU Commission to address the challenges that SMEs face and invites it to pay special attention to the specificities of the liberal professions, which are principally made up of micro-enterprises. Indeed, the vast majority of architectural offices in the EU have fewer than 5 employees and according to the Commission's definition, are categorized as micro-enterprises. They are also faced with the growing complexity of building, the extraordinary performance requirements and the specialist assistance that is required.

As stated in the Directive on the Recognition of Professional Qualifications¹, Architects “*are in a position to understand and translate the needs of individuals, social groups and authorities as regards spatial planning, the design, organisation and realisation of structures, conservation and the exploitation of the architectural heritage, and protection of natural balances*”. Moreover, it is underlined that “*architectural design, the quality of buildings, their harmonious incorporation into their surroundings, respect for natural and urban landscapes and for the public and private heritage are a matter of public interest*”.

The ACE considers that the following issues should be taken into account by the Commission when implementing its SME strategy:

1. Measuring necessary regulation against general interest objectives to guarantee quality of services and consumer protection

The ACE is committed to the European Single Market and welcomes the Commission's aim to improve the framework conditions for SMEs by reducing bureaucratic hurdles and simplifying administrative conditions and procedures. In the architectural market, such improvements could result in greater mobility of professionals and services across the EU. However, this should not be based on a purely commercial approach and result in deregulation at the expense of the quality of services and consumer protection.

¹ Directive 2005/36/EC on the recognition of professional qualifications, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005L0036&qid=1589449119882&from=FR>



The Commission regularly complains (in the European Semester) about low levels of competitiveness, in a number of Member States, in the service sector and high levels of regulation in professional services. The number of restrictive regulations is generally considered to be high in many areas, including architecture. The Commission therefore advocates less regulation in business services to stimulate competition and thereby boost economic activity and investment.

However, such argumentation is both questionable and unbalanced if it disregards quality assurance and consumer protection. Therefore, ACE calls for a differentiated approach to professional regulation which takes into account the social responsibility of the liberal professions (especially of architects) and guarantees independent, high-quality service provision in the interests of consumer protection.

The architectural profession invests a considerable percentage of its work in a well-established form of competition: the design competition. The ACE Sector Study shows the amount of work invested in this field. Open design competitions make a significant contribution to increasing the volume of cross-border services in Europe.

In its ruling of 4 July 2019 on the German fees scale of architects and engineers for planning services (HOAI)², the European Court of Justice once again emphasised the preservation of *Baukultur* and the historical and cultural heritage, ecological construction, protection of the environment and consumers, as well as ensuring the quality of the service as overriding reasons of general interest.

Architects and urban planners are particularly committed to these public interests. Their work is focused on achieving quality and safety in the built environment and is therefore essential for the common good. In a number of EU Member States, control of planning and construction has largely been transferred to the planners and architects. Since their services require high quality and serve consumer protection, not only are regulations on the practice of the profession necessary, but it is necessary to ensure that the services themselves may only be provided by suitably qualified persons who are subject to the regulatory control of a competent authority.

Whether professions are subject to *ex ante* regulation (governing access) or *ex post* regulation (governing practice) – or both – such regulation guarantees that only architects with a high level of training and qualification may intervene, in the interests of building safety and consumer protection. Professional supervision and the mandatory Continuous Professional Development combine to ensure the quality of the planning services. These regulations, ensure that the services provided to the client are independent and based on the principles of liberal profession. The assumption of the European Commission that such regulations hinder competition is not correct and any measures that would deregulate these services would be detrimental to public interest and consumer safety.

Therefore, ACE calls for a sensitive approach to the liberal professions that takes into account the entire regulatory environment and national specificities.

² see ECJ, ruling of 4.7.2019, Commission/Germany, C- 377/17, ECLI:EU:C:2019:562
<http://curia.europa.eu/juris/document/document.jsf?docid=215785&doclang=EN>



2. Strategic Entrepreneurship Ambassadors - ensure participation of freelancers and micro-enterprises

ACE welcomes the Commission's proposal to appoint an EU SME Envoy to examine EU initiatives in cooperation with a newly established advisory group of entrepreneurs from all over Europe, the so-called Strategic Entrepreneurship Ambassador, and to coordinate closely with the network of national SME envoys. It considers that the appointment of the Ambassadors should take account of the diversity of European SMEs and be representative of the interests of the liberal professions, micro-enterprises and self-employed.

3. Make the SME Test suitable for freelancers and micro-offices

ACE welcomes the Commission's intention to continue to examine the impact of new legislative initiatives on SMEs. In the interests of better regulation, it recommends systematically including such an SME Test in all impact assessments and ensuring that it also takes account of the specific features of the liberal professions and micro-enterprises. ACE recommends that legislation takes into account the specific nature of the intellectual services provided by the planning professions. Exemption limits for micro-enterprises appear to be an effective means of preventing precisely these enterprises from being burdened by excessive bureaucratic hurdles.

4. Make public procurement quality-driven and project-oriented to improve access for SMEs

ACE welcomes the Commission's intention to make public procurement practices more SME-friendly and to expand strategic procurement. To this end, it considers competition on merit to be the most effective way to achieve this.

