



ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

Directive 2006/123/EC
on
Services in the Internal Market (SIM)

Guide for the Member Organisations of the ACE
on
Transposition and Implementation of the SIM Directive

Draft Version 6.1
12th September 2007

Contents

Introduction

- I. **General Provisions** (Articles 1-4)
- II. **Administrative Simplification** (Points of Single Contact) (Articles 5-8)
- III. **Freedom of Establishment to provide services** (Cost Information Systems) (Articles 9-15)
- IV. **Free Movement of Services** (Articles 16-21)
- V. **Quality of Services** (Insurance; Advertising; Multi-disciplinary Activities; Quality Charter; Dispute Resolution) (Articles 22-27)
- VI. **Administrative Co-operation** (IMI) (Articles 28-36)
- VII. **Convergence** (Code of Conduct; CPD; Screening) (Articles 37-43)
- VIII. **Other**

Introduction

This Guide has been produced by the ACE Work Group on the Services Directive (WG SIM) and is intended for use by the Member Organisations of the ACE in their efforts to lobby their national governments during the transposition period of this important directive. It sets out information, advice and guidance on the various aspects of the SIM Directive that affect the architectural profession. It is conceived as a “live” document that will be updated over time as further, more detailed information comes to hand.

This draft version can already be used by Member Organisations in their national actions.

The main aims of the SIM Directive are

- to improve the basis for economic growth and employment in the EU by breaking down barriers to cross-border trade in services between the Member States of the EU, making it easier for service providers (in all sectors) to permanently establish a presence in a Member State other than that of their first establishment or to provide services on a temporary basis in that other State;
- to contribute to the achievement of the Lisbon Agenda that aims to make the EU the most competitive and dynamic knowledge-based economy in the world by 2010, in order that the EU is able to compete globally with other economies both established (for example, the USA or Japan) and developing (for example, India, Korea or China);
- by providing for administrative simplification the SIM Directive will significantly support the better regulation agenda of the EU.

In this context, it should be mentioned that the Professional Qualifications Directive (PQD) 2005/36/EC also endeavours to implement these objectives. However, the SIM Directive differentiates between the two Directives in Recital 31:

“This Directive is consistent with and does not affect Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. It deals with questions other than those relating to professional qualifications, for example professional liability insurance, commercial communications, multidisciplinary activities and administrative simplification. With regard to temporary cross-border service provision, a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC is not affected. Therefore, none of the measures applicable under that Directive in the Member State where the service is provided is affected by the provision on the freedom to provide services.”

Therefore, in conclusion, one could say that the SIM Directive concentrates on matters relating to the quality of services, whereas the PQD focuses on the professional recognition of qualifications for market access, wherever a profession is regulated. Consequently, it should be kept in mind that, for architectural services, the PQD deals with questions such as “professional profile of the architect”, “protection of title”, “competent authority for recognition” and “minimum training requirements for automatic recognition”.

However, there are some notable overlaps on certain issues in some parts of the two directives. Unfortunately, identical terms (sometimes with different definitions) are employed in the directives to identify different matters. The description and explanation of identical terms, which describe different circumstances, is therefore essential to illustrate the differing objectives of the two Directives. This applies first and foremost with regard to:

- Points of Single Contact (PSC) according to Article 6 of the SIM Directive as opposed to the Contact Point according to Article 57 of the PQD
- Competent Authorities according to Article 4(9) SIM Directive as opposed to Competent Authorities according to Articles 3(1) and 56 of the PQD.

In this regard, Recital 48 of the SIM Directive reads as follows:

“In order to further simplify administrative procedures, it is appropriate to ensure that each provider has a single point through which he can complete all procedures and formalities (hereinafter referred to as “points of single contact”). The number of points of single contact per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of points of single contact should not interfere with the allocation of functions among competent authorities within each national system. Where several authorities at regional or local level are competent, one of them may assume the role of point of single contact and coordinator. Points of single contact may be set up not only by administrative authorities but also by chambers of commerce or crafts, or by the professional organisations or private bodies to which a Member State decides to entrust that function. Points of single contact have an important role to play in providing assistance to providers either as the authority directly competent to issue the documents necessary to access a service activity or as intermediary between the provider and the authorities which are directly competent.”

The detailed tasks of the PSC (SIM) as described further below differ from the tasks of the Contact Points (PQD) insofar as the latter handle only the information requirements for the recognition of professional qualifications according to the PQD. These information requirements include the relevant laws, codes of conduct and – rather surprisingly – social legislation. The Contact Points are supposed to form a network structure at European level as the Directive only requires that one “Contact Point” be defined by each Member State.

