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European Network of Architects' Competent Authorities (ENACA) Response to the European Commission's Public Consultation on the Professional Qualifications Directive (PQD)

Foreword

The following is the response of the **European Network of Architects' Competent Authorities (ENACA)** concerning questions and issues raised in the CONSULTATION PAPER BY DG INTERNAL MARKET AND SERVICES ON THE PROFESSIONAL QUALIFICATIONS DIRECTIVE dated 07 January 2011 (MARKT.D.4 D(2010)), referred to in this submission as "The Consultation Paper".

The ENACA welcomes the opportunity to submit its views in the Public Consultation on the Professional Qualifications Directive (PQD). It should be noted, however, that individual competent authorities may make their own submissions, and that these may reflect varying views.

Chapter 1: Introduction

1.2. The first challenge: simplification for individual citizens

Experience shows that architects have good access to information about mobility processes through direct access to their registration and other competent authorities, especially in their home States. Experience shows too that architects rarely enquire to Article 57 PQD contact points nor involve the Services Directive (SD) Points of Single Contact. Instead they go directly to the competent authority, sometimes via the professional body in the home or host state. Consequently, the architects' competent authorities and professional organizations need to publish information addressing applicants from second and third countries (step-by-step-guides). The websites of the ENACA and most of its members offer platforms where registration information for foreign applicants could be publicly available.

It seems to the ENACA that there are few procedural barriers under the PQD. In most countries, architects are required to be registered under national law; and most of what the PQD requires when they move is that they repeat a small part of the home State procedures in the host State, since Articles 7 and 50 PQD restrict what the host State may demand. There may indeed exist for the immigrant architect a complex jigsaw of procedures in the host State, but this does not relate to recognition of qualifications, but has to do with tax, social security, insurance, banking, planning and

building control laws etc. The PQD processes by contrast are already simple and straightforward as required under the Directive.

1.3. The second challenge: integrating professions into the Single Market

The Consultation Paper notes "*two innovative tools which could be developed by the professions to facilitate mobility: professional cards and common platforms. The related projects, however, have not led to concrete deliverables. Do we need fresh thinking . . .?"* In the case of architects, professional cards have been considered since long before the PQD, however competent authorities see such a card as the solution to a problem which does not exist for architects, thanks to the PQD system for automatic recognition, which is also why architects do not need a common platform under the PQD general system.

Section 1.3. then describes as a "*major innovation in the 2005 Directive"* its Title II provisions *"to facilitate temporary mobility for professionals".* But it says that these "*obviously trigger a reflex in Member States to maintain checks of qualifications as far as they can. This has led to a declaration system which is not easy to implement."* For architects, this is not the case. States whose competent authorities publish an online list of the architects who have made prior declarations (acc. to Article 7 PQD) make it simple for architects and clients alike. Perhaps the Consultation Paper confuses, in the last sentence of 1.3, the declaration system with pro-forma registration, on which we comment further below.

1.4. The third challenge: Injecting confidence into the system

In the experience of the ENACA, the PQD has helped to build confidence. In particular, the emphasis in the PQD on administrative cooperation, and in the SD on electronic means, has allowed (and determined) the 27 Member States to learn from and about each other. In the case of architects, the unifying effect of the PQD seems to be reinforced by a shared sense across the Member States of professional ethical standards, and of duty to the client and consumer, which exists regardless of the many differences in law and practice at national level.

One problem which Section 1.4. correctly identifies is the risk that professionals who are disbarred or suspended "*for serious professional misconduct [will use] free movement rules to start practising again in another Member State".* This issue can be addressed by improvements to the "Internal Market Information (IMI)" system, so that the system of alerts between competent authorities (CA) about misconduct (or fraudulent attempts to register) under the SD-IMI are extended to the PQD-IMI, to include principals and directors of firms disbarred or suspended under the SD-IMI.

Chapter 2: A Call for Simplification

2.1. Why Simplification

Q.1 Do you have any suggestions for further improving citizens' access to information on the recognition processes for their professional qualifications in another Member State?

