ARCHITECTS' COUNCIL OF EUROPE
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Access to the Profession

Work Group Professional Qualifications Directive (PQD)

ACE Response to the European Commission Green Paper

Version 10.3

GREEN PAPER: Modernising the Professional Qualifications Directive ("PQD")
ACE Workgroup PQD, Chairman: Toal Ó Muiré

1. INTRODUCTION

1.1 Preamble

The Architects' Council of Europe (ACE) makes this submission in response to the Commission's Green Paper of 22nd June 2011 titled "Modernising the Professional Qualifications Directive". The ACE has taken an active part in the Commission's evaluation of the PQD, and already made a submission in response to the Commission's public consultation on the PQD in March 2011. Members of the European Network of Architects' Competent Authorities (ENACA) were active also in this, and submitted "Experience Reports" in the earlier part of the Commission's evaluation in 2010.

In this Introduction, the ACE hopes it is useful to highlight its major concerns in relation to the Green Paper, before addressing particular issues questions raised by the Paper.

1.2 Freedom to provide services and the European Professional Card:

The ACE hopes that any Card as proposed in the Green Paper can be made more flexible. The Commission proposed in October 2010 to EU professional bodies (as a possible alternative to a plastic card) an "e-certificate", which could be provided by a home competent authority to a professional who requests it, in the form of a downloadable *pdf* certificate as some architects' competent authorities already provide. This can be a simple certificate for the architect to present to a client or employer, and/or could be a more detailed certificate, which an applicant for automatic recognition can use, i.e. for presentation to a host competent authority. The suggested "e-certificate" presents a much more cost effective proposal, which is important as costs will fall initially on the profession and ultimately on the consumer.
The ACE notes the Working Document presented on 12 July 2011 by Rapporteur Emma McClarkin MEP to the Committee on the Internal Market and Consumer Protection (IMCO) of the European Parliament, titled "Implementation of the Professional Qualifications Directive" (PQD). The ACE supports most points which the Rapporteur's Working Document makes in relation to the Professional Card, but not its views on prior declarations.

The simple e-certificate (for a client) could be checked more effectively and cheaply if the PQD was strengthened to require Member States (i.e. their competent authorities) to publish an online list for each profession, accessible to the public, detailing for each registered provider of professional services – including those who have made prior declarations – the name, professional title, and registration number. Most architects' competent authorities already have such an online list, but it needs to be made mandatory across the EU, regardless of whether there is also a Card for those who want one. Such a requirement would simplify the prior declaration system and make it more transparent, so enhancing public confidence in the free provision of services. Among architects, the prior declaration system only appears cumbersome because the optional transposition of the PQD, permitted in many aspects of PQD Title II, allows a lack of consistency in national laws, in transparency and (ultimately) in public knowledge and awareness across the internal market. Addressing these issues may be more fruitful than other forms of 'Simplification' envisaged by the Commission.

1.3 The proposal to delete Article 11 from the PQD General System:
Abolishing in Art.11 the five levels of qualifications is premature, and will effectively undermine "Professional Qualifications" within the meaning of the Directive. The existing five levels help to reconcile two key policy objectives:

a. On one side, **consumer protection,** which the PQD promotes by upholding the transparency and standards of professional qualifications; and
b. On the other side, **the right of professionals to establish and provide services** across borders in the Internal Market, including a provision for individual compensation measures where necessary to help a professional to achieve the standard expected by the consumers of a host Member State.

If the five steps (a) to (e) of Art. 11 are abolished, it will do great harm to the first of these objectives. Eventually it will harm the second one also, by encouraging EU countries and consumers to prefer holders of their own national professional qualifications to the holders of foreign qualifications whose transparency will diminish, and whose uncertainties will grow, if the five steps in Art. 11 are abolished. If the Commission seeks to "modernise" Article 11, it would be far safer to amend the levels so as to incorporate the already-implemented system of ECTS points now, instead of delaying thinking about it until 2014 as the Green Paper proposes. The ECTS is a quantitative measure already understood across the EU; unlike the qualitative measures of the European Qualifications Framework (EQF) which is a voluntary system implemented in only some countries.

1.4 The proposal to amend Article 46:
The ACE as a representative European professional organisation of architects actively promotes the introduction of a requirement for a minimum of five years academic training complemented by two years of supervised professional experience. "5+2" is also the world standard at international level. The European Association for Architectural Education EAAE strongly supports the five-year minimum. The EU COM is familiar with these policy positions, and we urge it to consider this third Option for reasons explained in our answer below to Question 22, which currently envisages only "5+1" or "4+2".

If the only choice offered to the profession in response to the Question 22 of the Green Paper is between Options 1 and 2, then Option 2 is preferred. Option 1 proposes no change, while Option 2 proposes to amend PQD Art. 46 so as to "*complement the current requirement of a minimum four-year academic training by a requirement of two years of professional practice*"; and the alternative (within Option 2) whereby Member States' architects "*would also qualify for automatic recognition after completing a five-year academic program, complemented by at least one year of professional practice*."

Option 2 is better than the current PQD Art. 46 four-year minimum, which in some cases is complemented by 'accompanying certificates'. We assume Annex V will remain in its current form, given the great amount of work the Commission has put into updating it recently, and we support that also. Thus the experience requirement in Option 2 simply adds a minimum assurance as to experience, and permits national 'access to market' requirements nonetheless to remain, but in a form which is more transparent, more consistent with existing national laws, and more reflective of custom and practice for architects and their clients; not only in Europe, but across the world.

1.5 Consistency across sectoral professions:
We note several Questions in the Green Paper about possible changes in the regime for the "healthcare professions". The ACE considers that some such changes could usefully extend across all of the "sectoral professions" which have automatic recognition under PQD Title III Chapter III, including architects. Language requirements, for example, are not a matter of life and death for the architect's client so evidently as they could be for a nurse's patient, but architects do deal with health and safety, for example on building sites. The ACE also challenges the legal logic or practicality of 'partial access' – mooted as a PQD amendment – especially for sectoral professions such as architecture which have minimum training standards under the PQD.

2. NEW APPROACHES TO MOBILITY

2.1 The European Professional Card

Question 1: *Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?*

a) Context: Member State cooperation and consumer protection

Yes, the ACE welcomes the debate which is taking place concerning the provisions of a professional card, and notes the work of the European Professional Card Steering Group, which will no doubt also be considered by the Commission. There are varying objectives and possible formats for introducing a card and this can make it difficult to assess how a card will work. The Green Paper proposes a professional card both to assist in cooperation (and mobility) between Member States and to provide information to consumers and employers about qualifications in a context where qualifications are not harmonised. To introduce a card at European level which promotes consumer confidence but **only** covers qualifications could potentially mislead consumers and ultimately undermine consumer protection and professional regulation. ACE welcomes the EU COM's intention to confer the right to issue professional cards only on competent authorities. This will help to ensure the correctness and validity of the information on the card.