The SIM Directive, at Article 4(9) defines “Competent Authorities” as “... any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof”. Hence it may be concluded that the term “Competent Authority” is not applied in the SIM Directive in the same sense as in Article 56 of the PQD, which defines Competent Authorities in Article 3(d) as “... any authority or body empowered by a Member State to issue or receive training diplomas and other documents or information and to receive the applications, and take the decisions referred to in this Directive;”

The real differences between the two types of Competent Authorities described above will only become clear as the implementation of the two Directives takes hold in the Member States and it seems that some governments may decide that both roles should be taken up by the same body or authority as there is a certain logic in such an approach.

Chapter I – General Provisions (Articles 1-4)

This Chapter, which is largely technical, sets out the general provisions of the Directive including its subject matter, scope, relationship to other provisions of community law and definitions. At Article 1(1) it states that:

- *“This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services”*

It is important to understand that the concept of “service” is a rather precise one and needs to be appreciated in the manner that the EU institutions define it. The concept is, in line with the EC Treaty and the related case law of the European Court of Justice (ECJ), defined in a broad manner. In order to constitute a “service” an activity has to be a self-employed activity normally supplied by a provider (which can be a natural or a legal person) for remuneration, as referred to in Article 50 of the EC Treaty. As such the service activity has to be provided outside the ties of a contract of employment.

Furthermore, Recital 38 clarifies what is meant by a “legal person”:

“The concept of “legal persons”, according to the Treaty provisions on establishment, leaves operators free to choose the legal form which they deem suitable for carrying out their activity. Accordingly, “legal persons”, within the meaning of the Treaty, means all entities constituted under, or governed by, the law of a Member State, irrespective of their legal form”

From these definitions and clarifications it can be seen that the provision of architectural services is definitely included in the SIM Directive.

In considering the relationship of the SIM Directive to other provisions of Community Law it is clearly stated, at Article 3(2), that the rules of private international law will not be affected by the implementation of the SIM Directive. It must be noted that this means that it is the SIM Directive that determines which public laws apply to the relationship between a service provider and a consumer (client).

Finally it is also important to pay attention to the definitions given in Article 4 as this will significantly assist in the reading of the provisions of the Directive and in deciding on how they apply in a national context. The definition of Competent Authority at 4.9 is of notable interest, in that it is at variance with the definition contained in the Qualifications Directive.

Chapter II – Administrative Simplification (Articles 5-8)

This Chapter sets out measures intended to lead to the:

- Simplification of procedures applicable to access to service activity;
- Establishment of Points of Single Contact to facilitate procedures and formalities needed for access to service activities and to ensure that information is easily accessible to both providers and recipients of services;
- Development of facilities to allow procedures to be completed electronically.

Article 5 of the SIM Directive (Simplification of procedures)

This Article requires the Member States to examine procedures and formalities governing access to service provision and to simplify them where necessary.

ACE activity:

Member Organisations are encouraged to monitor moves, by their governments, towards achieving better regulation (simplification) through the screening of legislation that is required by this Article and by Article 39 on mutual evaluation.

Article 6 (Points of Single Contact)

The SIM Directive makes provision for the establishment of Points of Single Contact (PSC) in the Member States to help service providers start and develop their activities. The provider must be able to carry out all procedures and formalities at this PSC. The material tasks of the PSC are defined in Articles 6, 7, 8, 11(3) and – optionally – in Article 21.

The establishment of Points of Single Contact to deal with declarations, notifications and applications for authorisation or registration, is “... *without prejudice to the allocation of functions and powers among the authorities within national systems*” (extract from Article 6(2)).

Responsibilities of the PSC

The role of the PSC in each Member State is to:

- Inform providers of services (from other EU Member States and from its own State) on all relevant procedures and formalities needed for access to his service activity completely and comprehensively
- To coordinate requests from provider’s with the relevant Competent Authorities
- To receive certain obligatory information from the provider such as applications for authorisation that is needed to exercise his service activity

In relation to PSC it is important to note that:

- The PSC do not monopolise access to Competent Authorities. Service providers are free to communicate directly with these authorities and may, in some countries, act as “signposts” to the Competent Authorities.
- The competence of the PSC includes the means by which service providers can complete all pertinent procedures and formalities although the Commission has clarified that Member States may decide that they only play

a coordinating role so that final decisions remain with the existing Competent Authorities. The splitting-up of an individual PSC into various categories (e. g. division between trading regulations, professional legislation) is not acceptable.

- PSC do not necessarily have to handle the contents of the files (Recital 48, Article 6(2)).

It is likely that, in Europe, various models for the PSC will be established to reflect differences in administrative and cultural practices as well as different political structures within Member States. Therefore it seems that a harmonisation of the various national characteristics will not occur at the moment of implementation of the Directive (see Annex to Chapter II). From initial survey work, it seems that these characteristics may include:

- a) the desire to assign to the existing Competent Authorities in the fields of architecture and/or planning the task of acting as PSC;
- b) the aim to load the tasks of the PSC on many shoulders, i.e. on various professional chambers which are in charge as a joint body;
- c) the aim to install a centralised PSC at a highly specialised authority, e.g. a ministry.