Access to information is a key matter in the stipulations of the SD (article 7 and article 22 SD) which complements the PQD in EU and national law and regulations concerning architects. Many professional bodies and competent authorities are working hard to fulfill (and/or help their members to fulfill) these obligations, work which will be disrupted if the Directives and processes themselves are changed significantly. The Commission should take into account that experiences will vary between professions and the work which has been undertaken in respect of the mobility of architects, through the use of the IMI, the work of ENACA itself and awareness of the Commissions Code will all have helped to make access to information and procedures become more readily available and understandable. ENACA believes that the way forward is to build confidence in the systems which have not as yet had the opportunity to fully embed.

Q.2: Do you have any suggestions for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence.

Summary of suggestions on automatic recognition and on the general system: The automatic recognition procedures for architects – especially under Article 46 – display little need or opportunity for further simplification. Most ENACA members also support the Architects' Council of Europe's suggestions to incorporate the worldwide standard for a minimum five years training as noted at Q.1 above, and for a supplementary two years of pre-recognition professional experience, previously included as Article 23 of the former Architects' Directive 85/384/EEC.

The Commission may however wish to consider a change to the definition of level (e) of Article 11, based on evidence provided below in relation to the general system. Currently the application of qualification levels (d) and (e) is ambiguous, because both levels cover a study period of 4 years. Level (d) covers studies of up to 4 years duration, while level (e) covers studies of at least 4 years duration. Such a change would make clear that level (e) covers only study courses of more than 4 years duration

ENACA also suggests ending discrimination against recipients of architects' services by electronic means, compared with those receiving services by telephone, by post and/or in person from architects who are registered under Title II or Title III of the PQD, and who are subject to obligations under Chapter V (Articles 22 to 27) of the Services Directive. Adoption of that suggestion would bring all such services into the PQD, and would avoid the need or a special initiative as envisaged in Proposal 4 of the SMact, at least in this area.

General system - the attestation: The conditions for recognition of the regulated professions under the PQD general system are generally laid down in Article 13 PQD, which thus regulates the recognition of architects who are not subject to the automatic recognition regime. This article stipulates that the host Member State, which demands the possession of specific professional qualifications for access to or pursuit of a regulated profession, shall permit access to and pursuit of that profession to

applicants from another EU Member State under the same conditions that apply to its nationals. The foreign applicant must possess the required attestation of competence or formal qualifications of another Member State in order to gain access to and pursue that profession. This attestation of competence must attest a level of professional qualification at least equivalent to the level immediately prior to (i.e. lower than) that which is required in the host Member State. This system applies also in cases where the profession is not regulated in the other Member State (country of origin). If so, the competent authority must attest that the holder (applicant) has been prepared for the pursuit of the profession in question. According to the Directive the "professional training" in both the home and the host Member States must not differ materially but be "adjoining" in the sense of Article 11 PQD. Only when there exist differences between the professional training in the country of origin and the host Member State, may compensation measures apply.

General system - the five levels: The PQD stipulates five levels of professional qualifications in order to classify the professional qualifications of foreign applicants with regard to their equivalence to the qualifications of national professionals. If the applicant possesses a professional qualification of a level immediately prior to (i.e. lower than) that of national professionals, compensation measures can be required. If the applicant's level of qualification is two or more levels below that of national professionals, the application is to be rejected. In that case, compensation measures are not possible. The EU Member States retain the right to lay down the minimum level of qualification required to gain access to and to pursue the profession in their territory (see also Recital 11 PQD). These procedures permit rejection of all unqualified applicants and raising under-qualified ones to the level of qualification of the host Member State's national standard.

Several competent authorities have experience of the general system in registration of other professional branches like interior architects, landscape architects and town-planners, because the latter regulated professions are not subject to the system of automatic recognition. Such CAs thus use the five levels laid down in article 11 PQD quite regularly. Likewise some competent authorities employ them regularly to process applications from holders of diplomas not yet notified. So the current recognition procedures under the general system have stood the test of use.

Most potential applicants inform themselves about the procedures, and are well capable of evaluating their own professional qualifications against the five levels of Article 11 and, if not sufficiently qualified, usually do not apply for recognition. Consequently it would not make sense to abolish the Article 11 PQD qualification levels on the grounds that applicants hardly ever possessed unequal qualifications, because this would deny the preventive impact and current operation of the regulations.

For the time being, further harmonization for example with the European Qualifications Framework System (EQF), is not necessary. On the contrary, the PQD should be given an opportunity to settle down, after the considerable efforts and investments by Member States to implement it, especially for professions (like architect) not previously in the general system.