b) Added value and added costs

The ACE considers that latest technologies are beneficial only if they add value, by facilitating low-cost solutions for the card holder and for card-issuing competent authorities (CAs). Because architects see little demand to introduce a European professional card, low costs are all the more important. Architects' CAs are all registered in the IMI system, which helps communication between CAs in the home Member State (MS) and in the host MS. Communication is also helped by participation (and personal acquaintance) of many/most CAs in the European Network of Architects' Competent Authorities (ENACA). So the CAs are already 'mobilised' contrary to what headings in the Green Paper say. Adding "*latest technologies to offer new tools for mobility"* risks being superfluous, since the problems described in Subsection 2.1 do not appear to exist for architects. To extend the card to cover all issues of professional regulation and to support adequate consumer safeguards would be expensive because it would need to provide real time information and live access to registration information. The cost of such an all-encompassing professional card for use with consumers is unlikely to be offset by any consumer benefit. Easy access to public registers, as occurs in many countries for a number of professions, seems a more appropriate mechanism for generating consumer confidence and providing up to date information. There may also be costs of sending cards annually by recorded delivery postage to architects who may never use them, and of maintaining a CA office which people can visit so as to present their cards for inspection. The costs of the systems are likely to be borne by the professionals and ultimately by consumers through professional fees. It is essential that costs are minimised and existing resources such as the IMI are used. Section 6 of the Services Directive means that most CAs are already able to receive and verify documents electronically, so a system which involves installing card readers would be a resource-intensive backward step. The ACE has the same questioning approach as the "IMCO"-Rapporteur set out in the last section of her Working Document presented by at the European Parliament on 12 July 2011.

c) The IMI, E-certificates and 'guarantees'

It is disappointing that Green Paper proposals do not specifically mention an E-certificate, as outlined in the Commission presentation on the European professional card to the EU professional bodies on 29 October 2010. Some CAs already issue such E-certificates on request to registered professionals, who can download them as pdfs, at little cost. ACE is of the opinion that the term "professional card" includes e-certificates. Consequently, the following statements by the ACE pertain to e-certificates. For the sectoral professions, the exchange of information could be undertaken effectively through the IMI, using a standardised format or through an electronic (or/and paper) certificate issued by the competent authority. This could be issued on request in real time and confirm whether the individual is currently established, rather than simply providing historical information. For automatic recognition, such a system could deal with certain requirements by confirming:

- that the applicant has the qualifications and other necessary items listed in Annexes V and VII,
- that the applicant is entitled to pursue the profession of architect in the home member state, and
- that the applicant has not been subject to any disciplinary sanction.

But many questions remain: for example,

- Would different information (or even *a* different card) be required, for example, if the applicant wished to provide temporary services under Title II of the Directive as opposed to exercising the right of establishment?
- And would different information (or even *a* different card) be required, for example, if the applicant applied for a card under the Services Directive as well as (or instead of) under the PQD?
- How and under what circumstances could the card be updated and in particular under what conditions, and how, could a home Member State withdraw the card, e.g. if it is an e-certificate?
- How much information could realistically be stored on the card? If rather than being evidence in its own right it was simply a link to the IMI, could it generate expense for no tangible benefit?
- Is the card sufficiently robust to deter fraud, which would otherwise significantly undermine the use of the card? Or does it in any case rely on a telephone call to the CA for verification?

  If the Directive does introduce a professional card, the terms of the Directive must be sufficiently flexible to take into account the areas where movement is minimal and the costs of any system are likely to be disproportionate to the use of the card.

The Commission may wish to note that amongst ENACA members, information is often exchanged through a certificate which provides all of the information under Annex VII in one document. This obviates the need for professionals to provide additional information and significantly speeds up the process. ENACA, as a network of competent authorities would be able to assist by proposing a suitable certificate across all architect competent authorities. Other networks may also be able to provide similar assistance.

The introduction of a card which provides information for a receiving competent authority or member state will place an additional responsibility on competent authorities. The issuing authority must undertake checks on the information before issuing the card and the accuracy of the information will be very important both in respect of the individual professional and also to build trust in the system. In the experience of the UK, there are significant differences currently in the accuracy and timeliness of information provided by competent authorities and this would need to be addressed.

Whether the Card is a simple pdf; or a 'smart' card with a chip, or incorporates a barcode/URL as the Commission showed in October; the card or E-certificate ought to say that any person to whom it is presented may check its validity with the CA. The Green Paper says in the middle of page 4 that the Card itself can "offer a guarantee" to service recipients, but we disagree. It is instead the ability for the CA to check via the IMI, on its own behalf or at the request of a prospective client or employer, which is the best reassurance. Vigilance is of key importance, since no system can guarantee that false or fraudulent documents (or cards) will not be produced. The transparency claimed by the Green Paper for the Card itself (in the middle of page 4) is only available to CAs, via the IMI system. The ACE is interested to hear that a new law governing the IMI system is in preparation, and hopes that registration in the IMI will become mandatory for every CA under the PQD, as it already is for CAs under the Services Directive, and not only for CAs issuing Cards as the Green Paper proposes.

d) <u>Presumptions about translation, and CA entitlement to documents</u>
The Green Paper proposals on translation of documents seem quite unclear, especially in what it says on page 3 under the heading 'Mobilising the Member State of departure'. This seems to envisage that the Card would:

- Deal with difficulties for the professional who currently "may need to submit translations of various documents". The Green Paper says the Card "could facilitate the process by increasing the role of the [home MS]". The home CA would "store the documents which justified issuance of the card and make them available to [the host CA] as necessary". This

does not say whether the host CA is proposed to be entitled to have the home CA translate the documents.[1]

- The last two paragraphs under this heading increase the uncertainty about entitlement. The last paragraph disregards that the IMI currently provides translations only for set questions and not for "free text" where we understand further efforts by the COM may bear fruit in 2012 or 2013. The previous paragraph proposes removing the obligation of a host MS to verify information: its silence causes concern that host MS entitlement to verify information would also be removed.

e) Reciprocity and the IMI

The reciprocal IMI facility for CAs to communicate with each other is the IMI's great strength. The distinction in Subsection 2.1 of the Green Paper between the roles of home CA and host CA may be unnecessary, for example in the situation foreseen in Q.11, of facilitating graduates from a "home" Member State (MS) to acquire supervised professional experience in a "host" MS. In such a situation, the IMI exchanges of information – and issue of E-certificates – can be reciprocal, so that each State has a role in verifying aspects of the qualification. Likewise IMI alerts relating to disciplinary sanction of a professional can be reciprocal; e.g. where an architect is working in two EU/EEA States: see Q.12. Some competent authorities (CAs) issue on request to graduates not yet eligible to register, but whose diplomas conform to Article 46, a downloadable pdf confirming this status. Such a document could have the characteristics (except the barcode) of the E-certificate presented by the Commission in October 2010, and could be presented by a graduate beginning his period of pre-registration practical experience in a host MS, as Question 11 foresees. The ACE strongly favours such flexible provisions in and under the PQD, and favours use of a mandatory PQD-IMI to support it. But other impositions on a home MS, as page 3 of the Green Paper foresees, may compromise this. For example, the home CA cannot check, as easily as the host CA can that a professional's indemnity insurance fully complies with host MS legal requirements. The ACE does not agree that a professional card "could substitute the documents supporting prior declaration" as the Green Paper says; less still make redundant Art. 50 obligations on the applicant, as page 3 also says. In any instance, costs should be minimised and CAs should be able to recover the costs they incur when migrants make use of their services or facilities.