It is worthwhile noting that there are still discussions (mainly at national level) as to whether or not the PSC should only be available to cross-border service providers despite the fact that the Commission has clearly stated that they should also be available to nationals of the relevant Member State.

In the case where a Member State decides that the PSC will only have a coordinating (“front office”) role (and this is beginning to look like a common choice) it is essential that the professional bodies for the architectural profession seek to act as the “back office” to the PSC for the architectural profession.

Current ACE policy:

The ACE recommends that its Member Organisations, who have sufficient human/physical resources, seek to take on the responsibilities of the PSC (at least the “back office” role for the architectural profession) and to lobby their governments actively to ensure that this function is allocated to them. The ACE will engage its correspondents to monitor the transposition of the SIM Directive within each of the Member States and disseminate information gathered through them to all Member Organisations.

Rationale:

The desire of the architectural profession to act as the PSC for the profession is founded on technical and political grounds. Right now, in the majority of EU Member States, many political bodies (ministries, chambers of commerce, professional chambers, communities and counties) are competing for the appointment as PSC. This presents a substantial risk that bodies other than the professional or architect’s organisations will be charged with important tasks, which so far have been executed by the professional organisations. Consequently, politicians could form the opinion that professional institutions are no longer necessary because their tasks can be undertaken by other institutions (“The biggest fish in the pond takes all”).

Since the objective of being appointed PSC (front-office) is not desirable, as such a role must cover all service activities and sectors, it is essential to lobby for one of the two following positions:

- Appointment as the “back-office” to the PSC for the architectural profession

Or

- If the professional organisations are not charged with individual competence as PSC for the architectural profession, because the resources of the professional institutions seem insufficient to fulfil the tasks of PSC, the institution should strive to pool its resources with other institutions to obtain a better position.

Relationship to “Contact Points” of the PQD

The Commission has published a Handbook on the implementation of the SIM Directive for the attention of the Member States. It is freely available on the web at the following address (English only):

http://ec.europa.eu/internal_market/services/docs/services-dir/guides/handbook_en.pdf

In that Handbook, along with much useful clarification on the role of the PSC (the essence of which is included in the text and advice above), the Commission says the following about the relationship between the “Contact Point” of the PQD and the PSC of the SIM Directive:

“Finally, it is worth noting that the “points of single contact” provided for in the Services Directive and the “Contact point” envisaged in Article 57 of the Directive on the Recognition of Professional Qualifications pursue different objectives. Whereas according to Article 57 of the latter Directive, one single contact point is to be set up in each Member State which will make available information concerning recognition of professional qualifications and assistance to citizens wishing to have their professional qualifications recognised in another Member State, the “points of single contact” referred to in the Services Directive will make it possible for citizens and businesses to actually complete through it all procedures and formalities relating to access to and exercise of service activities, including those related to the recognition of professional qualifications.”

This seems to indicate that it would be possible for some Member States to decide that the same body takes up the two roles within its territory.

Article 7 (Right to information)

Information responsibilities

- The PSC must make general information on the matters quoted in Article 7(1) available to the providers and recipients that they deal with.
- If concrete questions arise, the PSC must act as a portal to the relevant Competent Authority that can provide more detailed information and advice on the general interpretation and application of the relevant requirements.
- All information provided to the provider or the recipient must be:
 - Delivered in plain and intelligible language

- Easily accessible to service providers and recipients available by electronic means (Article 7(1) and (3))
 - Always up-to date (Article 7(3))
 - Delivered “as quickly as possible” (Article 7(4))
- The PSC do not give legal advice in individual cases, but general information on the way in which requirements are usually interpreted (Article 7(6)).

ACE Activity

Monitor the establishment of PSC within the Member States and seek to be involved directly in the establishment of the information requirements that will be set down for providers and recipients of architectural services. In so doing, seek to ensure that there is adequate consistency between Member States on the type of information provided.

Article 8 (Procedures by electronic means)

As already noted further above, the SIM Directive requires that it must be possible to carry out procedures required by it by electronic means. This is a significant advance that will benefit both providers of services and recipients but it is a heavy burden for Member States. Recognising this, the Commission has announced that its Internal Market Information (IMI) system will be expanded to allow Competent Authorities to use the IMI to fulfil some of the requirements of the SIM Directive.