2.2. Making best practice enforceable

Q.3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

The non-binding character of the Code of Conduct should remain so. It helps to promote administrative cooperation while necessarily allowing flexible standards for the recognition procedures, which – regarding the great variety of regimes for the various regulated professions and activities – differ considerably in their details and extent. To safeguard legal certainty, legally binding stipulations, for example concerning the documents which can lawfully be requested for the recognition process, should be set down in the Directive only, as Annex VII already does.

Various Commission reports, including the *Scoreboard* referred to above and the *Staff Working Document* of October 2010, show that even Treaty obligations to transpose the PQD were not achieved on time by any Member State. So it is far from certain that making the Code of Conduct binding will secure more consistent PQD implementation across the EU/EEA.

The ENACA notes that the text in 2.2. of the Consultation Paper says that "*The Code draws on the case law of the European Court of Justice in respect of the Directive and the relevant provisions of the Treaty on the Functioning of the EU.*" The ENACA does not have specific suggestions (or reasons) for amending the Code, seeing these as a matter for the Article 56 Group of National Coordinators. But it finds the Commission's information regarding case law in relation to the PQD quite unsatisfactory, as explained at Q.6 below.

2.3. Mitigating unintended consequences of compensation measures

Q.4: Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?

Architects' competent authorities have increasing experience of compensation measures, both of tests and of adaptation periods. Compensation measures serve two objectives: the interests of clients and those of the service providers. The interest of clients is to deal with service providers who have a certain minimum level of professional qualification. To serve the aspiration of applicants to gain access to a profession despite having a substandard level of professional education, compensation measures are an indispensable instrument to compensate for substantial differences in the professional education of the service providers. This applies in particular to adaptation periods, which need (except in countries which have a derogation under Article 14) to be completed only if the applicant decides not to sit the aptitude test prescribed to make up for substantial differences in professional education or if he fails that test. The duration of the adaptation period depends on the degree of the substantial differences to be compensated for. The maximum duration of three years is seldom needed, but should remain available for special cases.

Q.5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

The development and implementation of individual aptitude tests and adaptation courses put the resources of the registration bodies and institutions under strain. European Codes of Conduct for the relevant professions could well enhance confidence between the European registration bodies and further the exchange of information between them, leading to more consistent standards in the long run. However, the development of non-binding Codes of Conduct should be done independently of any revision of the Directive.

The ENACA has already begun to network and to cooperate among architects competent authorities just as the third paragraph of 2.3. of the Consultation Paper envisages. This is likely to lead initially to better mutual understanding, and perhaps eventually to convergent practices. ENACA supports such administrative co-operation, and not a mandatory code as Q.3 above envisages. EU-Commission proposals to change the PQD risk deterring the development of such cooperation or codes during the next year or two.

Q.6: Do you see a need to include the case-law on "partial access" into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

No, in answer to the first part of the question. As regards the second part of the question, „Partial access" to a regulated profession means that the person concerned is not allowed to exercise the full range of tasks a professional in this field usually does. The example quoted by the Commission on page 8 of the Consultation Paper is ECJ case C-330/03: Collegio de Ingenieros -v- Administracion del Estado concerning the Italian hydraulic engineer Sr. G M Imo. He was granted registration as a civil engineer in Spain, but Spain's Council of Engineers argued that the works (and hence the professional services) covered by Sr. Imo's curriculum was much narrower than the wider curriculum (including roads and harbors) covered by Spanish civil engineers. The ECJ ruled that Mr Imo was entitled to partial access. Keeping in mind the interests of consumers /clients, it is difficult to envisage a comparable circumstance arising for architects even in special instances. We know of no general criteria which would allow codification of such cases with sufficient legal certainty in the Professional Qualifications Directive. Persons with partial access cannot gain professional experience with those tasks they are not authorized to exercise, which means that their ways to achieve full access are those which the Directive already includes:

- successful completion of a diploma course listed in Annex V.7.1, bearing in mind that the automatic recognition system already permits in Article 47 (2) a recognition of prior learning etc.; and
- successful completion of compensation measures.

ENACA is not sure why the EU-Commission, after having generated a transparent and reliable law code in Directive 2005/36, is keen to open up a discussion of this codified law by reference to older case law. It ought to be the duty of the EU-Commission as co-legislator to ensure that its Directives either embody or supersede all earlier case law. It is unfair to citizens that all the case law on the EU-Commission PQD website at the end of 2010 predates 2005 when the PQD was adopted.

