

EUROPEAN COMMISSION'S CALL FOR EVIDENCE REGARDING THE SINGLE MARKET STRATEGY FOR 2025

The [Architects' Council of Europe \(ACE\)](#) is the representative organisation for the architectural profession at European level. Its membership consists of 50 Member Organisations which are the regulatory and professional representative bodies of the EU Member States, Norway, Switzerland, UK, Serbia, Ukraine, Montenegro, the Republic of North Macedonia, Moldova and Kosovo. Through them, ACE represents the interests of c. 600,000 architects from 36 countries in Europe.

The contribution a truly integrated Single Market could make to addressing competitiveness has been highlighted in recent reports by Enrico Letta and Mario Draghi. Recalling the 2020 Communication "Identifying and addressing barriers to the Single Market", it seems that there is an ongoing need to focus on regulatory and administrative issues that may be felt to impede the overall functioning of the Single Market, and in particular the cross-border provision of services.

1. Professional Mobility

The necessity for cross-border providers of architectural services to have their qualifications recognised is not a problem. According to the Commission's Regulated Professions database, more than 94% of cross-border registration requests are satisfied. In 2022, according to the [OECD](#), its services were among the most liberalised service sectors.

However, ACE is developing a trial further to improve professional mobility by helping Competent Authorities to issue (home country) and process (host country) Accompanying Certificates in a uniform manner and to ensure that legal interpretation and recognition processes are more uniform.

Accompanying Certificate

Architects seeking automatic professional recognition in another EU Member State are currently required to provide, to the host country Competent Authority - in addition to their diplomas - a statement from their home country certifying that they fulfil the professional access requirements and/or are registered. The assessment is based on a common legal interpretation of the requirements of the Professional Qualifications Directive and which is intended to replace the issuance of the certificate pursuant to Article 46(1) in conjunction with Article 21(1) and (5) of the Professional Qualifications Directive (PQD).

Data entry will allow the filtering and selection of options from dropdown lists, automatically populating fields to reduce errors. The dropdown menus will be linked

to the PQD Annex V list of qualifications. The output of the process is a PDF document with the logo of the home country Competent Authority which can select two languages for the form (that of the Home State and the Host State).

This tool reduces the workload for Competent Authorities in the host Member State as the standardised form they receive already provides them with the necessary information which has already been confirmed by the home country Competent Authority. Importantly, the tool also provides the legal assessment of the documents based on the PQD and determines the applicable recognition system (automatic or general).

Review of the Professional Qualifications Directive

If the Professional Qualifications Directive is reviewed in 2025 there are a number of issues that usefully could be addressed.

Mixed qualifications –

Holders of Mixed qualifications can only benefit from automatic recognition if they seek their first registration in the Member State in which they qualify. Otherwise, the General system applies, which does not provide the same level of legal certainty, and outcomes may vary.

This also impacts on eligibility for mutual recognition with third countries as there is no way to repair this lack of acknowledgement in the context of bi-lateral agreements (MRAs).

According to the ACE Sector Study¹, some 20% of architects have been partly or wholly educated in another country so the issue of mixed qualifications is not negligible.

ACE considers that the issue of mixed qualifications is not negligible and requires clarification, as some 20% of architects have been partly or wholly educated in another country, according to data from our Sector Study

¹ The Architectural Profession in Europe, 2022 Sector Study,
https://issuu.com/azizmirza/docs/2022_draft_ace_report_en_271022

Minimum requirements –

There is also a need to align the minimum requirements with the international standard as defined by the UNESCO-UIA Charter² (5 years of university-level education plus 2 years of practical experience).

Such an alignment would help the negotiation of Mutual Recognition Agreements – so that EU architects may gain recognition in third countries, thereby enhancing their ability to compete internationally and avail of any opportunities offered by the Government Procurement Agreement (GPA).

Greater alignment would also simplify the task of the Competent Authorities responsible for the registration of professionals in the Member States, responding to the Commission's encouragement to facilitate the recognition of third country qualifications.

The ACE is developing a study aimed at improving its understanding of access to the profession requirements in main markets around the world. This should also help Competent Authorities in their assessment of registration applications from third countries.

It has also developed a definition of Traineeship and a Code of Conduct (for offices offering traineeships) to ensure that young graduates are not exploited in any way, are given a properly defined professional experience with clear outcomes, are suitably remunerated and insured. This is very much in line with the Commission's draft Traineeship Directive and proposal to up-date the Framework for Quality Traineeships.

ACE also encourages its Member Organisations to ensure that architects are able to maintain their skills through Life Long Learning and to this end has developed a Guideline on Continuing Professional Education and invited Member Organisations operating CPD schemes that comply with the Guideline to notify them on a Register. Notified schemes undertake to recognise other schemes on the Register.