Reacting to this, the ACE decided that it would be useful to work specifically on the topic of administrative cooperation and so it established a Forum on Administrative Cooperation (FAC) that brings together Member Organisations to debate the practical implications of the SIM Directive for professional bodies and Competent Authorities. The FAC meeting in Dublin (May 2007) decided that there should be an ACE Pilot Group on this subject and it was agreed that the Pilot group should address two questions:

1. What needs to be included in the IMI for architects? and
2. How should a PSC (and/or PQD Contact Point) for architects be constituted?

On 22 June the FAC Pilot Group met in London (represented were Germany, Ireland, Romania and the UK). The group discussed the latest version of the IMI as presented by Mrs. Pamela Brumter-Coret (DG Market Unit D3 Regulated Profession) to the European Council of the Liberal Professions on 20th June 2007. It seems that the Commission has taken on the task to develop the IMI for regulated professions.

The ACE – or rather, the Pilot Group – will check how far the IMI version presented on the 20th June 2007 matches the requirements of the architectural profession with particular regard to the sectoral regulations. The results will be made available to the ACE before the General Coordination meeting mentioned above.

ACE activity:

Following debate within the Executive Board of the ACE, it is recommended that the ACE should closely accompany the Commission’s IMI work and request that the architectural profession be included as one of the pilot professions for the

development of the IMI system for the SIM Directive. In doing do, it should draw on the valuable work that has been carried out in the context of the Work Group on Registration and Licensing as represented by its own adopted “Information and Services File” (ISF).

At the time of writing, it is far from certain that the demands of the architectural profession will be satisfied by the extension of the IMI system. Some of the questions on the exchange of information developed by the Commission are rather complex and not always to the point. As a result, it is expected that, at least in the short-term, the exchange of information will most probably continue to be carried out as before via e-mail or other similar and safe digital means.

Chapter III – Freedom of establishment for providers (Articles 9-15)

This Chapter relates to the case where a service provider wishes to establish in a Member State of the EU. It is important to be aware that it covers both the situation where a service provider seeks to establish in another Member State and the situation where a provider seeks to establish in his own Member State.

Section I (Articles 9 to 13) of this Chapter deals with the authorisations and various conditions that can be imposed by Member States on service providers who wish to establish in their territory. In short, the SIM Directive outlaws any measures that are discriminatory to the provider, that are not objectively justifiable by an over-riding reason relating to the public interest¹ and, as such, present no particular concern to the architectural profession in the transposition process.

One specific aspect of this section on the SIM Directive that is worth noting is the territorial scope of an authorisation to provide a service. Article 10(4) clearly states that authorisations shall generally enable the provider to have access to the service activity or to the exercise of that activity throughout the national territory. This means that the fact that the competence to grant authorisations lies with local or regional authorities is not in itself a valid reason justifying a territorial limitation of the validity of the authorisations. This provision may have an impact in those Countries where authorisations to practice architecture are delegated to regional bodies such as Germany, France, Spain etc.

ACE Activity:

Member Organisations that act as Competent Authorities and that issue authorisations to practice should carefully examine their own procedures to ensure that they do not conflict with the requirements of Section I of Chapter III of the SIM Directive

Section II (Articles 14 and 15) of this Chapter of the SIM Directive deals with requirements on migrants from other EU Member States who wish to establish in their territory for the purpose of providing a service that are to be prohibited or evaluated by Member States.

Article 14 (Prohibited requirements)

This Article lists a number of requirements that are sometimes imposed by Member States that must be abolished. These include, for instance:

- A prohibition on having an establishment in more than one Member State.
- The case-by-case application of an economic test making the granting of authorisation subject to proof of an economic or market need. This prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest.
- An obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory.

¹ This is a defined term in the SIM Directive with the following meaning: *"reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;"*

- An obligation to be pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in their territory.

ACE Activity:

Cooperate with national authorities in the identification of any prohibited practices that are still in force for the architectural profession and cooperate in their abolition so as to quickly improve the conditions for establishment of architects across the EU.

Article 15 (Requirements to be evaluated)

This Article requires that Member States examine whether their legal systems impose certain requirements on service providers including (but not limited to):

- Obligations to operate through specific legal forms,
- Requirements relating to shareholding in a company,
- Requirements relating to reserved functions and
- Compliance with fixed minimum and/or maximum tariffs (Cost Information Systems).

It is noted that such requirements are permissible provided they are

- Non-discriminatory;
- Necessary, meaning that they must be justified by an overriding reason relating to the public interest;
- Proportional, meaning that they are suitable to attain the objective pursued and cannot be attained by any other less restrictive means.

ACE Activity:

Cooperate with national authorities in the evaluation of any listed practices that are still in force for the architectural profession and cooperate in their abolition or amendment so as to quickly improve the conditions for the establishment of architects across the EU.