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It would be helpful if the EU-Commission updated its website not only with all relevant cases, but also with an opinion (and as many caveats as may be necessary) on the application of each case in 2011; e.g. as to how it is embodied in the PQD or of why, if it is not embodied in the PQD, that was not done.

2.4. Facilitating movement of new graduates

Q.7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

The current wording of the Directive does not facilitate such mobility and PQD Article 1 should be clarified so as to give effect to its apparent intentions. Graduates not yet qualified for full access to the profession experience a gap when they "*are no longer students but not yet fully qualified professionals either*". The principle of mobility should logically be extended to such trainees, having a chance to accomplish their practical professional education in another Member State, as many already do. The opportunity is greatest where both Member States require a comparably similar practical professional experience element. Convergence with regard to both the duration of University studies and two years of professional experience would also assist mobility. To deal with variations between practical experience in different EU countries, the ENACA is hoping to develop sample cases.

A graduate with a notified diploma, listed in column 2 of PQD Annex V.7.1, will seek to obtain the "accompanying certificate" in column 4 of the said annex, so as to qualify for full automatic recognition. But other approaches might be possible, if the full qualification is not yet achieved by the applicant. A means could be established for the holder of a notified diploma, unable to fulfill the related column 4 requirement in his home country, to apply for individual evaluation of his practical professional experience through the host country requirements.

This will most be especially needed when the applicant has acquired this professional experience in more than one EU Member State (as the EU-Commission Paper encourages him to do) and consequently is in difficulty to fulfill the registration conditions of the country where the diploma was obtained. Sample cases should be given as best-practice models in the non-binding code of conduct, after having been discussed with the EU-Commission.

Q.8: How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons.

Please see the answer to question 7.

2.5. Facilitating movement between non-regulating and regulating Member States

Q.9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

Q.9 refers to Article 13 PQD with special emphasis on Para 2 Subpara 1, which stipulates that applicants from a country where the profession is not regulated intending to establish themselves in a country where the profession is regulated must deliver proof of at least two years of professional practice within the last ten years. Furthermore the text leading to the question indicates that there are existing professions that are eo ipso "cross-border by nature" so that there is a supposed need for special treatment. As also architects in some branches are very mobile (hotels, industrial plants i.e.), this distinction of "cross-border by nature" or "not-cross-border by nature" professions is not helpful. There is no connection to the question whether or not the pursuit of the profession is per se of a cross-bordering character – whereas the EU Commission's consultation paper deems this issue an important one.

The stipulations of Article 13 have caused no difficulty, because practically all qualified applicants who could provide proof of a regulated education had not to prove their professional experience, and so were accepted. Nevertheless the existing regulations can be improved.

A clause should be inserted to deal with practical experience, just as Article 23 of the former Architects Directive 85/384 EC did. *"If in a Member State the taking up of the activities under the title of architect is subject, in addition to the requirements to the possession of a diploma, certificate or other evidence of formal qualifications, to the completion of a given period of practical experience, the Member State previous residence stating that appropriate practical experience for a corresponding period has been acquired in that country."* This requirement should be limited to a maximum of two years and should be of non-discriminatory character. The experience of the architects' competent authorities shows that practical experience of two years need not hinder access to the market of another European member state. On the contrary, it creates trust in the eyes of clients in the host member state. Additional practical experience of two years therefore ought to be supported by the PQD.

Q.10: How could the concept of regulated education be better used in the interest of the consumers? If such education is not specifically geared to a given profession, could a minimum list of relevant competences attested by a home Member State be a way forward?

This question is also under the same sub-heading 2.5, concerning movement between non-regulating and regulating Member States. It raises several sub-questions.

In the first part of the question, the term *consumer* is unclear: is it the student or the recipient of a service? It may be that it asks whether regulated education alone can lead to professional qualifications and thus (perhaps) whether it can replace or abolish burdensome procedures, like the notification of architectural diplomas. In this context it must be stated that universities in most Member States are free - sometimes protected by constitutional guarantee - to generate their curricula. So many Member States are prohibited from interfering in study courses, even to ensure compliance with the needs of a regulated professional qualification.