² UNESCO-UIA Charter For Architectural Education, updated July 2023: <https://www.uia-architectes.org/en/resource/unesco-uia-charter-for-architectural-education-revised-july-2023/>

2. Proportionality Test Directive

A related issue is the adoption of the Proportionality Test Directive regarding access to regulated professions. While we understand the motivation for this Directive, we believe that it duplicates some of the existing provisions of the Professional Qualifications Directive and the Services in the Internal Market Directive. Furthermore it is costly, time-consuming and inhibits Competent Authorities from updating existing regulation.

Moreover, it duplicates existing provisions for proportionality already present in:

- Article 59.3 of the Professional Qualifications Directive which already contains requirements for transparency and requires any restrictions on access to the profession to be (a) non-discriminatory, (b) justified by overriding reasons of general interest, (c) proportionate (suitable for securing the attainment of the objective pursued and not going beyond what is necessary).
- Article 10.2 of the Services in the Internal Market Directive (granting of authorisations) which lists the same three criteria (non-discrimination, justification, proportionality);
- Article 15.2 of the SIM Directive (requirements to be evaluated) which says these must also satisfy the conditions of non-discrimination, necessity (overriding reasons of public interest) and proportionality (cannot be replaced by less restrictive measures).
- Article 16 of the SIM Directive (providers of services) which says that the Member States shall not make access to the exercise of a service activity subject to compliance with requirements that do not respect the principles of non-discrimination, necessity and proportionality.

While the European Commission argued that the Proportionality Test Directive would limit the number of infringements, in 2024 it opened and pursued numerous infringement procedures in relation to this very Directive:

- 11 letters of formal notice were sent to Bulgaria, Czechia, Greece, France, Croatia, Cyprus, Latvia, Hungary, the Netherlands, Austria and Slovakia ;
- Estonia received a letter of formal notice to ensure that the introduction of professional regulations via parliamentary amendments is covered by a prior proportionality assessment ;

- 5 reasoned opinions were sent to Germany, Spain, Lithuania, Poland, and Slovenia, for not having properly implemented the EU Proportionality Test Directive for regulation of profession.

ACE is concerned that this could lead to a regulatory freeze as Member States will become increasingly reluctant to up-date legislation, thereby defeating the general “better regulation” objective.

3. Notifications

We read in the “Single Market at 30” report of the Commission’s intention to explore extending the notification requirement (which currently only applies to regulated professions) to all services.

We recall that the European Commission already failed in its attempt to introduce a Notifications Directive (as part of the 2018 Legislative Package on Services) which would have extended the notification requirement beyond professional regulations to other areas. The proposal was opposed in the Council and both Parliamentary Chambers in France & Germany issued reasoned opinions saying that it was in breach of the principles of subsidiarity and proportionality.

ACE believes that revisiting this issue would be a waste of resources.

4. Reform Recommendations on Professional Regulation

Reform Recommendations on Professional Regulation is another Commission action that appears unnecessary. Published from time to time by the European Commission, they are based on a *Regulatory Restrictiveness Indicator* that puts a disproportionate weighting (70%) on *ex ante* regulation (governing access to the professions) and only 30% on *ex post* regulation (governing practice of the profession).

Regarding exercise (practice) requirements, the eight items listed – corporate form, shareholding, management control, multi-disciplinary, incompatibilities, professional indemnity insurance, tariffs restrictions and advertising restrictions – relate mainly to business establishment. The Commission omits any reference to practice requirements arising from *ex post* regulation e.g. countries like Denmark, Finland or Sweden which rely upon certification of competence within the construction environment or *ad hoc* evaluations of competence and experience on a case-by-case basis (e.g. on submission of plans or building permit requests).

In countries with exclusive or shared rights, responsibility for ensuring compliance with Building Regulations lies with architects (and sometimes others). Thus, in

Germany, Italy or Ireland, the State does not need to make provision for inspections by a building supervisory authority. Conversely, in countries without exclusive rights (Denmark, Finland, Sweden) such inspections take place during the building permit process.

By excluding conduct regulation of this kind, the RRI does not reliably represent regulatory intensity and tends to compare 'apples with oranges'. While the overall regulatory intensity and competitiveness of access regulation and practice regulation are equivalent e.g. as far as the Professional Qualifications Directive is concerned, the RRI declares different values and does not appear to accommodate the two systems. The first system protects the public interest by *ex ante* control (training, Supervisory Chambers, etc) while the second system provides for *ex post* control e.g. by way of liability requirements.

According to a study by the University of Cologne³, both systems are equivalent from an economic or legal perspective, yet the RRI appears to favour *ex post* control.

Interestingly, Eurostat data shows that prices have risen more sharply in countries without statutory regulation of title (i.e. countries with *ex post* regulation).

