



## Practice of the profession

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Services in the Internal Market

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Response to consultation on the Internal Market for Services (rapporteur Anna Maria Corazza Bildt)

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Final

### Services – untapped potential for growth & jobs (points 1-5)

The draft report on the Internal Market for Services states that red tape, discriminatory practices and restrictions to service provision across the EU are depriving citizens of jobs.

While the basis for this assertion is not substantiated in great detail, we would stress that as far as the architectural profession is concerned, if the number of practitioners offering cross-border services has not increased over the period between 2010 to 2012 (in fact it dropped slightly from 3.4% to 2.9%) – and also actually decreased in relation to the preceding period (falling from 7% in 2008 to 3.4% in 2010)<sup>1</sup> – this is not because of any failings in the system in place for the mutual recognition of architectural qualifications, or the assistance provided by Points of Single Contact (though the quality of these is understood to be variable) but rather because of the general lack of work in most EU Member States, given

- the lasting effects of the credit crunch which has restricted lending;
- the withdrawal of the remaining recovery measures;
- the start of the sovereign debt crisis; and
- the subsequent implementation of austerity measures);
- all the above are depleting the fragile resources of architectural service providers which are predominantly SMEs or micro-enterprises.

ACE questions the reliability of the data supplied by the EU Commission and referred to by the Rapporteur (cf. point 2) which forecast considerable economic growth from deregulation. According to the “Study to provide an inventory of Reserves of Activities linked to professional qualifications requirements in 13 EU Member States & assessing their economic impact” (January 2012) there is no statistically significant relationship between deregulation and the productivity of the profession (Executive Summary no. 3.2.2. Construction Services).

However, we agree with the Rapporteur’s statement (at point 5) “... the Services Directive does not force liberalization but paves the way for both business and consumers to grasp the full potential of our single market”.

### Barriers, borders and burdens for free movement (points 6-8)

- Point 6 – the “Requirements to be evaluated” (article 15 of Directive 2006/123/EC) are not encroachments on the freedom to provide services *per se* but need to be evaluated with regard to proportionality and justified individually. Consequently, ACE does not share the Rapporteur’s claim that “Members are often using overriding reasons of public interest [article 15 of the Services Directive] to protect and favour their domestic market (*and*) ... that burdensome legal forms and shareholder requirements, territorial restrictions, economic needs tests and fixed tariffs create unjustified obstacles to cross-border establishment”.

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<sup>1</sup> cf. [“The Architectural Profession in Europe 2012”, by the Architects Council of Europe](#)

Difficulties associated with cross-border service provision can include

- Point 7 - inability of have home country Professional Indemnity Insurance recognised in Host Member States (often creating a double regulatory burden);
- Procurement - a dysfunctional Procurement Directive that excludes 90% of architectural firms from the market by imposing irrationally high turnover requirements (at three times the contract value) on bidding firms. We hope that the current review of the Directive will produce improvements;
- Corruption – where contracts are assigned by political interest, not by tender (cf. World Bank analysis). Member States have also identified corruption phenomena in relation to financial engineering practices and failure to pay for work on time (Indeed, most architectural practices are SMEs and failure to get paid on time – a problem which can be exacerbated in cross-border situations and a major problem for most architectural practices and cause them to fail (though we understand that the adoption of the Late Payments Directive – if properly enforced - is expected to assist in this area);
- Cost - financial outlay/investment involved in undertaking projects in locations that are remote from one's base note. Even within individual Member States, many professionals practice on a regional – rather than a pan-national or international level;
- lack of knowledge of local systems and language is also a deterrent.

#### **Smart governance of the internal market for services (points 9-15)**

- Point 9 - the interplay between the Services in the Internal Market Directive and the Directive on the Recognition of Professional Qualifications appears to work reasonably well as far as the architectural profession is concerned and does not necessarily give rise to extra costs.
- Intelligent sign-posting from the Points of Single Contact to the competent authorities responsible for the registration of architects appear to work seamlessly, and in both instances it is possible to undertaken procedures by electronic means.
- Point 10 - there is no “disproportionate blocking of access to the profession” as far as the architectural profession is concerned.
- Point 12 - as regards the development of voluntary standards (point 12), the ACE has already undertaken a considerable amount of work in this area:
  - adoption of a voluntary ACE Quality Charter;
  - adoption of ACE Guide to Quality Management;
  - adoption of voluntary European Code of Conduct;
  - work on Alternative Forms of Dispute Settlement (ADR);
  - analysis of different kinds of cost information systems.
- Point 13 – insurance. We agree that inadequate cross-border coverage of insurance for service providers is a major hindrance to free movement. In view of the different liability regimes that exist within the EU – and given also that the scope of service provided by architects varies considerably from one Member State to another - ACE is conducting an exercise designed to identify common elements of service that could constitute a “common core service”, which would then provide the basis for further work on developing common insurance coverage. ACE has also initiated an investigation with representatives of GEAAC (a European Economic Interest Grouping comprising the main insurance mutuals in Europe – from F, ES, B and DE). Finally, we are aware of two Commission activities underway – the ELIOS II study (being conducted by DG Enterprise) and a review in DG Internal Market & Services.

- Point 14 – IMI. The architectural profession was also one of the first to adopt the Internal Market Information system (IMI) and while those concerned are familiarizing themselves with the system, it is supplemented by other networks e.g. the European Network for Architectural Competent Authorities (ENACA) and the Architects Council of Europe (ACE).
- Point 15 – Points of Single Contact. Improvements to the Points of Single Contact would be welcomed, especially as regards additional linguistic coverage and best-practice benchmarking.

#### **Better enforcement for maximized economic effects (points 16 – 20)**

- Points 16/17 – Concrete results of implementation/impact of inadequate implementation. It would be useful to understand in what ways the Services Directive has “brought concrete results in terms of jobs and growth” and the ways in which citizens of the EU are meant to be “paying the price” for inadequate implementation. The tons of new guidelines and paperwork does not do effectively anything for jobs and growth; the sickening tendency to regulate every small procedure or aspect of service undermines the role of expertise in all areas of work..

#### **Strengthening transparency and accountability (points 21 – 27)**

While we understand the Commission’s wish to ensure that the application of the SIM Directive covers a greater number of sectors, we believe that many of the concerns set out in this report do not apply to the regulated professions governed by the Professional Qualifications Directive; indeed, this is recognised by the various derogations set out in the SIM Directive. However, we would support

- initiatives to encourage a better functioning of the IMI;
- greater linguistic coverage and a more consistent range of services offered by the Points of Single Contact;
- steps to make it easier for cross-border service providers to obtain insurance.

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*The Architects’ Council of Europe (ACE) is the representative organisation for the architectural profession at European level: it aspires to speak with a single voice on its behalf in order to achieve its aims. Its growing membership currently consists of 47 Member Organisations, which are the regulatory and professional representative bodies in all European Union (EU) Member States, Accession Countries, Switzerland and Norway. Through them, the ACE represents the interests of over 549,000 architects from 33 countries in Europe.*