Therefore national subsidiarity and academic freedom prevail regardless of voluntary convergence at the root of the Bologna process. The negotiation of a minimum list of relevant competences (as this question envisages) would require a great deal of resources, which may instead be dedicated to expanding the system of automatic recognition, which already exists for architects, and for whom the 11 points of knowledge and skill in Article 46 (1) continue to appear robust after 20 years of use.

Having said this, regulated education (under PQD Annex IV) often means something different from regulated exercise of the professions under Annexes V and VI. These professions, regardless of the competences required for them to serve the needs of consumers in a particular Member State, are entitled to establish and/or provide services in all other Member States, subject to the discipline of their profession in that host State.

So regulated education cannot replace a common multinational system of agreed standards. So it seems to make sense for the PQD

a. to support the existing and functioning regime of article 46 for the architectural profession and
b. to extend the system of automatic recognition into related branches like the interior architects, landscape architects and town-planners, instead of creating lists of minimum competences for exchange between the Member States. Such an extension seems preferable to a 28th regime as Q.15 envisages.

PQD Article 46 (1) accommodates nationally distinct architectural history and heritage, planning and building controls etc. ENACA's member organizations have prepared lists of competences relating to the 11 points of Article 46 (1), which are quite compatible. So the system of attestation of minimum training conditions already co-exists with the system of competences within the automatic recognition system.

Chapter 3: Integrating Professionals into the Single Market

3.1. A European Professional Card

Q.11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase the transparency for consumers and employers? Should it enhance confidence and forge close cooperation between a home and a host Member State?

The objectives listed in this question - for speed, transparency, confidence and cooperation - are very desirable. However, a professional card will not speed up the recognition process for architects, whose competent authorities have now put all or most of the application processes online, and all of which are within the IMI system. On the contrary, there is a contradiction between the encouragement of online processes under the PQD and SD on the one hand, and the possible encouragement of card-holders to visit a competent authority in person to produce their card on the other hand, which can be inconvenient both for the card-holder and for the authority; duplicating online and personal facilities.

The ENACA has discussed a professional card. A card makes sense only if it makes the recognition process according to the PQD easier, more transparent and user-friendly. The practical realization of these requirements must be discussed in detail. One crucial necessity is the obligatory application of the IMI (see also answers to the questions 12 – 14), requiring many improvements and greater consistency between PQD-IMI and SIM-IMI; for example as regards alerts. **It is currently difficult for the architects' competent authorities to see any added value that a professional card could add to the current automatic recognition system.** There is a great danger that such a card will create expectations which citizens will feel are not fulfilled, and cause confusion for holders of cards, for their professional bodies and for competent authorities.

Q.12: Do you agree with the proposed features of the card?

The features of a professional card as proposed in the Consultation Paper deserve a detailed evaluation:

a. Feature 1: Card issued by Competent Authorities
The ENACA agrees with the Consultation Paper that professional cards can be issued only by competent authorities of the home State (country of origin) so as to give the necessary credibility to professional cards. Potential clients or employers should be able to obtain on the card enough information to permit them to verify the identity of the holder of a qualification, as a basis for further enquiry.

b. Feature 2: Additional support by electronic exchange via the IMI-PQD:
The ENACA also agrees with the Commission's Consultation Paper that, if there is a European card for a profession, it should only be issued by competent authorities who are registered in IMI and therefore able to exchange information electronically and confidentially with competent authorities in other Member States. However, the Commission should note that only the IMI-PQD is a reliable support for the architects' competent authorities, because IMI-SD suffers from many flaws.

c. Feature 3: Optional for the card-holder
The ENACA agrees with the EU-Commission that, in professions where the introduction of a professional card seems appropriate, it ought to be optional for professionals to obtain such a card. Professional cards should not, in any circumstances, be obligatory for the professional. An obligation on those pursuing a regulated profession to hold or to present a professional card would be an additional burden, clearly so on citizens whose countries are already developing an all-embracing national card for all citizens such as Estonia and Portugal.

d. Feature 4: Optional or binding for the competent authorities?
In Q.11 ENACA has pointed out contradiction between the encouragement of online processes under the PQD and SD on the one hand, and the possible encouragement of card-holders to visit a competent authority in person to produce their card. In the first bullet on page 11 of the Consultation Paper, the Commission says that "once issued, the card should be binding on the competent authorities", but what can that mean?

- That an applicant must be met in person?

- That, once the card is presented, the competent authority may read the card by eye and/or electronically, but is forbidden to use the IMI (which all competent authorities for architects have) to verify that information on the card is still up to date?