It should be noted that the ACE has already adopted a position on Competition Policy² that sets out guidance on many of the questions covered by Article 15 including:

Cost Information Systems
Multi-disciplinarity
Shareholding in companies
Commercial communications

Member Organisations are urged to familiarise themselves with this document on Competition Policy and to use its recommendations in their contact with their National authorities and Ministries.

² The ACE Competition Policy document can be downloaded at:
<http://www.ace-cae.org/MemberN/Content/EN/com/pos/com2006.html>

Chapter IV – Free Movement of Services (Articles 16 to 21)

This Chapter sets out the provisions that apply to the freedom to provide services on a temporary or occasional basis in States of the EU other than in which the provider is established. It reflects that provisions of the EC Treaty that establishes the principle that persons and legal entities have the freedom to provide services in all parts of the EU territory and it requires Member States to abstain from imposing their own requirements on incoming service providers except where justified by the four reasons enumerated in Article 16(1) and (3).

The architectural profession enjoys a derogation from the freedom to provide services by virtue of Article 17(6) that states:

- *“Matters covered by Title II of Directive 2005/36/EC (the Qualifications Directive), as well as requirements in the Member States where the service is provided which reserve an activity to a particular profession”*

While this provides comfort to the profession, it must be recalled that the derogation does not apply to matters such as commercial communications, multidisciplinary practices, tariffs etc. for which the provisions of Article 16 apply.

The aspect that relates to reserved activities is important as it means that a person who is not qualified under the PQD but who can, by virtue of national laws, provide services normally reserved to a regulated profession in their own country cannot rely on the provisions of Article 16 to provide those same services in another Member State.

This Chapter also sets out provisions that clarify the rights of recipients of services that will have an impact on the procedures to be followed, or put in place by Competent Authorities and, conceivably, by the Member Organisations of the ACE. Specifically, Article 21 (Assistance for recipients) states (inter-alia) that:

“Member States shall ensure that recipients can obtain, in their Member State of residence, the following information:

- (a) general information on the requirements applicable in other Member States relating to the access to, and exercise of, service activities, in particular those relating to consumer protection;*
- (b) general information on the means of redress available in the case of a dispute between the provider and the recipient.*
- (c) the contact details of associations or organisations, including the centres of the European Consumer Centres Network, from which providers or recipients may obtain practical assistance.”*

ACE Activity

Carefully monitor the procedures that are established in each Member State that regulate how architectural services are provided on a temporary basis after the implementation of the SIM Directive. In particular seek to monitor the volume of such services in order to estimate if the SIM Directive has the effect of encouraging such services.

Chapter V – Quality of Services (Articles 22 to 27)

This Chapter sets out a range of provisions that Member States can implement in order to encourage service providers to improve the quality of the services delivered by them. Only a few of the provisions are obligatory in nature (such as the requirement to make certain information available to recipients) The optional character of the bulk of the provisions means that this Chapter affords to the ACE and its Member Organisations the opportunity to be pro-active in establishing measures for the profession that will assist it to provide better and more valued services to its clients.

Article 23 (Professional liability insurance and guarantees)

The architectural profession values its independence and it accepts that it must take responsibility for the consequences of the decisions that it takes in exercising the profession. In order to safeguard architects and their clients from the negative consequences that can arise in the exercise of the profession, most Member Organisations of the ACE require or recommend that architects carry Professional Indemnity Insurance (PII).

For this reason the ACE lobbied, in vain, for the provisions of the SIM Directive in this regard to be compulsory as the current situation is such that many Member States require architects to take out separate PII policies in their country (sometimes through specified agencies) in order that the architect can exercise his or her activity in their country. This is costly and a real barrier to the free movement of architect in the EU. Nevertheless, the following elements of Article 23 give some comfort to the ACE and to its position:

- *“when a provider establishes himself in their territory, Member States may not require professional liability insurance or a guarantee from the provider where he is already covered by a guarantee which is equivalent or essentially comparable as regards its purpose and the cover it provides ...*
- *“... when a Member State requires a provider established in its territory to subscribe to professional liability insurance or to provide another guarantee, that Member State shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in other Member States”.*

In recognition of the current differences in liability regimes between the Member States, the ACE has, as noted above, highlighted the fact that the requirements of this Article are impractical and cannot be fulfilled at the present time, not least because the professional duties and functions of architects depend on each country's planning, building control and property laws, and the PII cover of architects varies accordingly. Furthermore, the ACE has established a Work Group on the subject of PII that is seeking to address the variations across the EU and to draw up pragmatic suggestions for the elimination of barriers identified in this subject area.

ACE activity:

The ACE is developing a position on PII and Member Organisations are asked to cooperate with it in this work by reporting on any developments in relation to this subject that arise as a result of the national implementation of the SIM Directive.