f) Presumptions about speed

The ACE cautions against presumptions in the Green Paper that, because procedures by electronic means are required by law to be available (Article 6 of the Services Directive), all applicants can and do use them for every aspect of their applications for recognition; and that recognition procedures – even under the general system – "*could be shortened to a maximum of one month instead of the current maximum of four months*". Submission of an application by email instead of by post may save two or three days. CAs fear that the Commission misunderstands that this difference between email and postal submission hardly reduces the total time taken to process an application for recognition. CAs currently try to operate within PQD time-limits even where the initial application is incomplete. If those time-limits are reduced as the Green Book says, incomplete applications will need always to be returned immediately, instead of allowing incremental submission of application documents. In applications for automatic recognition, the ACE believes the three-month time-limit can be reduced to two months (not two weeks as the Green Paper envisages in the middle of page 4), but experience under the general system for recognition as architects is that it can take up to four months to obtain necessary information.

g) Professionals' file repositories and data retention problems

At a meeting with the Commission on 20 July, the ACE expressed concern at the file repository – apparently at EU level – which is a central feature of Options 2, 3 and 4 in the Commission's 8 July presentation to the Steering Group on the Professional Card. Option 1 foresees a simpler repository in the home MS. Uploading to, and removal of information from, an EU repository (and/or from a Card) needs to comply with national laws on data retention (typically requiring destruction of application documents after five years) and with laws on rehabilitation of offenders, which may require deletion also of data relating to previous disqualifications for disciplinary reasons. A CA may be reluctant to upload to an EU repository any documents for which the CA is responsible, since that may involve an

[1] Currently the ENACA is preparing standard formats for particular documents to be translated for exchange between CAs, but the ENACA has at least the advantage of dealing with set minimum training conditions, which do not prevail under the general system.

obligation for the CA to ensure its deletion by a later date enforceable under national law. Checks on documents (and on eligibility) via the IMI system between CAs are simpler, cheaper and more reliable than an EU repository, because legal responsibility for documents is managed at national level. While a waiver or consent by the applicant may be possible/helpful as part of a European card system which is voluntary, there is no evidence that the Commission has yet adequately considered the Green Paper implications under national and EU laws on data retention and on rehabilitation of offenders. For some CAs the introduction of such a system would require the development of new systems and infrastructure. Furthermore, the historical information which is central to such a scheme may not be available in all cases.

h) Member State where a profession is not regulated
When a profession which chooses at EU level to have a professional card is not regulated in the Member State of departure, that MS must designate a competent public authority to issue a professional card. This forces the Member State of departure to set up a system of recognition for emigrating professionals, to certify their qualifications and perhaps also their practical experience and other information, even though they do not regulate that profession at all. This could lead to regulation of that 'unregulated' profession (and there are so many). As a result, there will be even more regulation within the general system, contrary to COM's attempts to reduce the number of professions already regulated.

Question 2: *Do you agree that a professional card could have the following effects, depending on the card holder's objectives?*
a) The card holder moves on a temporary basis (temporary mobility):
- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

The introduction of a card for those seeking to provide services on a temporary and occasional basis is subject to the same criticisms and conditions as noted above. The Article 7 declaration is necessary so that the host MS CA knows that a particular regulated professional is providing services on its territory. The ACE proposes a new requirement in the Directive for each Member State competent authority to publish a list of all professionals.

The simple E-certificate (for a client) could be checked more effectively and cheaply if the PQD were strengthened to require Member States (i.e. their competent authorities) to publish an online list for each profession, accessible to the public, detailing for each registered provider of professional services – including those who have made prior declarations – the name, professional title, and registration number. Most architects' competent authorities already have such an online list, but it needs to be made mandatory across the EU, regardless of whether there is also a Card for those who want one. Such a mandatory online list would simplify the prior declaration system, and enhance public confidence in the free provision of services. Among architects, the prior declaration system only appears cumbersome because the optional transposition of the PQD, permitted in many aspects of PQD Title II, allows a lack of consistency in national laws, in transparency and (ultimately) in public knowledge and awareness across the internal market. Addressing these issues may be more fruitful than other forms of 'Simplification' envisaged in the Green Paper.

The card issuer would face a potentially significant increased burden if the card included all of the information which the receiving member state may require. Through ENACA, we are aware that competent authority certificates may provide details of establishment, confirmation that an individual is not prohibited to pursue the profession and details of professional qualifications. Competent authorities would, under a card system, take on an additional role of verifying nationality and obtaining and providing insurance information on the card. The duration of validity of a card would then become more of a problem as the insurance may expire or be cancelled after the card has been issued. Should a card be introduced, the professional may find that it is an increased burden to supply the insurance details to the competent authority in order to secure the certificate. We would not therefore recommend that a card replaces the declaration and the accompanying documents and we do not support option 1.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.
A card may be more appropriate in supplying details of nationality, establishment and full details of qualifications, as suggested under Option 2. For architects such a card would most easily be produced as an electronic certificate or after the exchange of information through the IMI in a standard format. A more cumbersome system would be disproportionate to set up and administer in view of the take up.

A card system would need to provide full details of the qualifications held in order that the receiving state can identify whether services should be provided under the home state title or the receiving state title (Article 7(3)). The host MS CA must also be empowered to prevent fraud by checking that any documents on (or vouched by) the card actually exist – e.g. professional indemnity insurance.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

Presentation of the card may accelerate the recognition procedure just as certificates from home competent authorities already do. These accelerate the ***submission*** of documents and ease the process significantly. In practice, this does allow CAs to recognise the qualifications swiftly. But based on CAs' experience, a two week response time is unrealistic Shortening the periods currently set in the Directive would require competent authorities to maintain higher levels of resources (at greater costs) simply to achieve response times which are too restrictive. Current experience of the use of certificates suggests that two months is a more realistic target for the receiving Member State to take a decision (whether with a certificate or with a card) instead of three months. However, many member states are unable to meet the current timescale, so it would be better to keep the current timescales and ensure they are met, whether a card is introduced or not.

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

Again, in our experience, a one month response time would be unrealistic. The general system requires a more detailed assessment than automatic recognition and the use of a card could create administrative problems as the host member state will need to request further detailed information about the applicant's experience and training which cannot be provided through a card. The applicant's eligibility for use of the General System has to be determined before the detailed consideration. The candidate may need to attend an interview whereby they can present additional evidence. This process suggests that a four month timeframe would still be required.

As a comment on the first line of Q.2, the objectives of the card holder cannot be the only determinant of the effects of a professional card. Equally relevant in some instances will be the mission of the CA and, the need to protect the consumer.

2.2. Focus on Economic Activities - the principle of partial access

Question 3: *Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle).*

The ACE does not see the need for partial access provisions to be inserted into the PQD, to grant applicants partial access to a regulated profession, which would lead to confusion for the consumer. The Directive is already sufficiently complex, and amendments which make it more complex and make the Directive harder to apply in practice are to be avoided. Instead, the ACE is convinced that consumer protection requires limiting partial access to individual cases. Partial access implies that the person in question is not authorized to exercise all the professional tasks which members of the said profession usually carry out in a host MS. Wider provision for partial access by professionals would risk fragmenting many professions' long-standing role and ethos, and create greater legal uncertainty for

providers and recipients of services alike. Furthermore, it will be difficult to monitor compliance with the prohibitions on professionals with only partial access, to ensure that they do not perform all the tasks which members of their regulated profession in the host MS usually perform.