- Or that the competent authority is forbidden to check whether the card is forged?

So the card should not, at least in these respects, "be binding once issued".

And just as important is a cost effectiveness-valuation, especially for the competent authority of a profession which sees little added value in the professional card, as architects do. A compulsory card reader or card-maker may find little or no demand for its use in dozens of the architect competent authorities across Europe. It would bring about unnecessary administrative burdens on Member States and on the competent authorities. The lowest initial estimate of installation and set-up costs for a reliable system to produce and check cards is €50,000.00 per competent authority and other initial estimates are more than twice that. In addition the Member States must implement adequate mechanisms to police and to prosecute fraud or misuse of cards.

In any case, if the card is optional for the card-holder, it is vital for the further discussion to understand that procedures must remain available within competent authorities for migrants in Europe who possess no card.

e. Feature 5: Availability of the card to all interested professionals
Even if the issues at d. can be resolved, the universal availability of the card depends in part on its agreed contents. The necessary precondition for one card to be available to all professionals of one profession is that everybody fulfills the same qualification standards and therefore the same rights to exercise the profession. In many Member States this is not the case; e.g. professionals who bear a title similar to "architect" but do not have PQD rights of automatic recognition across Europe because their qualification does not conform with the minimum Article 46 PQD training standards.

f. Feature 6: Facilitating temporary mobility
A card could, in professions where its introduction seems appropriate, give access to data about whether the holder's profession is regulated in the home Member State, about the holder's regulated professional education, and/or about whether he possesses two years of professional practice experience. It can first and foremost provide the competent authority of the host country with the necessary information on the holder of the card (authentication is a major issue). However, the card cannot replace "prior declaration", which imposes under the existing regime the very important task on the migrating service provider to hold professional indemnity insurance to meet legal requirements of the host country. Prior declaration ought to permit the service provider to be listed in the public area of the website of the host competent authority, and so to be checked against a corresponding entry in the website of the home competent authority. This is in the interest of consumers, and is a simpler and cheaper system, to allow the consumer check that the professional is registered.

g. Feature 7: Simplifying the recognition procedure
Professional cards cannot prejudge the host Member State competent authority's decision on recognition of a professional qualification. Furthermore, professional cards cannot replace or dispense with the submission of the information required for the recognition process. However, if appropriate, the host Member State could base the evaluation of a foreign applicant's qualifications on detailed and standardized documentation of the holder's professional education and experience accessible via the IMI; via the ENACA website or via a European professional card specific to that profession in his or her home Member State, provided it is based on a single EU–wide standard for content and technology. It seems that, for authentication of an applicant, professional cards which hold an electronic signature, are of value in making identification more reliable. However, there is no reason to believe that registration procedures will be quicker using a professional card than it is now using a certificate from the competent authority. There is also no reason to expect recognition cases under the General System to obtain any special gain.

Finally, if the "European skills passport" mooted in the Single Market Act is pursued, it would make no sense to have two separate European cards competing to help lifelong mobility of European citizens in the closely related areas of training and of qualifications.

Q.13: What information would be essential on the card? How could a timely update of such information be organized?

If there are to be European Professional Cards (despite the skepticism of the ENACA in that regard noted at Q.11), they should follow a consistent design all over Europe and contain a photo of the holder and other features to safeguard it from falsification. Professional cards intended for cross-border services and those for the sectoral professions subject to the automatic recognition regime should give access for competent authorities via the IMI system to information which verifies that the holder fulfills the requirements stipulated in the Directive, perhaps in the form of the e-certificate shown in the Commission's presentation to the professional bodies on 29 October 2010.

Professional cards could also contain a chip offering an extensive and standardized documentation of the holders' professional education and practical experience. But this would make it more the "skills passport" mentioned at the end of Q.12 above; would make it more expensive than (say) a bar code needed for a competent authority to interface with the IMI; would also make it necessary to have periodic updates (at least annually); and could impose a burden on CAs to take responsibility for the holder's post-registration CV in a way which is beyond their legal powers, and further complicates and adds to the cost of the card system. It may also complicate matters by requiring some information obtained from (or via) the card to be only accessible by CAs, while other information (e.g. the "skills passport") may need to be accessible to prospective clients or employers. However, the websites of service providers usually offer ample information on their services and competences.

