



## Consultation on the regulation of professions: Member States' National Action Plans and proportionality in regulation

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Regulation of professions

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ACE Commentary on the consultation

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### BACKGROUND

In 2014, architecture was one of the professions addressed directly in the EU Commission's 'Mutual Evaluation' exercise arising from Article 59 of the PQD (2005/36/EC). The ACE has previously taken strenuous issue with elements of the process.

Member States have been required to respond to the Mutual Evaluation process with the production of National Action Plans (NAPS), intended to address how Member States will improve their regulatory systems.

The Commission has opened a consultation on the NAPS, which includes a suite of questions on how to assess the proportionality of regulation. Proportionality is defined by the Commission as making sure that "*requirements are justified by overriding reasons of general interest and are suitable for securing the attainment of the objective pursued without going beyond what is necessary to attain that objective*". In the preamble to the questions, the Commission suggests that the burden [of regulation] on the professional poses a risk of negative consequences not only to the economy but also to consumers.

### HIGHLIGHTS

- ACE considered that it was not appropriate to evaluate any of the NAPs – rather, it submitted a commentary to express its own position on professional regulation.
- ACE recalls that, while levels of regulation are quite similar in the field of architecture, they take different forms (ex ante vs. ex post) depending on the historic approach to regulation in Member States.
- ACE contends that the registration of architects ensures the protection of public health, safety and welfare, as well as a level playing field, consistency of standards and quality of services.
- ACE underlines that some areas of work are reserved to architects for the protection of the public interest and contests the claim that regulation of title restricts consumer choice. Indeed, the Commission's own research showed there is no statistically significant correlation between reserves of activity and the market dominance of a profession.
- ACE points out that growth and mobility in architectural services are driven by the economy: Architects go where there is work. They make decisions based on economic considerations, along with cultural, language and historical factors – regardless of the regulatory regime.



## ACE POSITION

### ▪ **Reasons for Regulating Professional Services**

According to the Commission's website, there are three reasons for regulation professional services:

- 1) asymmetry of information
- 2) externalities
- 3) the concept of public good (interest).

Professional services are typically regulated *ex ante* (where access to the profession is regulated i.e. training) or *ex post* (where the function is regulated). It happens that while registration is not the only way of regulating professional services, it is the most common.

Asymmetry of information and public interest (including Consumer Protection) are the key issues. Architecture is a broad and complex field with a very real and immediate effect on consumers (including financial, health, safety, quality of life, and environment). However the majority of consumers cannot reasonably be expected to have sufficient knowledge and expertise to question the recommendations or proposals of an architect. Thus, many consumers cannot be expected to have the necessary information to select a suitable professional or hold the professional to account. It is a question of trust.

The profession is regulated so that clients/consumers may have the protection of confirmed qualifications, professional experience, knowledge, skill and competence, as well as a code of conduct and a complaints process. The quality of the built environment impacts not only physically and visually, but must also be seen in the context of the health and safety of all who use and engage with it.

### ▪ **Cornerstones for registration**

In relation to consumer protection and public benefit, the registration of architects ensures the protection of public health, safety and welfare, a level playing field, consistency of standards and quality of service. Registration bodies maintain a register of qualified persons, oversee their behaviour via Codes of Conduct and sanctions, provide for dispute resolution and monitor requirements for professional indemnity insurance and CPD (continuing professional development). CPD, as is recognised in the original and further so in the modernised Directive 2005/36/EC, is a key element of professional regulation, mostly driven by the professional bodies, which occurs in both statutory and non-statutory contexts according to national regulatory regimes.

### ▪ **Reserves of function**

Some areas of work are reserved to members of the architectural and related professions for the protection of the public interest on the basis that the governing body will ensure that those authorised to practice are qualified and conduct themselves appropriately. The Commission's own research (*"Study to provide an inventory of Reserves of Activity linked to professional qualifications in 13 EU Member States", 2012, DG MARKT*) showed there is no statistically significant correlation between reserves of activity and the power of professions, their market dominance or competitiveness. Regulation of title does not restrict choice – it helps the client to choose a competent provider.

Regulation not only benefits consumers but actively contributes to the mobility of architects, because employers and consumers have developed a sense of confidence in the regulatory systems in place and are willing to hire architects from other EU Member States because there is an overarching regulatory system (mutual recognition requirements per 2005/36/EC).

The Commission's continued focus on architects is based on the belief that the business



services and construction sectors are important to the European (Single Market) economy and an assumption that architecture could generate a large number of new jobs. First, it is worth noting that while the construction industry as a whole may represent c. 10% of EU GDP, architectural services represent less than 10% of the construction sector – so 0.9% of EU GDP.

That said, as far we are aware, architects are relatively mobile and will travel to where the work is. Growth in architectural services is driven by the economy; in particular, cross-border services are driven by economic activity in Cities and Regions where there is construction activity.

Our own Sector Study – and DG REGIO's summary report on 'Overcoming Obstacles in Border Regions' – suggest that professionals cite a great many concerns or potential obstacles to cross-border activity including insufficient language skills, insufficient knowledge of planning / building regulations, practical and location issues, lack of knowledge of the local market or fees / tariffs. Moreover, 98% of offices are excluded from public procurement markets: SMEs with a turnover of €160,000 or less do not meet the turnover requirements of the EU Public Procurement Directive, set at twice the value of the project – so with thresholds set at €206k, offices must have a turnover in excess of €400k.