It will be difficult for legislation to define – more clearly than the TFEU (the EU Treaty) already does – the criteria according to which the activity of a professional with partial access must objectively be separated from the overall scope of activities covered by the profession in each EU member state. Legislation will in any case not prevent recourse to the TFEU. Accordingly we suggest that the limited number of scenarios in which this issue is relevant in practice are dealt with under the TFEU as they are currently, rather than legislating for this. If the EU Commission decides, despite these objections, to insert the criteria for partial access into the Directive, a requirement needs to be inserted also that the differences between two professional roles, for example between skiing instructors and snowboarding instructors, are so great that they can only be compensated by completing the full training course. Furthermore exceptions from partial access must be possible in a profession on grounds of prevailing public interest.

It seems contradictory for the Commission to promote "simplification" of requirements for access to the market and of standards for consumer protection while, at the same time, highlighting in changes to the Directive the principle that a Civil Engineer in Spain offers a range of professional services which is substantially different from those of a Civil Engineer in Italy.

There is in any case a lack of transparency about how the PQD relates to jurisprudence of the CJEU (Court of Justice of the European Union). In the common law world it is normal to take account of case law including CJEU decisions (e.g. Dreessen, Imo, Cavallera, Morgenbesser). But the CJEU/ ECJ cases available for reference on the Commission's own Internal Market website all date – without exception – from before the PQD took effect[2]. This seems to indicate that, whether under the common law or under the civil law code, an EU government, Court or competent authority must in any case read the PQD **and** all relevant ECJ cases, since there is no indication that the PQD itself embodies any decision of the ECJ, regardless of whether that ECJ case predates or postdates the PQD. A better approach might be for the Commission to update its guidance on the case law so that competent authorities are aware of the provisions and implement the rules correctly. The Commission's own report on its previous consultation described the principle of partial access as "not widely known and appears to be controversial".

According to the Commission, during the previous consultation "almost no competent authorities, professional organisations and governments see the need for including the principle of partial access in the Directive".

In any case, a specific reason for a derogation from the principle of partial access exists in the automatic recognition system under Title III Chapter III. It would be nonsense to spend years defining a common definition (in PQD Article 46, and twenty years earlier in Directive 384/85) of the knowledge and skills of an architect as part of PQD minimum training conditions, and then to give partial access to that profession to someone who may lack the particular knowledge and skills needed by their next client. Competent authorities are especially aware of the need to help immigrant architects through PQD and other means to be able to serve clients in their host countries.

2.3. Reshaping common platforms

Question 4: *Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.) Professional qualifications in regulated professions.*

[2] *See in the Internal Market and Services part of the Commission's own website where, under the heading "Free movement of professionals", the "List of judgements of the Court of Justice concerning professional recognition" is a document dated 6 February 2004.*

Generally, the proposed amendment of the current provision on common platforms (Art. 15) should serve as a first step to the extension of the automatic recognition regime and provide – after amending of Art. 15 – comparable results in terms of recognition. ACE supports such an amendment as long as duration and quality of the academic education are safeguarded by minimum standards and are not to be circumvented by common platforms granting holders of lower professional qualifications access to the market. To compensate for the lower threshold (one third instead of two thirds) the EU Member States must be accorded the right to object – the current right to be heard will not suffice in that case.

The lowering of the threshold for the successful establishment of platforms from two-thirds to one-third seems appropriate as a principle. Nevertheless, provided that the future common platforms are conceived as an opt-in solution, even a lower threshold is possible and applicable in practice.

Finally, the proposed Internal Market test based on the proportionality principle seems reasonable as a safeguard to avoid eventual discrimination of non-participants (in the respective platform) when entering the market. Nevertheless, the mentioned test be itself proportionate and consider the added value such platforms will provide in terms of enhanced recognition.

2.4. Professional Qualifications in Regulated Professions

Question 5: *Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.*
- no answer -

3. BUILDING ON ACHIEVEMENTS"

3.1. Access to information and to e-government

Question 6: *Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).*

We support the suggestion that recognition procedures should be capable of being undertaken electronically. This is one reason why it is important that any professional card is capable of electronic submission; both to and by a professional (or applicant for recognition), and to and by a competent authority. Architects' competent authorities which are ACE Members have worked with their Governments to provide electronic procedures, not only for making applications but also for issuing certificates by post and/or as pdfs. We would however caution against the Directive being too prescriptive about the ability for all applications for all professions being handled through a single access point. Although extremely valuable in sign-posting applicants, a "one size fits all" portal for application procedures has created greater problems for applicants than has a bespoke process offered through a competent authority's own website.

If the Directive specified that all processes must be capable of being offered through one portal, this could lead to the duplication of procedures, because competent authorities' (CAs) own websites must still remain in any case. One answer which seems to work well is for the CA's website to be in tandem (not in parallel) with the central on line access point; so that an application for a particular profession will arrive at the same desk, regardless of whether the applicant begins the procedure in the central access point or goes directly via the CA website.

3.2. Temporary mobility

Question 7: *Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State?*
Should the host Member State still be entitled to require a prior declaration in this case?
(Please give specific arguments for or against this approach.)

Although we understand the rationale put forward for some professions, such as tour guides, the significant relaxation of the rules for other professions, such as architects and professions in the fields of health and safety could also create significant consumer risk.

The Directive provides that the regime covers temporary or occasional work. Where an individual makes a prior declaration under the PQD, the professional may offer any services and is not restricted to a specific project or only providing services to consumers from their home state. The approach proposed would allow the professional to conduct any work on a temporary or occasional basis unless the Directive introduces a restriction on the consumers for whom services could be offered. Such a restriction could create an administrative burden for both the professional and the competent authority. We are unaware of the level of concern in this area for other professionals which would need to be assessed against the proposal.

3.2.2. The question of "regulated education and training"

Question 8: *Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)*

Our comments here are similar to those against Q7 above. Whilst we can understand the rationale for what the Commission is suggesting in certain limited circumstances, it would be inappropriate to have any relaxation of the requirements in relation to architecture given the specific nature of the profession. It is essential that any training to be taken into account for architects should relate specifically to architecture. It seems likely that the same criterion will apply to all professions in the automatic recognition system under PQD Title III Chapter 3. It seems undesirable to "stretch" the definition of "regulated education and training", especially if the qualification levels of article 11 (see question 9) are also abolished.

3.3. Opening up the general system

3.3.1. Levels of Qualification

Question 9*: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).*

No, the ACE would not support such a deletion because the classification of qualification levels within the framework of the general system for the recognition of professional qualifications is a proven and rational instrument for evaluation and recognition of professional qualifications, and so helps the mobility of EU professionals. However, in the context of this Directive, which is to assist free movement through the recognition of professional qualifications, the principle aspects not only of Article 11 but also of the inseparably with Art. 11 connected Article 13 should remain, i.e. that attestations of competence or evidence of formal qualifications should attest a level of qualification at least equivalent to the level immediately prior to that which is required in the host state. (Access to professions through social betterment provisions, as currently noted in Article 47 must remain available).

a) General

The General System provisions are one of the more complex areas of the Directive. They are designed to deal with professions which do not benefit from the automatic recognition regime, but can also cover architects who hold relevant evidence of qualifications but do not benefit from automatic recognition.

General Systems' provisions are thus not primarily designed to deal with professions who could benefit from automatic recognition does cause difficulties in their application to architects. This is specifically commented on at paragraph 4.3.4.4 of the Commission's evaluation report on the Directive. In terms of architects specifically, it has never been clear what the phrase "specific and exceptional", used in Article 10 and a key operative part of the General Systems provisions, means in the context of architects and when someone should properly be put on the General Systems route. The Commission itself notes that "the process leading to the recognition decision under the general system is cumbersome and time consuming for competent authorities and for citizens" (paragraph 4.4 of the Evaluation Report).