Perhaps *ex post* regulation has been included among the "non-regulatory barriers" (as the Commission believes these countries to be unregulated). However, it is noted that non-regulatory barriers are "not reflected in the indicator" but rather "in the qualitative description, to the extent possible and depending on information available". In any event, the 2017 Communication concludes "there is not necessarily a perfect correlation between the scores provided by the indicator and the reform recommendation".

A recent OECD study revealed the architectural profession to be one of the least restrictive in terms of regulation – which probably explains why (according to the EU's regulated professions database) around 94% of cross-border registration requests are satisfied. This strong performance underscores the limited need for pursuing additional reform recommendations on professional regulation.

5. Public Procurement Directive

We are encouraged to note a further call for evidence in relation to the long overdue modernisation of the Public Procurement Directives. While we will respond fully to

³ *The European architectural sector. A scientific perspective on the debate about the economic impact of different regulatory approaches in the Member States of the EU*, Arentz, Oliver, Recker, Clemens, Michel, Dirk, Pommerening, Julia and Riegler, Andreas (2017): <https://kups.ub.uni-koeln.de/7386/>

that separate initiative, we would comment briefly here that it would hugely benefit from:

- Enhanced provisions to facilitate better SME access to procurement markets;
- A discrete chapter on Intellectual Services, as these services have clear and distinct features;
- More innovative approaches include greater use of architectural design competitions.

The Architecture Sector is highly “atomised” and characterised by its large number of small operators. According to the ACE Sector Study over 90% of architectural practices are micro-enterprises.

Architectural services – as many intellectual services - have clear and distinct features that distinguishes them significantly from many other markets for goods and services. They involve complex transactions, asymmetrical information, and challenges in defining, standardising, and measuring service quality and productivity, as well as significant long-term externalities that impact third parties and the general public and its interest.

Intellectual Services must be specifically addressed in the Directive, to allow for a more quality-oriented choice of procedure as well as a special regime to allow teaming-up more easily during the procedures. Besides favouring broader competition this would allow for a better use of the opportunities of the Single Market.

Indeed, the architectural design competition has a long tradition and, in the case of open competitions, offers all architects the chance to take part anonymously, and the jury’s decision is based on the quality of the project. In fact, it is the most likely and most common way of making cross-border service provision a reality in the field. It is a quality-based, project-orientated procedure. It is also future-orientated, and promotes innovative approaches, as this quality-based selection is not focused on past experience. A stronger focus on quality-based decisions in the architecture sector would increase cross border services.

And there are many other issues regarding thresholds, turnover requirements, division of contracts into lots and requirements for past experience. Indeed, given that over 90% of architectural practices are micro-enterprises with only 1-5 staff, they frequently do not meet the turnover requirements and are excluded from the public procurement market, which is not in line with the desire for a Single Market that allows companies to compete globally.

Strict reciprocal application of the provisions of the Government Procurement Agreement (GPA) will make it possible for EU professionals to be able to bid for public sector contracts in signatory countries.

6. Services in the Internal Market

Regarding enforcement of the SIM Directive, the Commission's focus has been mostly on

- 'Authorisation Schemes' (articles 9 –13),
- 'Requirements to be evaluated' – legal form, shareholding, fee-scales (article 15) and
- 'Multi-disciplinary activities' (article 25).

while some of the proposals included in the 2017 Legislative Package on Services (e.g. proposal for a Notifications Directive and proposal for a Services e-card) have gained minimal traction.

However, there has been little focus on other aspects of the Directive including "policy on quality of services", mutual assistance and Codes of Conduct (as part of the "convergence programme").

While the Directive says that the Member States should take steps to develop measures in these areas, ACE is concerned that the Member States are unlikely to coalesce around these unless and until the Commission provides some leadership.

SIM - Article 23 - on Professional liability insurance and guarantees

"when a provider establishes himself in their territory, Member States may not require professional liability insurance or a guarantee from a provider where he is already covered by a guarantee which is equivalent or essentially comparable as regards its purpose and the cover it provides in terms of the insured risk, the insured sum or a ceiling for the guarantee and possible exclusions from the cover, in another Member State in which the provider is already established. Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered".

In spite of work already undertaken by the Commission (ELIOS I / II) difficulties remain in having existing cover recognised or obtaining additional cover for cross-border work.

ACE has supported steps taken by the "Groupement Européen pour l'Assurance des Architectes et des Concepteurs" (GEEAC) to develop mutual recognition of cover provided by insurance mutual. GEEAC's commitments currently cover AT, BE, DE, ES, F, LU, PT.

SIM – Article 26 - Policy on quality of Services –

“...Member States shall, in co-operation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision... through ... drawing up their own quality charter or participation in quality charters ... drawn up by professional bodies at Community level”.