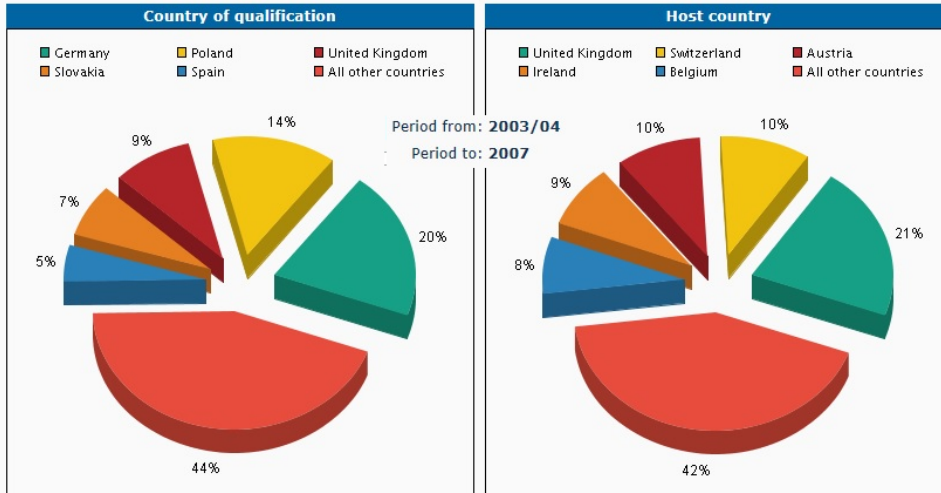
For the period 2007 to 2015, Architects, who represent a relatively small profession compared to the medical and nursing professions in particular, were 14<sup>th</sup> on the EU's ranking of mobile professionals with 4,460 architects formally moving from one state to another during that period. The seven sectoral professions that benefit from automatic recognition are all within the top 15 most mobile professions for that period.

In addition, the pattern of mobility (i.e. where architects move from, and their destinations) clearly describes a situation where architects follow the work and make decisions based on economic considerations combined with cultural, language and historical connections. For example Ireland, a very small country by EU standards, was nevertheless the fourth most popular destination for architects in the EU in the period 2003 to 2007 when it was experiencing the so called 'Celtic Tiger' boom. In the 2008 to 2012 period the most popular destinations were the UK, Norway, Germany and Switzerland.

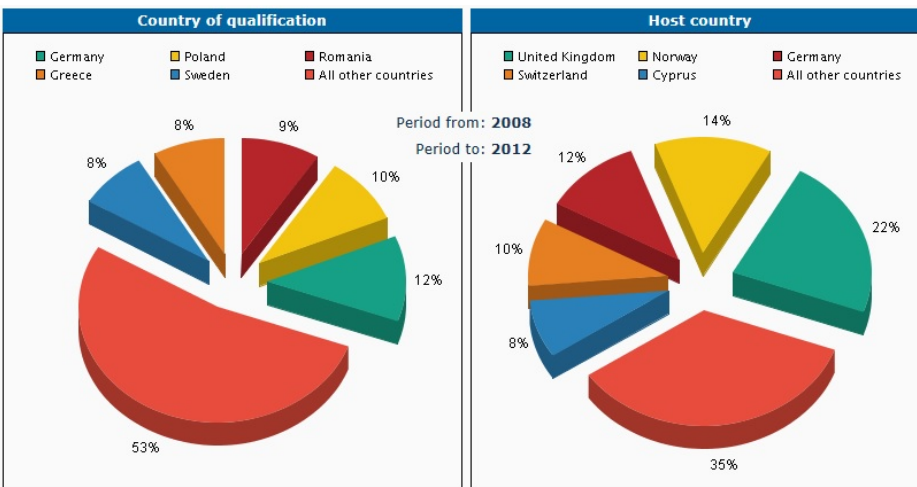
Architects go where there is work. The regulatory regime is clearly not a barrier. Although the Member States have quite diverse approaches to regulation ranging from *ex ante* to *ex post* mechanisms, according to the Commission's own database of the regulated professions 94% of cross-border recognition / registration requests are satisfied for architects. According to the Labour Force Survey, national accounts and structural business statistics by Eurostat, the biggest obstacles to growth for the years 2011-2013 for enterprises involved in the provision of services were: the general economic climate, demand in domestic markets, price competition and high labour costs. Financing, succession planning, demand in foreign markets, the legal framework and tax incentives were rarely perceived as a potential barrier to growth.



**Mobility of Architects according to the EU Regulated professions database from 2003 to 2007 showing 'Home' country and 'Host' country.**



**Mobility of Architects according to the EU Regulated professions database from 2008 to 2012 showing 'Home' country and 'Host' country.**



**Proportionality questions:**

With regard to most of the questions in the consultation, there is no opportunity to provide comment but only to answer Agree, Disagree or Don't know. In many cases this is entirely insufficient and the questions may be best left blank and comment provided where possible if the answer is not immediately clear.

**ANNEXES**

- [Consultation page on DG GROW website](#)
- [National Action Plans](#)
- [Mutual evaluation of regulated professions](#)