There is nothing to be gained by deleting this classification. On the contrary, it is much easier and more transparent to check as a first step along the qualifications levels whether a diploma meets the requirements for equivalence, than to operate only on the rather woolly legal basis of "substantial differences" (Article 14, para 4 PQD), which requires evaluation of each case individually. In the absence of the Article 11 quantitative classification, the individual applicant is not in a position to do this, and the competent authorities too will be deprived of transparent standards and criteria. One consequence will be a considerable increase in bureaucracy, so as to explain and defend qualitative assessments. Furthermore, as the Green Paper indicates, shared understanding of the relevant legal terms would be undermined by deletion of the classification, leading to a more complicated handling of the Directive and making it harder for a migrant to foresee whether his or her professional qualification will be recognized. The shared understanding between competent authorities of how to operate under the Article 11 classification helps to prevent obstacles to mobility of professionals; to prevent "forum shopping"; and so to prevent protectionist abuses which could impede mobility. For the time being the general system is a useful instrument to evaluate architectural qualifications including diplomas in architecture which so far haven't been notified – in short, of all qualifications in the field of architecture which are not subject to automatic recognition; the General system may also be used by some competent authorities to consider other disciplines falling within their own national regulations (landscape architect, interior architect and urban designer etc.) but such decisions should not bind other MSs where such professions do not exist or are unregulated. The ACE fears that removing the levels from Article 11 may even risk that legal issues on qualifications will increasingly come to be decided under the EU Treaty, because the Directive itself will become more obscure, just as the case law on recognition continues to be in the absence since 2004 of updated Commission guidance. But even if all architectural qualifications were subject to automatic recognition, ACE would still hold on to the general system, because there will always be a considerable number of diplomas not notified to be evaluated within this system.

b) Qualification levels according to PQD and EQF

The Green Paper fears confusion resulting from the parallel existence of two different classifications: because the PQD contains five qualification levels, whereas the European Qualifications Framework (EQF) includes eight levels. The ACE doesn't share these fears of the EU COM at all, because competent authorities at present do not work with both systems – but only with the current unambiguous Article 11 system. This should be maintained and the EQF levels should not be introduced. We have an – unfortunately undated – document of the EU Commission, Internal Market and Services DG, Knowledge-based Economy, Regulated Professions which is titled *"Directive 2005/36/EC on the mutual recognition of qualifications / the European Qualifications Framework"*. Part of this reads as follows: *"Reference to the European Qualifications Framework levels on qualifications should not affect access to the labour market where professional qualifications have been recognized in accordance with Directive 2005/36EC."* The competent authorities have followed this guidance from the EU COM, and therefore apply the five levels according to Art. 11 PQD in a first evaluation of the qualifications, based on duration of studies.

c) Assessing not only the study content, but also the duration of studies

The Directive with its five qualification levels in Art. 11 is not only an efficient instrument to safeguard quality, but also a flexible one. The quality of professional education depends on two factors: Duration and Content.

Evaluation of the quality of a professional diploma must include not only the subjects covered, but also the depth to which these subjects were studied. For example, it is not sufficient to know that a structural engineer has studied statics without detailed information about how long and to what depth he has done so. Since the minimum duration of professional education safeguards the quality of the qualification, this duration (or the alternative measure of ECTS) must be taken into account. The qualification levels in Article 11 help to do so in a simple and efficient way. It does not make sense for the Green Paper to ask competent authorities to evaluate "substantial differences" between the national and the migrant's professional education after forbidding the authorities to have regard to the most transparent quantitative measure used throughout the world, which is the duration of the studies to evaluate the "substantial differences" between the national and the migrant's professional education. The evaluation of the duration of professional studies has stood the test of time also within the automatic recognition regime of the PQD. The Green Paper does not propose to delete this principle for automatic recognition, so it should not remove from the general system the important criterion of duration of studies.

The current graded Article 11 model ensures that the only professional qualifications which must be investigated with regard to substantial differences, are those which have potential to be recognized because they fulfill (or almost fulfill) the minimum duration requirements.

Furthermore, this model ensures great flexibility. In North America by contrast, admission to the profession is refused unless the applicant complies in full with the minimum duration of professional education; and a deficiency of even one year of studies cannot be compensated for. Article 11's five qualification levels allow compensation for up to one year of difference in the duration of studies. This is a great aid to mobility for professionals in the EU in comparison with rigid systems elsewhere.

d) Consequences of a possible deletion of the five levels

As already stated above, the five qualification levels of the PQD should be maintained and under no circumstances be deleted to solve a non-existent problem (i.e. a confusion of these five levels with those of the EQF). But there are other reasons for maintaining this position:

Abolition of the levels in Article 11 poses great danger of completely devaluing academic education. Currently, the five qualification levels permit competent authorities to concentrate on potential substantial differences between two adjacent qualification levels and related compensation measures. If the first filter – i.e. the qualification levels – were abolished, the competent authorities would be forced to focus on possible shortcomings by reference only to the professional training subjects and the need for compensation measures. Consequently, they would have to analyse all sorts of educational courses and records of professional experience, many of them so inferior to current PQD requirements that compensation for the deficiencies would not be possible within a reasonable timeframe.

In many instances, the differences in subjects compared with those taught in the required professional curriculum will be so substantial, that an adaptation course limited to a maximum of three years duration will not suffice to compensate for the deficiencies. This will most often be the case when migrants with a professional education of less than 3 or 4 years apply for recognition of their qualification.

Furthermore, if the qualification levels were deleted from Article 11, migrants could submit certificates of qualification confirming only the holder's years of professional practice, without any need for certificates confirming the holder's professional education and/or supervised professional experience.

Without the duration of a professional education as a set requirement, proof of relevant professional experience could completely replace the proof of the required professional education. This proposal would even make the system of compensation measures such as adaptation courses or aptitude tests

superfluous because, thanks to "relevant professional experience", the "substantial differences" to be compensated for would no longer be so obvious. Such a proposal cannot be reconciled with the EU's explicit intention to promote and facilitate free movement of professionals and services and at the same time safeguard the high quality of the services provided. It would be naïve to expect that claims for recognition will not arise from people with no academic qualification, because a statutory right will always be claimed. Specialized lawyers will see to that, if nobody else. Consequently, a considerable rise in the number of under-qualified applicants may be safely predicted – leading to a parallel rise in the administrative and judicial workload, if the existing levels in Article 11 are abolished.

