



General Affairs

EU Commission Services Package

ACE position on non-binding guidelines on the Reform Recommendations for regulation in professional services

Date: 03/04/2017 - Ref: 081/17/PO

Introduction

The Commission is seeking to complete the Evaluations undertaken within the framework of the Peer Review and the European Semester (annual coordination cycle of the economic policies of EU Member States) and proposes action to tackle remaining barriers, e.g. implementation measures for possible breaches of EU law or legislative proposals targeting persistent obstacles.

While by definition, the Reform Recommendations are supposed to be country specific, much of what the Commission has published to date – whether in the context of Mutual Evaluation, the Communication on Reform Recommendations for Regulation in Professional Services or the accompanying Staff Working Document – along with the rationale for its actions, related studies and the so-called empirical evidence to which these documents frequently refer in their footnotes – is all rather generic.

Many of the criticisms made of professional regulation, and the negative impact it is alleged to have on economic growth, job creation and mobility, are general in nature and frequently do not apply to the architectural profession. Indeed, the Commission does not always make appropriate distinctions between the automatic recognition enjoyed by the so-called « sectoral professions » and the others falling under the General System, the former invariably enjoying higher mobility rates.

Remit

“The EU should only act where the objectives of ... proposed action cannot be achieved sufficiently by the Member States and where the objectives can be better achieved by the EU”.

Mobility

Clearly, if 94% of cross-border registration requests are satisfied for architects (according to the Commission's regulated professions database), then it is difficult to understand why the COM now considers further intervention to be necessary – or why the Member States need more assistance. The architectural registration bodies volunteered to use the IMI early on and collaborate closely through the Group of Coordinators, the European Network of Competent Authorities (ENACA) and the Architects' Council of Europe (ACE).

Indeed, the numbers seeking cross-border registration might be even higher – if more work was available; or if SMEs were not excluded from the majority of public works by



the requirements of the Procurement Directive (combination of turnover requirements in relation to thresholds, plus track-record).

Regulation as an obstacle to mobility

ACE's own research (Sector Study) – as well as that of DG REGIO – show that the reasons why many professionals are reticent about working in another country are many (language, trust, insufficient knowledge of planning / building regulations, practical, relocation issues, family,, fees, PII) – but nothing to do with registration / regulation. On the contrary, many professionals find it easier to work in a regulated market because responsibilities are better defined, giving greater legal certainty.

Differences between regulatory concepts

The fact that there are differences between regulatory concepts is neither here nor there. First, the Commission's own report states "differences between regulatory concepts ... do not necessarily indicate a need for reform" and "the differences ... [between *ex ante* and *ex post* models] may be less significant than they might appear". Second, for the past 32 years (since the Architects' Directive was agreed in 1985) the competent authorities in the Member States have treated each other's qualifications as equivalent (we also tell our negotiating partners outside the EU that notwithstanding differences in regulatory concepts, the outcomes are equivalent). That being the case, we cannot now accept arguments - from the very authors' of the Architects' Directive and the later Professional Qualifications Directive – that the differences we have accepted since 1985 are suddenly considered to be obstacles.

New Restrictiveness Indicator

While the new Restrictiveness Indicator developed by the Commission is a welcome step in the right direction, permitting a finer grain of analysis of regulation, we were dismayed to see that Continuing Professional Development is now listed (along with Reserved activities) as a negative restriction – whereas this is something that has been encouraged in recent times as a way of maintaining currently skills and developing new ones, in the interest of staying globally competitive.

We were also disappointed to see the inclusion of Reserved Activities as negative restrictions – although the 2012 DG MARKT "Study to Provide an Inventory of Reserves of Activities linked to Professional Requirements" concluded that "the economic analysis ... does not show that there is a clear impact of reserved activities on economic performance". Where activities are reserved to certain professions it is usually because they hold specific skills or competences.

While we consider that the New Restrictiveness Indicator is an improvement on the OECD PMR, we find it is incomplete as it only takes into consideration *ex ante* regulation. A more complete Indicator would also look at *ex post* regulation (e.g. other



forms of authorisation e.g. building codes and planning permission) and aggregate the two types of regulation, to gain a more equitable picture.

Asymmetry of Information

Whereas the Commission believes that in some areas, as clients become better informed, the asymmetry of information (traditionally evident in the “credence” or “trust” professions) will diminish, in a technical area such as architecture, the advent of new technologies such as Building Information Technology (BIM) is likely to exacerbate the asymmetry of information.

Economic impact of regulation

The Commission claims that lower levels of regulatory restrictions coincide with better economic outcomes. However, EUROSTAT figures show that while countries without mandatory Chamber registration appear to have less *prima facie* legislation, the cost of services in these countries has risen more sharply than in countries with mandatory Chamber registration.