Article 24 (Commercial communications by the regulated professions)

This article seeks to remove prohibitions on advertising, while ensuring that it complies with professional rules (provided these are non-discriminatory, justified by over-riding reasons of public interest and proportionate).

ACE activity:

The ACE has already adopted a policy on this subject that is included in the ACE Competition Policy Paper.

In summary, the ACE supports freedom of professional advertising in content, instruments and all types of media and it supports the protection of clients and professional interests by means of general laws and professional codes of conduct, so as to avoid dishonest, misleading, disloyal or unfair use of advertising.

To read the full position of the ACE on this subject go to:

<http://www.ace-cae.org/MemberN/Content/EN/com/pos/com2006.html>

Article 25 (Multi-disciplinary activities)

This Article states that:

“Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities”.

For the architectural profession, the question of multidisciplinary activity is of growing importance as the methods of procurement of buildings proliferate. The ACE has therefore adopted a policy on this question that is included in the ACE Competition Policy Paper noted above. It seeks to ensure that when architects enter into or join a multi-disciplinary practice that the following seven principles are adhered to by that company:

1. The independence of the work of architects shall be guaranteed;
2. The company's services shall be limited solely to professional services;
3. The vast majority, if not all members of the professional firm shall be liberal professionals;
4. The strong, personal responsibility characteristic for the provision of services by liberal professionals demands strong representation for them in the management of the professional firm;
5. All professional members of a registered multi-disciplinary professional firm shall be listed in their respective professional register;
6. Professional firms shall obtain insurance cover against risks from planning, consulting, supervision and co-ordination defects (over and above cover obtained in respect of recipients of services and third parties at Article 23(5) of the SIM Directive);
7. Shareholder and director status, appropriate to the legally protected title shall be defined and regulated to achieve consumer protection.

ACE activity:

The Member Organisations of the ACE shall monitor the manner in which the Member States interpret and transpose the requirements in relation to multi-disciplinary practices and shall seek to ensure that, for the architectural practice, the seven principles outlined in the adopted policy of the ACE on the subject are respected.

Article 26 (Policy on quality of services)

This article encourages the Member States to take action on a voluntary basis to either have service activities certified or to develop Quality Charters which, in this Article, are documents that enable outside bodies to easily assess whether a provider (such as an architect) has performed the services required properly and in accordance with specific standards.

The ACE has already done substantial work in this area and it proposes a three-fold response to the requirements of the SIM Directive:

- The ACE adopted a Code of Conduct (cf. chapter VII) in November 2005;
- Certification or assessment is best addressed using the Guide to Quality Management already adopted by the ACE;
- The development of a Quality Charter setting down general obligations – competence, integrity and quality requirements – as well as obligations to clients, society and the profession is to be undertaken;

ACE activity:

The ACE will develop a European Quality Charter for the architectural profession that it will request Member Organisations to take into account when establishing national Quality Charters for their members.

Article 27 (Settlement of disputes)

This Article of the SIM Directive addresses the important subject of the settlement of disputes between service providers and recipients of services. It requires Member States to:

- *“... take the general measures necessary to ensure that providers who are subject to a code of conduct or are members of a trade association or professional body, which provides for recourse to a non-judicial means of dispute settlement inform the recipient thereof and mention that fact in any document which presents their services in detail, specifying how to access detailed information on the characteristics of, and conditions for, the use of such a mechanism”.*

This provision clearly covers the architectural profession and so it will be important for the Member Organisations of the ACE to be informed of developments in this respect during the transposition period of the SIM Directive. It is known that the majority of the Member Organisations of the ACE already have procedures in place for the resolution of disputes between architects and their clients. Where these exist

and have been effective, they should be brought to the attention of the relevant Ministry or department in the national government.

One of the main causes of dispute between architects and their clients arises from the collection of fees. In order to resolve claims without incurring significant costs, it has been proposed that the ACE consider developing a Dispute Resolution System (additional to existing systems) which is simple, affordable, legally justifiable and binding in order to protect clients from the expense of going to the courts. It is envisaged that the Member Organisations will be invited to agree to operate the same scheme in each Member State. It would only apply to claims of small monetary value, and, if well received, might be extended to other parts of the construction industry.

ACE activity:

The Member Organisations of the ACE are to examine their own procedures and/or recommendations for dispute resolution, assessing their effectiveness in reducing the number of cases that end up in front of the Courts, and to bring them to the attention of the ministry responsible for this aspect of the transposition of the SIM Directive. They are also to be requested to consider adopting any future policy that the ACE may develop in this regard into their national policies and practices.

Chapter VI – Administrative Co-operation (Articles 28 to 36)

These Articles describe the Mutual Assistance that the Member States are obliged to extend to each other. They define obligations for both the Member State of establishment and the Member State in which the service is provided.