If the first step in evaluation of a professional qualification – i.e. the evaluation according to Art. 11 PQD – is abolished, the ACE is of the opinion that competent authorities must be given the power to require all migrants to sit a compulsory aptitude test at university level. The test results will identify the deficiencies, and (if the deficiencies are not too great) the compensation measures necessary.

e) Investigation of substantial differences without the qualification levels
Article 14 para 4 defines "substantially different matters". According to this definition, matters differ substantially, when knowledge of them is essential to pursuing the profession and when the training received by the migrant in these matters shows important differences in comparison with duration or content required by the host Member State. For example, if qualification level (d) in Art. 11 PQD is required for access to a profession, a qualification at level (b), which may not necessarily comprise university matriculation standard, will show such grave deficiencies, that these cannot possibly be made up for by compensation measures. If the Art. 11 classification is abolished, persons with a foreign vocational qualification requiring only apprenticeship could claim, (and perhaps even gain) access to a regulated profession for which the basic requirement is an academic education, by undertaking no more than a three-year adaptation period so as to compensate for the deficiencies in their professional education.

f) Protection from disproportionate compensation measures
If it were indeed necessary to protect EU citizens from disproportionate compensation measures – this is what the Green Paper says under item 3.3.2 – it would be more helpful to specify the preconditions for the imposition of such measures more precisely. The present proposal, however, does the opposite by defining fewer preconditions, leading to uncertainty, and consequently to increased administrative burdens and costs. The ACE sees no documentary evidence of "…lot of claims from citizens against competent authorities imposing disproportionate compensation measures." (Green Paper „Modernising the Professional Qualifications Directive", 22 June 2011, chapter 3.2.2 (3), page 12), certainly not for the professions listed in PQD Annex V. Deletion of the five qualification levels would increase the likelihood of such claims. The Green Paper seems to share this assumption, because it proposes additional safety measures to protect EU citizens from arbitrary compensation measures. However, the contents of this proposal are essentially what Art. 14 para 4 PQD already demands. The imposition of compensation measures must always be justified, so such a requirement is not new.

g) Enlarging the scope for discretionary decisions
There is no documentary evidence of the assertion in the Green Paper that application in practice of the Articles 11 the classification of professional qualifications has been especially complicated or inaccurate, or that their implementation has been particularly difficult. The articles serve as a kind of doorkeeper: applicants, who inform themselves about this system, are usually able to estimate the qualification level of their own professional education covers, so as to avoid submitting futile applications if they are gravely under-qualified.

Another aspect of the five PQD Art. 11 qualification levels relates to the overlap of levels (d) and (e). A four-year study course could belong to either (d) or (e). This problem can easily be remedied by defining (e) to cover only study courses of more than 4 years duration, which will enhance the clarity of the arrangements for both CAs and migrants.

3.3.2. Compensation measures

***Question 10**: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)*

Re step 1
As a first step to simplify PQD Art. 14, the Green Paper proposes to delete Art. 14.1(a) which relates to the duration of training. As explained above, the ACE believes this will not simplify procedures, or uphold the transparency or quality of recognition. If the first evaluation step is deleted – the duration of professional education, represented by the five qualification levels PQD Art. 11 levels – the less transparent term "substantial differences" gains enormous weight and significance. The process will become less transparent and more onerous for applicants and competent authorities.

Re step 2
PQD Art. 13 (2) must also be maintained. This article stipulates that migrants, in whose home state the profession is not regulated, must submit attestations of competence and evidence of formal qualifications in addition to proof of at least two years of professional practice. These documents must attest a level of professional qualification at least equivalent to the level prior to that required in the host Member State and that the holder has been prepared for the pursuit of the profession in question.

Art. 13 PQD must not be deleted, because it not only regulates minimum standards for the pursuit of a profession, but also ties in the qualification levels acc. to Art. 11 PQD and the preparation for the pursuit of a profession. In case of a regulated professional training – and this applies to the majority of architectural training courses which are not covered by Art. 46 PQD – evidence of two years' professional experience is not applicable anyhow

Art. 13 PQD is at the core of the regulations pertaining to the general system on freedom of establishment. Art.13 para 1 is about migrants who want to pursue a profession which is regulated in the host Member State. The pursuit of such a profession depends on the migrant's possession of certain professional qualifications. The migrant must hold the attestations of competence and formal qualifications required in his home state to enter the profession in his home state (diplomas, certificates and other evidence issued by a competent authority in a Member State certifying successful completion of Professional training obtained mainly in the EU – Art. 3 para 1 letter (c) PQD). If this is the case, the migrant must be allowed to enter and pursue the profession in the host Member State under the same conditions as nationals. If the migrant holds attestations of a level of professional qualification at least equivalent to the level lower than that required in the host Member State, he is – with the imposition of compensation measures acc. to Art. 14 PQD – entitled to enter and pursue the profession in the host Member State.

Art. 13 para 1 PQD covers the case of a migrant from a home Member State where a profession is regulated, entering a host Member State, where that profession is also regulated. The migrant passes from one "regulated" state to another, and must submit to the authorities of the host Member State attestations of competence and formal qualification at least equivalent to the level below the level required in the host Member State, in accordance with Art. 11 PQD.

Art. 13 para 2 covers the case of a migrant from a home Member State where a profession is not regulated, entering a host Member State, where this profession is regulated. The stipulations of Art. 13 para 2 PQD require that, subject to certain preconditions this migrant can still enter and pursue the profession in the host Member State. Even when the said profession is not regulated in the home Member State, the migrant may enter the host Member State and pursue that profession on condition that the migrant has pursued it for at least two years during the previous ten years in a member State where it is not regulated and that the migrant holds attestations of competence and formal qualification. As in the cases regulated by Art. 13 para (1) PQD, the migrant has to submit to the authorities of the host Member State attestations of competence and evidence of formal qualification at least equivalent to the level prior to the level acc. to Art. 11 PQD which is required in the host Member State. Furthermore – and this is different to Art. 13 para 1 PQD – the documents must attest that the holder

has been trained for the pursuit of the profession in question. This preparation through a professional practice of at least two years is to compensate for the fact that the profession is not regulated in the migrant's home Member State.

Consequently, if Art. 13 para 2 PQD were deleted together with Art. 11 PQD, the substantial differences in the professional education of every migrant would have to be assessed, using documentary evidence of any kind of professional education in architecture (other than that regulated under Art. 46 PQD), landscape architecture, interior architecture or urban planning. Thus if in a home Member State the professional education of an interior architect consists of a vocational qualification requiring only apprenticeship, the attestation of this qualification would have to be accepted subject only to further assessment of content matters. At the same time, due to the intended deletion of Art. 14 para 4 PQD, it would no longer be possible to impose compensation measures on grounds that the duration of education deviates by more than one year. Consequently, the unequal duration of the professional training could not justify the imposition of compensation measures, so that the assessment of the equality of the professional education would necessarily focus only on the contents of the professional education.

One consequence of the deletion of Art. 13 para 2 would be that a considerable number of qualifications would have to be recognized, which are not based on a regulated professional training. This would be a complete paradigm shift which will make decisions under the PQD more opaque for professionals, employers and competent authorities alike.

Re step 3
Please see above sections c) – f) of the answer to Question 9.

Re step 4
No, ACE does not support the concept of a binding text as part of the code of conduct, with the rest being voluntary. ACE proposes that the EU Commission should establish an expert group charged with gathering and evaluating the various experiences. Based on their report, the part of the code of conduct on various compensation measures should be developed.

3.3.3. Partially qualified professionals

Question 11: *Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)*

The ACE supports the premise that graduates should be able to complete periods of professional experience abroad. The home member state should then consider the equivalence of that training to any national requirements. The ACE supports also extending the benefits of the PQD to graduates, including all graduates in architecture notwithstanding that Q.11 is under the heading "Opening up the general system". At Q.1 above, we note (and support) the practice of some competent authorities (CAs) to issue on request to graduates not yet eligible to register, but whose diplomas conform to Article 46, a downloadable pdf confirming this status. Such a document or E-certificate could be presented by a graduate beginning his period of pre-registration practical experience in a host MS, as Question 11 foresees. The ACE strongly favours such flexible provisions in and under the PQD, and favours use of a mandatory PQD-IMI to support it.