It would be interesting to know what steps the Commission has taken, or plans to take, to encourage such measures.

Following the adoption of its own Quality Guidelines for Architectural Practice in 2003, ACE adopted a client / public-facing Quality Charter in 2007 (revised in 2009)⁴. It also drafted a position on Quality Indicators in 2008.

SIM - Article 28 - Mutual Assistance –

“Member States shall give each other mutual assistance and shall put in place measures for effective co-operation with one another, in order to ensure the supervision of providers and the services they provide”.

While Points of Single Contact vary in terms of performance, the IMI has proved to be a valuable tool to allow Competent Authorities to share confidential information in a secure environment.

Bodies such as the Architects’ Council of Europe (ACE) and the European Network of Architectural Competent Authorities (ENACA) also help in this regard.

SIM Article 37- Codes of Conduct (cf. Convergence Programme) –

“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 aimed at facilitating the provision of services or the establishment of a provider in another Member State ...”

We are unaware of any steps taken by the Commission to encourage activity in this area.

ACE produced its own non-binding Deontological Code (in 2009, up-dated in 2016).

7. Proposal for a Planning Services Directive

⁴ ACE Quality Charter, 2009, <https://ace-cae.eu/wp-content/uploads/2024/10/Quality.pdf>

ACE believes that a Directive on the Quality of Planning Services would protect, promote and disseminate the quality of planning services in the built and natural environment as an overriding reason of general interest.

As an asset of public interest, quality in planning services in the built and natural environment must be protected, promoted and disseminated by all public authorities, including the national legislator, state, regional and local administrations, within their respective competences.

In principle, the EU has the competence to issue a legal act on planning services, which, for example, places certain requirements on the content of such services and - connected to this - qualification requirements on their providers. In any event, the objective should be that planning services are only provided by qualified professionals. In this context, certain reserved tasks could also be regulated - explicitly or implicitly.

In addition to consumer protection and ensuring the quality of planning services, the aim of such a measure could also be climate and environmental protection, sustainability and "building culture" (*Baukultur*). In this respect, a political link to the "New European Bauhaus" initiative would be appropriate.

The legal basis is primarily Article 53 (1) TFEU, which has already been used as the basis for several Union legal acts relating to the regulation of liberal professions. In addition, the general internal market competence pursuant to Article 114 (1) TFEU can also be used. The environmental competence from Art. 192 TFEU can also be considered in part. If necessary, the so-called rounding-off competence according to Art. 352 TFEU could also be used.

Summary

To achieve a truly integrated Single Market ACE considers that:

1. **Professional Mobility** could be improved and the operation of the **Professional Qualifications Directive** optimised for architects by
 - 1.1. implementing an ACE proposal to assist Competence Authorities by introducing a standardised electronic Accompanying Certificate for cross-border registration;
 - 1.2. resolving the problem of Mixed Qualifications (regarding the treatment of graduates who achieve their diploma in one Member State and satisfy access to market requirements in another);

- 1.3. aligning EU standards for architectural education and training with international standards to assist with MRAs and recognition of third country qualifications.
2. a regulatory freeze and further infringements could be avoided by rescinding the **Proportionality Test Directive**. Two-thirds of Member States already received formal notices and reasoned opinions relating to proportionality. It should be possible to rely, once more, on existing proportionality provisions already included in article 59.3 of the Professional Qualifications Directive and articles 10.2 (authorisations), 15.2 (requirements to be evaluated) and 16 (providers of services) in the Services in the Internal Market Directive.
3. no further action is required from the Commission regarding **Notifications**.
4. the Commission should accept that their **Regulatory Restrictiveness Indicator** produces different results to those of the OECD-STRI because it applies a disproportionate weighting to *ex ante* regulation and gives insufficient appreciation to *ex post* regulation. The OECD-STRI is a long-established and well-respected tool and the Commission's work on the RRI is duplicative.
5. the opportunity to revise and improve the **Public Procurement Directives** is welcomed – and long overdue – and the application of the **Government Procurement Agreement (GPA)** should be strictly reciprocal
6. regarding the **Services in the Internal Market Directive**, the Policy on Quality of Service, mutual assistance and convergence programmes has not received sufficient attention. The development of convergence in the areas of European Deontological Codes, Quality Charters and Quality management systems would be helpful, along with further work to ensure that cross-border service providers are able to obtain adequate professional indemnity insurance that does not duplicate cover from their home country.
7. There is a regulatory gap that, if filled, could improve the quality of the built and natural environment if steps were taken to ensure that only qualified professionals were allowed to offer **Planning Services** – professional services related to the design, planning, renovation, alteration and maintenance in the natural and built environment.