Article 34 (Accompanying measures)

This Article indicates at 34(1) that the Commission will establish an electronic system for the exchange of information between Member States to be known as the Internal Market Information (IMI) system. It is likely that the IMI, currently being trialled for four professions in the context of the PQD, will determine, for the SIM Directive:

- The type of information that is to be exchanged in the future
- The manner in which it is to be exchanged,
- The format in which it is to be exchanged,
- The medium in which it is to be exchanged.

The Commission has announced its intention to choose a number of professions with whom it will run a pilot phase of the IMI for the SIM Directive and the ACE has expressed its desire that the architectural profession be chosen as one of these spearhead professions. In engaging with the Commission on this work, the ACE intends to take account of the structure of the ISF, an ACE approach to the categorisation of information on the profession that was adopted by the General Assembly in November 2006.

ACE Activity:

The ACE Forum on Administrative Cooperation will work on this subject formulating recommendations that will be transmitted to the Commission during the pilot phase of the development of the IMI for the architectural profession.

Chapter VII – Convergence Programme (Articles 37 to 43)

Given the major impact that the implementation of the SIM Directive is expected to have at EU level, the Directive foresees a need for further convergence between Member States in a number of key areas. This Chapter of the SIM Directive addresses these matters and also fall into the set of issues on which the ACE can undertake pro-active measures to facilitate the trade in architectural services across the borders of the EU.

Article 37 (Codes of conduct at Community level)

The architectural profession has always been characterised by its ethical and responsible approach to the provision of services to society. For this reason Codes of Conduct for the profession exist in all Member States of the EU. Furthermore, the ACE, aware that the existence of a Deontological Code at EU can be a significant encouragement and reference to the Member Organisations in the Member States, has adopted a European Deontological Code in November 2005.

This action therefore leaves the profession ready for the implementation of Article 37(1) that states:

- *“Member States shall, in co-operation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct facilitating the provision of services or the establishment of the provider in another Member State, in conformity with Community law”.*

The implication of this provision is that there will be, over time, a greater convergence of professional rules at European level and the profession will have to examine ways and means by which this can be achieved.

Amongst other things, the ACE Deontological Code includes a requirement for architects to maintain their competence by undertaking a prescribed number of hours of Continuing Professional Development (CPD).

This is in line with the CPD Charter adopted by the ACE in 2001 which exhorts MOs to:

- make participation in CPD a moral obligation that is built into national Codes of Conduct;
- develop, by 2010, minimum requirements for keeping up to date with technical & legislative changes

ACE Activity:

Member Organisations will be requested to compare the provisions of their national Codes of Conduct against the provisions of the adopted ACE Deontological Code and to identify any significant discrepancy between the two. If any such discrepancy is detected, then the Member Organisation concerned will be encouraged to consider effecting revisions to their national Code to eliminate the discrepancy.

It is worth noting that the Commission has highlighted that the provisions of Codes of Conduct should normally apply to both the provision of services across borders and to the cross-border provision of services.

Article 39 (Mutual evaluation)

This Article requires that, by the time the SIM Directive is implemented on the 28th December 2009, Member States shall present a report to the Commission on the following:

- Article 9(2) on authorisation schemes;
- Article 15(5) on requirements to be evaluated (requirements the Member States are intending to maintain and the rationale relating thereto);
- Article 25(3) on multi-disciplinary activities

ACE activity: Member Organisations are encouraged to familiarise themselves with the actions being taken by their governments in the evaluation of national legislation as it affects the architectural profession, to engage with any evaluation or screening that takes place in their Member States and to share all information and data with the other Member Organisations of the ACE.

Annexe I:

Time-lines for the implementation of the SIM Directive and preparation of the ACE Guide

For the full information of the Member Organisations of the ACE, here are the anticipated key dates in relation to the implementation of the SIM Directive and the finalisation of this Guide:

SIM transposition

- Directive published in OJEU on the 12th December 2006;
- Implementation period – 3 years;
- Transposition into national laws must be completed by the 28th December 2009.

ACE guidance document

- Outline framework noted by ACE General Assembly, 19th April 2007;
- Contents amplified at meeting in London on 11th May 2007;
- Outline presentation of the Guide to the ACE Forum on Administrative Co-operation along with a request to establish a network for monitoring the implementation of the SIM Directive, Dublin, 18th May 2007;
- Further development at the SIM Work Group meeting, Brussels, 14th June 2007;
- Draft for information to the ACE Co-ordination meeting, 29th June 2007;
- This version prepared and circulated following the SIM Work Group meeting of the 19th July 2007;
- Approval to use the draft versions for ongoing work in the Member Organisations granted at meeting of 19th July 2007
- Draft Final version to be submitted to the Executive Board of the ACE for approval and publication on 5th October 2007;
- Following formal adoption, use information describing ACE activity, taken from Guidance document, to form the basis of a political statement or press release – October 2007.