In view of comments from the EU COM on unremunerated professional experience, whilst there must be a distinction between practical experience which forms part of a qualification and practical experience which occurs outside of the qualification, we do not believe that remunerated experience is the best or the only way through which a graduate may move towards establishment. Valuable practical experience can be unremunerated and whilst graduate exploitation should be avoided, the option of completing any relevant experience of sustainable quality should not be prohibited to the graduate. There could be other arguments in favour of remuneration but they do not form part of this Directive. Safeguards should be applied to any system for reckoning the experience, to ensure that 'double-counting' of experience is not possible towards both a qualification and a freestanding

requirement for professional experience. It should also be made clear that relevant practical experience may be completed following both first-cycle and second-cycle Bologna qualifications and it is a matter for the competent authorities of each MS to determine how such experience contributes to national requirements.

3.4. Exploiting the potential of IMI

Question 12: *Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?*
Option 1: *Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)*
Option 2: *Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)*

Our experience of the IMI indicates that it is a useful tool for the exchange of information between competent authorities. We support it becoming mandatory under the Qualifications Directive and that timescales for response should be adhered to.

The alert mechanism for those professions covered under the Services Directive is currently insufficient in that the mechanism does not provide for an alert in all appropriate circumstances; e.g. a fraudulent application which may be repeated, if unsuccessful, in a second or third country. (The ACE also discussed with DG-Markt in November 2010 the potential gap between a company or partnership treated as a service provider under the Services Directive, and the individual director or partner of that firm who may be registered as a professional under the PQD).

We therefore propose that an alert mechanism be available for all regulated professions, or, as a minimum, those where there are any implications for health and safety, which includes all the 'sectoral' professions in Title III Chapter III. The alert mechanisms proposed should not just be restricted to health professionals.

We favour option 2 with the mechanism being an alert which is easy to use and receive for competent authorities via the IMI. The mechanism should be for those who are no longer able to practice in the state owing to disciplinary action or where an application has been refused for reasons such as fraud, fitness to practice etc. In a recent case, a CA had no available method of alerting all member states to a fraudulent application made by an EU national except by contacting individual authorities. We would urge the Commission to discuss with competent authorities their experiences to date.

3.5. Language requirements

Question 13: *Which of the two options outlined above do you prefer?*
Option 1: *Clarifying the existing rules in the Code of Conduct;*
Option 2: *Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.*
- no answer -

4. MODERNISING AUTOMATIC RECOGNITION

4.1. A three-phase approach to modernisation

Question 14*: Would you support a three-phase approach to modernisation of the minimum training requirements under the Directive consisting of the following phases:*

- the first phase to review the foundations, notably the minimum training periods, and preparing the institutional framework for further adaptations, as part of the modernisation of the Directive in 2011-2012;
- the second phase (2013-2014) to build on the reviewed foundations, including, where necessary, the revision of training subjects and initial work on adding competences using the new institutional framework; and
- the third phase (post-2014) to address the issue of ECTS credits using the new institutional framework?

The ACE is of the opinion that after conversion of most architectural study courses according to the Bologna-scheme, credit points according to ECTS prevail already. This is reflected in the discussions of the EU Sub-Group dealing with architectural diplomas and in the Group of Coordinators for the recognition of Professional Qualifications about the notification applications of architectural study courses. Consequently, ACE suggests that the ECTS issue is dealt with in the first phase as described above and not postponed to a later stage. If the Commission seeks to "modernise" Article 11, it would be far safer to amend the levels so as to incorporate the already-implemented system of ECTS points now, instead of delaying thinking about it until 2014 as the Green Paper proposes. The ECTS is a quantitative measure already understood across the EU; unlike the qualitative measures of the European Qualifications Framework (EQF) which is a voluntary system implemented in only some countries.

4.2. Increasing confidence in automatic recognition

Question 15*: Once professionals seek establishment in a Member State other than that in which they acquired their qualifications, they should demonstrate to the host Member State that they have the right to exercise their profession in the home Member State. This principle applies in the case of temporary mobility. Should it be extended to cases where a professional wishes to establish himself? (Please give specific arguments for or against this approach.) Is there a need for the Directive to address the question of continuing professional development more extensively?*

We strongly support this approach which assists in safeguarding the consumer. Professionals should not be able to apply to another country for example for registration as an architect, when they have failed to meet the standards required in their home state. Equally, professionals should not have to maintain dual registrations, in the home and host state, as this may be costly. However, some safeguards do have to be built into this approach as professionals become more mobile. An individual should be able to acquire qualifications which are built up from any member state and problems can occur when a professional has undertaken a first degree in one country and a diploma/masters degree in a second county. Which would be the individual's "home state" in such a scenario?

4.3 Doctors, 4.4 Nurses/Midwives, 4.5. Pharmacists:

Question 16: *Would you support clarifying the minimum training requirements for doctors, nurses and midwives to state that the conditions relating to the minimum years of training and the minimum hours of training apply cumulatively? (Please give specific arguments for or against this approach.)*
Not relevant

Question 17: *Do you agree that Member States should make notifications as soon as a new program of education and training is approved? Would you support an obligation for Member States to submit a report to the Commission on the compliance of each programme of education and training leading to the acquisition of a title notified to the Commission with the Directive? Should Member States designate a national compliance function for this purpose?*
(Please give specific arguments for or against this approach.)

a) If the term "programme of education and training" refers to new study courses at universities and schools of architecture, the obligation to inform the EU Commission is purposeful. A report is not necessary when the program of education and training is a post-graduate program for extra-

occupational training which doesn't lead to the acquisition of a professional title but to its maintenance. The PQD is all about access to a profession, not about CPD.

b) With regard to current architectural courses, which have mostly been adapted to the Bologna process, such a notification is imperative. In many European countries, the universities and architectural schools have gained greater independence from government control and develop curricula on their own – which may lead to significant attention being paid to market requirements or focusing on special subject matters in the attempt to promote their individual profile in inter-university competition. There is a risk that if architectural studies are dominated by such objectives, they may in the end no longer comply with the requirements stipulated by Art. 11 or Art. 46 PQD. This is one of the reasons why new architectural courses must be evaluated with regard to their compliance with the PQD requirements. The notification system should certainly be maintained. At their March 2011 meeting at Thessaloniki, the members of the European Network of Architects' Competent Authorities (ENACA) supported this position

- In connection with the (justified) request to simplify the notification procedures the Green Paper proposes that notification is accompanied by a report from a designated national compliance function. Although a system may provide significant levels of assurance in some member states, for many reasons this is inappropriate, and will not work well.
- Member states may seek to appoint remote accreditation agencies to undertake such a role, rather than appointing competent authorities with the necessary skills and knowledge of the profession. When ACE / ENACA asked the European Quality Assurance Register for Higher Education (EQAR) to include notification aspects in their accreditation procedures, EQAR claimed not to be in a position to impose on its members in the field of architecture a set of integrated accreditation procedures, which would include PQD compliance. However, such integrated procedures are an essential prerequisite if accreditation bodies were to act as national notification points.
- Due to financial restrictions, more and more grouped or structural accreditations have come to replace the former individual subject matter accreditations. In such accreditations, details specific to architectural courses can "fall by the wayside", as complete faculties with all their branches can become accredited in one package without looking into details.