Architectural offices tend to be small – partly out of preference, partly because of “intermediate consumption” (outsourcing / sub-contracting). This is significant in relation to gross operating rates. Research recently published by the University of Cologne shows that while under the fiction of perfect competition, high gross operating rates incentivise new providers to enter the market with lower prices so that – in the long-run, gross operating surplus margins settle at average levels, sole practitioners – with no employees and purchasing intermediate outputs – by definition will have a gross operating rate of 100% - even if their profit margin can barely sustain the owner-manager. Conversely, gross operating rates are relatively low when the share of personnel costs – as a percentage of total turnover – is high.

The alleged benefits of de-regulation

Some “empirical evidence” has been provided on apparent benefits arising from de-regulatory measures taken in certain Member States.

Of course, it is debatable whether lowering entry standards to professions or increasing « churn rates » are actually beneficial. But as “churn” is apparently desired, it is worth noting that the ACE Sector Study shows that in 2008 there were 0.8 architects for every 1000 inhabitants; this figure had risen to 1.0 architects per 1000 inhabitants by 2016 – a net increase of 25% over the period. So one cannot deny the entry of new blood into the market. Of course, if there is no work to be had at the end of a period of long / expensive training, then the whole thing is a waste of time and resources.

There was also a marked increase in the number of practices – though the main reason for this was the fact that large firms had made extensive redundancies during the recession, which resulted in architects setting up their own firms (often one-man operations), as an alternative to becoming unemployed. As the recession recedes,



there is evidence of a return to employment by some singleton architects, thereby reducing the overall number of companies.

The Greek study referred to by the Commission draws conclusions for the professions examined – but not architects. However, if there has been no negative impact on the quality of service, this is because there has been no reduction in education standards or in the cost of architectural services.

If the Bersani reforms in Italy have been beneficial in some areas, they have been disastrous for the architectural profession. Fees have been slashed to 30% of former values which can only impact negatively on quality. Meanwhile, the withdrawal of the fee-scale has resulted in the authorities experiencing difficulties drawing up budgets for public works, while the courts find litigation more complicated as they have no basis on which to make awards. As a result, the Italian Government has had to ask the *Consiglio Nazionale degli Architetti* for information on resource allocation and cost calculation.

The publication of the “Study on the Effects of Liberalisation in Austria Using the Example of the Liberal Professions” showed the effects of reduced market entry barriers were negative for freelance architects (which may explain the delayed publication of this report).

Last, if the impact of liberalising access to certain professions on the quality of services provided was already known to be positive, the Commission would not have published Call for Tenders no. 573/PP/GRO/IMA/16/1131 recently (deadline, 10.02.17) – the aim of which is to gather evidence that does not yet exist.

Country-specific guidelines

Naturally it is for the Competent Authorities in the Member States to respond to the guidelines and recommendations that have been addressed to them. However, we have been made aware of the situation relating to a number of countries. For example, the Commission has recommended that Ireland take a look at “the wide scope of reserved activities that exist” (in addition to title registration). An examination of admissions to the RIAI Register over the period 2010 – 2016 reveals that only 42% were qualified entirely in Ireland, 34% were qualified in a single EU/EEA State and a further 20% had mixed qualifications (e.g. from two EU countries, usually one other country plus Ireland). This is an astonishing result considering the small size of the Irish economy and the severity of the recession that it underwent during that period.

Miscellaneous

Procedures - the Commission claims that procedures are costly and time-consuming – yet the PQD requires applications to be dealt with expeditiously (within 3 months) and at reasonable cost. Moreover, while the cost to foreigners might be substantial where there is no automatic recognition, page 6 of the Staff Working Paper says “automatic



recognition arrangements in the EU are effective in facilitating entry into foreign markets and mobility across countries”.

Professions chosen – the Commission gave as a reason for choosing architecture, “it is regulated in most Member States yet taking divergent approaches, meaning that potential for reforms most likely exists”. However, as we have seen above, the differences in regulatory models are “not significant”, produce equivalent outcomes and satisfy their objective (mutual recognition of qualifications in furtherance of cross-border mobility).

Conclusion

As far as the architectural profession is concerned, the non-binding guidelines on Reform Recommendations for regulation in professional services appear to be trying to solve a problem that does not exist.

The arsenal of back-up measures for which provision is made in the Services Package – ranging from a Proportionality Test, to a Notifications Directive and Services e-Card – seem totally disproportionate, and while they may be necessary for problematic areas of professional regulation, we remain convinced that such problems do not exist in the area of architectural regulation.

The Commission’s Mutual Evaluation report on the architectural profession might have provided an opportunity to lay down some kind of justification for such an approach, but as 80% of it was written before the Member States assembled in their cluster meetings to discuss these issues, its findings are both unreliable and tendentious.