Annex II

There is competition in some Member States as to who will be the PSC, notably in Germany where professional bodies, municipal authorities and commercial chambers are competing to take on the role. The ACE strongly believes that professional bodies, which have, for many years, been providing many of the services assigned to the PSC, should be able to adopt this role after the implementation of the SIM Directive. The ACE has therefore urged all of its Member Organisations to consider lobbying their governments to appoint them to fulfil this role for the architectural profession..

Therefore, in order to develop a collective understanding, and a collective position if appropriate, of the situation in each Member State the ACE has sought, on two occasions so far, to develop an accurate overview of the situation across the EU in relation to the architectural profession. The interim results to date are shown in the table below and Member Organisations are invited to inform the Secretariat on any changes that should be incorporated:

Country	Situation	Willingness to become PSC
Austria	The Ministry for Economy and Work is the Competent Authority and it looks as if there will be a Federal PSC with nine regional PSC. It is unlikely that the PSC role will devolve to professional bodies.	Not Stated
Belgium	It seems that there may be a PSC for each sector and that architecture will be included in the PSC for construction. If asked, the ACE Member Organisations would be willing to act as the PSC for the profession.	Yes, probably.
Bulgaria	PSC at education level is the Ministry for Education. For architects the PSC is already the Bulgarian Chamber of Architects.	Yes, already so
Croatia	No news	
Cyprus	No news	
Czech Republic	No news	
Denmark	The plan is for a central PSC. The portal idea will be suggested on return.	Yes, but costs must be considered
Estonia	No news	
France	The situation is unclear, but ideally government would hold the responsibility to organise a central portal, which would divert to specific bodies. The CNOA is the only body with the knowledge needed by a PSC for architects and it seems likely that it will be given the role.	Yes
Finland	The profession is not regulated and not very	Yes

	concerned about these issues to date. It is also the case that the Government has only recently started to consider the implementation of the SIM Directive. However, the implementation of the SIM Directive will change the situation and the SAFA would be interested in taking on the role of PSC for the profession.	
Germany	<p>Three different models are currently proposed and under active consideration:</p> <ol style="list-style-type: none"> 1. Chamber-model: comprising the professional chambers and the chambers of commerce and industry plus craft sector. 2. Municipality-model: giving the PSC to the cities, communities depending of the relevant local administrative structures 3. Mixed-model: combining the two <p>In Germany the chambers of Architects are lobbying to obtain a chamber-model structure. The BAK is seeking support from other ACE Member Organisations to argue for the Chamber model as a European-wide approach for the architectural profession.</p>	Yes
Greece	Not yet clear how the transposition will be managed	Not stated
Hungary	No news	
Ireland	It is not yet clear yet but it seems that the Department of Enterprise Trade and Employment will have a small, centralised (Government run) portal leading to the professional bodies where appropriate, including the RIAI.	Yes, but what about the costs?
Italy	There is a lot happening in relation to professional reform. It is all very unclear.	Not Stated
Latvia	No news	
Lithuania	No news	
Luxembourg	No news	
Malta	No news	
Netherlands	The Ministry for Economic Affairs is leading transposition. It is not yet clear what will happen.	Not Stated
Norway	No news	

Poland	Not clear.	Yes
Portugal	It seems unlikely that the Order of Architects will be asked to be the PSC for the profession.	Yes, if given the mandate and resources.
Romania	The Ministry of integration no longer exists but the law for architects (2001 amended in 2005) mentions the CAB as the Competent Authority for the profession. PSC were not covered. The government appears to expect the CAB to undertake both the CA and PSC roles.	Not Stated
Slovakia	No news	
Slovenia	Not clear as a new law for architects is currently going through Parliament. The Chamber of Architects is fighting to be the PSC for the profession.	Yes
Spain	No news	
Sweden	No news	
Switzerland	Not clear	Yes
Turkey	Progress is slow, but a calendar for the review of existing laws is in place.	Not stated
UK	The Department of Trade and Industry will run a portal (possibly managed by the SOLVIT team) and direct to specialist bodies. For architecture it is not clear what the input from ARB, the RIBA or other bodies will be, but it is thought that the ARB will be the PSC for the profession.	Not Stated

Even where professional bodies carry out PSC functions, it is unclear to which extent they would take on a 'front office' direct communication role, or a 'back office' or support role in providing information. It was agreed that a 'catalogue' of services to be provided by the PSCs should be developed outlining what tasks should or may be included, and what costs might be involved.

At the moment Member States together with the European Commission try to develop a catalogue of tasks falling into the responsibility of the PSC.