The ACE would not welcome a single national control body per member state to check compliance with the regulations across professions. This could lead to more bureaucratic structures and transfer responsibilities to national institutions. Thus, results of the notification procedures would become more irregular. However, some Member states already successfully operate profession specific systems which do provide a significant level of assurance. Rather than the compulsory introduction of a system, the Commission should encourage good practice to be shared and for the Sub-group to give appropriate weight to such systems which exist and operate effectively.

c) On the timing of notifications:
From the students' point of view, the notification of new study courses immediately after their implementation is absolutely desirable (otherwise, the students would find themselves in the role of guinea pigs, not knowing whether their diploma will be notified). New study courses should be notified at an early date after their accreditation or approbation.

Question 18: *Do you agree that the threshold of the minimum number of Member States where the medical speciality exists should be lowered from two-fifths to one-third? (Please give specific arguments for or against this approach.)*
Not relevant

Question 19: *Do you agree that the modernisation of the Directive could be an opportunity for Member States for granting partial exemptions if part of the training has been already completed in the context of another specialist training programme? If yes, are there any conditions that should be fulfilled in order to benefit from a partial exemption? (Please give specific arguments for or against this approach.)*
Not relevant

Question 20: *Which of the options outlined above do you prefer?*
Option 1: Maintaining the requirement of ten years of general school education
Option 2: Increasing the requirement of ten years to twelve years of general school education
Not relevant

Question 21: *Do you agree that the list of pharmacists' activities should be expanded? Do you support the suggestion to add the requirement of six months training, as outlined above? Do you support the deletion of Article 21(4) of the Directive? (Please give specific arguments for or against this approach.)*
Not relevant

4.6. Architects

Question 22: *Which of the two options outlined above do you prefer?*
Option 1: *Maintaining the current requirement of at least four years academic training?*
Option 2: *Complementing the current requirement of a minimum four-year academic training by a requirement of two years of professional practice. As an alternative option, architects would also qualify for automatic recognition after completing a five-year academic programme, complemented by at least one year of professional practice.*

ACE as a representative European professional organisation of architects actively promotes the introduction of a requirement for a minimum of five years academic training complemented by two years of supervised professional experience. "5+2" is also the world standard at international level. The European Association for Architectural Education EAAE strongly supports the five-year minimum. The EU COM is familiar with these policy positions, so it would make sense to introduce this third Option into the Green Paper.

The more so, since most of the four-year architectural study courses have been upgraded to five-year courses within the Bologna process. Almost all European architectural schools as well as the complete profession of architects agree that the professional tasks of architects have of late grown so complex, that the duration of architectural education must reflect this. In fact, this has already been accomplished.

So the ACE continues to seek five years minimum academic education, followed by two years of professional practical experience leading to registration. If the only choice offered to the profession in response to the Question 22 of the Green Paper is between Options 1 and 2, then Option 2 is preferred. Option 2 proposes to amend PQD Art. 46 so as to "*complement the current requirement of a minimum four-year academic training by a requirement of two years of professional practice*"; and the alternative (within Option 2) whereby Member States' architects "*would also qualify for automatic recognition after completing a five-year academic program, complemented by at least one year of professional practice*."

Option 2 is better than the current PQD Art. 46 four-year minimum, which in some cases is complemented by 'accompanying certificates'. We assume Annex V will remain in its current form, given the great amount of work the Commission has put into updating it recently, and we support that also. Thus the experience requirement in Option 2 simply adds a minimum assurance as to experience, and permits national 'access to market' requirements nonetheless to remain, but in a form which is more transparent, more consistent with existing national laws, and more reflective of custom and practice for architects and their clients; not only in Europe, but across the world.

Should option 2 be introduced, with alternative scenarios of four years academic training plus two years' experience or five years academic training plus one years' experience, the implications for implementing this and reflecting this in Annex V will need to be considered carefully.

As mentioned already under question 11 of this paper (see 3.3.3 page 15), it should also be made clear that relevant practical experience may be completed following both first-cycle and second-cycle

Bologna qualifications and it is a matter for the competent authorities of each MS to determine how such experience contributes to national requirements.[3]

4.7. Automatic recognition in the areas of craft, trade and industry

Question 23: *Which of the following options do you prefer?*
Option 1: *Immediate modernisation through replacing the ISIC classification of 1958 by the ISIC classification of 2008?*
Option 2: *Immediate modernisation through replacing Annex IV by the common vocabulary used in the area of public procurement?*
Option 3: *Immediate modernisation through replacing Annex IV by the ISCO nomenclature as last revised by 2008?*
Option 4: *Modernisation in two phases: confirming in a modernised Directive that automatic recognition continues to apply for activities related to crafts, trade and industry activities. The related activities continue to be as set out in Annex IV until 2014, date by which a new list of activities should be established by a delegated act. The list of activities should be based on one of the classifications presented under options 1, 2 or 3.*
Not relevant

4.8. Third country qualifications

Question 24: *Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)*

The position in relation to EU citizens who hold third country qualifications is an area in which, from the ACE point of view, the current provisions of the Directive work reasonably well.

A three year practical experience requirement seems to strike an appropriate balance between ensuring applicants are able to operate effectively within the EU and not imposing an artificial barrier to free movement. Furthermore, it gives an element of security that the member state carrying out the initial assessment of the applicant's qualifications will be doing so from the point of view that the applicant will subsequently practice in that member state, rather than using it for "forum shopping" so as to gain easier access to the EU generally.

To the extent the Directive applies to limited categories of non-EU (Third Country Nationals) TCNs (eg relevant family members of EU citizens, refugees) their rights ought to be the same as those of EU nationals in this area. However there does not seem to be any rationale for broadening the range of individuals who can benefit from the Directive outside these groups, if this is what the second limb of the question is suggesting.

POSTSCRIPT

In general, the proposals of the Commission (COM) in its Green Paper to try to increase mobility of professionals, implies a high risk of decreasing the quality levels of professionals, and thus of the professional services they offer. The ACE supports in principle efforts by the COM, and by the European institutions generally, to increase mobility in response to the challenge of filling highly skilled jobs, but EU consumers and professionals must fear that the Green Paper means that these jobs will

[3] A discussion between ACE and the EU Commission (Internal Market and Services DG, Knowledge-based Economy, Regulated Professions) on 20th July 2011 at Brussels included question 22 of the Green Paper. The EU COM indicated a certain flexibility with regard to the professional practice requirement, which period could possibly be inserted between the Bachelor and the Master course, either completely or a part of it.

be filled by less qualified professionals than are currently recognized under the PQD. COM's proposed changes may help to fill particular EU professional skills shortages (e.g. engineers, or specialised nurses) but at the expense of standards in other professions where no shortages exist or where changing the Directive will not in any case increase the level of mobility.

The Introduction to the Commission's ("the COM's") Green Paper resembles the *Introduction* to the COM's Paper for the PQD Public Consultation, in that the *Introduction* again includes sweeping and unsupported statements, and includes no questions or other indication that the COM invites comment on these statements. Instead of systematic references to empirical information, or to sources where factual data is coherently presented and analysed, the COM's *Introduction* includes (for example)

- The unreferenced statement "It has long been recognised that ...",
- Vague characterisation of PQD procedures as "burdensome and unclear ...",
- References to stakeholder complaints, more than to their outcome (including judicial decisions), or to econometric analysis; and
- References to strategy and promotional documents of the Commission itself.

All this gives an impression that the Commission relies more on repetition in order to vindicate its policy positions, and less on the COM's fact-finding and evaluative work such as the very useful COM 5 July 2011 working document titled "*Evaluation of the Professional Qualifications Directive*".

End of paper