The architectural design competition is a quality based and project orientated selection procedure. Quality based, because the decision is based on the quality of the proposal made by the participant, evaluated by an independent professional jury with members from the profession's side as well as from the client's side. Project orientated, because the selection is based on the very task, the very solution for the project.

ACE also welcomes any moves to oblige public clients to divide larger contracts into smaller lots to create opportunities for smaller offices.

However, this seems to be somewhat at variance with a parallel Commission objective relating to the calculation of the contract value of planning services. Taking the examples of COM infringement proceedings against Germany, it would appear that the Commission considers that the contract values of planning services related to a project should generally be added together. This would lead to a significant increase in EU-wide tenders in this area, as the current threshold value of EUR 214,000 would then be reached for almost every project. Consequently, there is a risk that the planning-specific contracts could be largely awarded to bigger companies/offices covering/offering the entire range of planning services, including architecture and engineering. This would create an imbalance to the detriment of small architectural offices that are more specialised and would then find themselves at a competitive disadvantage.



ACE also notes that past experience and turnover requirements tend to combine to exclude a significant percentage of SMEs from the public procurement market. Eligibility criteria for SMEs to participate in public tenders should be more quality- and project-related.

Moreover, our own research reveals that well-intentioned initiatives such as the Single Procurement Document (SPD) – introduced in the spirit of the “once only” approach – have proven to be overly complex.

5. Ensure financial support for “micro-industries”

ACE welcomes the Commission's plan to improve access to finance for SMEs. It points out that a major focus of the EU SME Strategy is on innovative SMEs and start-ups in the technology-based new economy and new financing opportunities. ACE calls for “micro-industries”, freelancers and family businesses to also be considered by the Strategy. Accordingly, traditional financing instruments such as promotional loans, grants and the proven instruments of guarantee banks should be considered and strengthened. Particularly in times of crisis, such as the one currently caused by the corona virus, SMEs, which generally have smaller financial buffers than larger companies, must be given financial support. Quick and effective support instruments or separate aid instruments should be considered in the SME strategy.

6. Supplementing the Strategy with the topic of practical standardisation

The development of standards and the setting of technical rules by private-law and state-recognised institutions is an essential element of the technical-economic infrastructure of the Member States and has a considerable influence, therefore, on the competitiveness of the economy and the strategic orientation of SMEs.

Standardisation has been growing during the last decades and tends to have an additive effect: instead of replacing existing standards, new standards are added to them. Through this process the aim of improving qualities leads to an enormous increase in the quantum of regulations to be respected. All this increases the cost of constructions generally, and makes problems more acute in certain sectors, e.g. in the sector of affordable housing

Standardisation is of considerable importance to architects, as an essential basis for quality planning and construction. Therefore, they try to participate actively, through their representative organisations, in standardisation processes with the aim of:

- Reducing the contents of standards to essential planning requirements,
- Reducing the liability risk,
- Developing standards that are adapted to the planning process, being applicable in practice, unambiguous and clear, developed in cooperation with the approving bodies and construction parties,
- Simplifying planning and execution with high quality of building design and use of the buildings,
- Reducing construction costs.



However, in many Member States, architects and even their representative organisations, are excluded from standardisation because of the cost of participation. Therefore, industry tends to dominate the decision-making processes by investing money and manpower in the relevant committees at European as well as on national levels. The Commission should reflect further on how to ease and promote access to standardisation for all stakeholders - in particular SMEs - and to strengthen the efficient implementation and use of standards should also be taken into account in the EU Strategy.

Standardisation, as a means of promoting innovation, should be limited to specific areas, such as digitisation. ACE considers that standards must represent "state of the art". An excessive opening of standardisation to innovation could lead to a further significant increase in standardisation projects, with a risk to burden SMEs instead of relieving them.

Recent EU legislation have led to a considerable increase in the number of technical regulations. In the field of construction, the yearly number of standards projects has doubled over the last 10 years. SMEs are reaching the limits of what is sustainable – we notice increased difficulty in managing the standardisation process and ensuring transparency, as well as increased bureaucracy. Architectural offices, which generally have very few employees, also have very limited opportunities to participate in European standardisation work.

ACE is therefore concerned by the unrestricted extension of standardisation activities to other areas, such as innovation, sustainability and digitalisation. In the interests of SME support, standardisation work should be limited to what is really necessary, and prior examination of standardisation projects should always seek to evaluate their relevance and cost effects, so that the participation of the relevant stakeholders - and here in particular of micro-entrepreneurs - is guaranteed and affordable.

7. Making innovation programmes more accessible to small businesses and the self-employed

ACE welcomes the Commission's ambition to mobilise all SMEs in Europe to move towards a climate-neutral, resource-efficient and agile digital economy. In view of digitalisation and the transition to sustainable production and management, innovation projects are of eminent importance to SMEs. However, they are particularly difficult to implement as SMEs lack not only financial and human resources, but also employees who can write funding proposals for R&D projects. Therefore, support is necessary to allow SMEs to avail of the opportunities that digitalization and Building Information Modeling (BIM) have to offer. Moreover, very low-threshold offers for SMEs, uncomplicated application procedures and one-stop-shop to deliver information on funding opportunities are also needed. Research institutes should be encouraged to partner with SMEs which are not able to benefit from funding without a lead institute.