The period of validity of a card should be limited to guarantee regular updates of this information, and to limit harm done in the event that it is stolen or falsely used. For architects, the low demand for a professional card, and the even higher costs for competent authorities to establish the infrastructure necessary for a chip-based card, mean that the Commission should not make it compulsory; since it seems certain that such infrastructure will be little (if ever) used.

Q.14: Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?

The title "professional card" is the appropriate one, because the term „professional passport" may mislead professionals into thinking that even the electronic application procedures under the SD, which extend also into the PQD, are no longer necessary. If there is a card there should be a card that also covers e-commerce services.

3.2. Abandon common platforms, move towards European curricula

Q.15: What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to the national requirements? What conditions could be foreseen for its development?

Minimum Curricula are not in the competence of the EU-Commission. In the Consultation Paper the EU Commission proposes to develop "European Curricula" based on common sets of competences. The system of automatic recognition in the sectoral professions according to Chapter III of the Directive already operates with "common minimum requirements of professional competences", for example the 11 points (knowledge and skills) stipulated in Article 46 PQD. So for architects who are subject to the sectoral regime, there is no need for a new 28th regime. However, for all other professionals outside the sectoral regulations, like for example interior architects, landscape architects and urban planners, a 28th regime could make sense if a system for automatic recognition is not available to them. If the term "European Curricula" stands for "common minimum requirements of professional competences" on the model of the sectoral professions of Chapter III, a further development of this concept to extend the system of automatic recognition to other professions would be supported by architects, because they consider that a broader system for automatic recognition would help other professions just as it has already helped architects as employees, as employers, and as providers of services to clients in other countries.

The revision of the PQD should be used to lay the foundations for an expansion of the scope of application of the automatic recognition regime to cover such professions, where the development of minimum lists of competences, modeled on the sectoral professions of Chapter III, is feasible.

The EU Commission is right to say that the development of such minimum lists of competences should not depend on the consent of all 27 Member States. **The Competent Authorities who decide on the registration of applicants should be involved in drafting** such lists of minimum competences.

3.3. Offering consumers the high quality service they demand

Q.16: To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

Architects do not see such a risk. The greater risk at present seems to be of fragmenting the regulatory regime through ad hoc changes.

Q.17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?

The current regime serves the needs of the architectural profession and its clients. Among architects, it is frequent that an architect from the client's country of residence works with a colleague architect already based in the host Member State, in line with internationally recognized practices.

3.4. Making it easier for professionals to move temporarily

Q.18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms "temporary or occasional" or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?

There is no unnecessary burden. With regard to regulated professions, a prior declaration of the service provider, who is moving to another country to deliver services for the first time, is indispensable. Otherwise, professional supervision would become impossible. A requirement to publish national or state online registers of architects established under Title III, and national or state lists of declarations received, would (as noted previously above) simplify consumer protection.

Service providers moving into another member State are subject to the professional regulations of that host country (see Art. 5 Para 3 PQD). Service providers who do not move into another state but provide their services there, may be subject only to the e-commerce Directive, but not to the professional regulations of the receiving country. This different treatment of service provision is not justified, because the demarcation between e-services and services by post and by telephone is quite unclear where they are offered in combination as part of a single service, as is usually the case for architects. From the point of view of the architects, it would not hinder their mobility if the e-commerce services were treated in a way similar to temporary or occasional services as laid down in the PQD.

A legal definition of the term „temporary or occasional" would be helpful to avoid legal uncertainties, instead of the current reliance on a "case by case" basis which lacks transparency and consistency for the migrating professional, and for competent authorities.

Q.19: Is there a need for retaining a pro-forma registration system?

The system of compulsory declaration prior to the delivery of services (Service Declaration) must be maintained. From the architects' point of view, a pro-forma-registration is not necessary in addition to prior declaration. Consequently, the stipulations of Article 7 PQD should be maintained. However, if they are to remain, the somewhat foggy relation between Articles 6 and 7 PQD should be clarified. A professional card cannot replace the system of prior declaration, but (as previously explained above) an online list of declarations available at the host competent authority, referring to an online register in the country of establishment, would be simple for consumers and professionals alike.

Q.20: Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?

With regard to regulated professions with effects on the public health or safety, a prior declaration is indispensable in the interest of the consumers. It must be stated that foreign architects working only "transitional" in a host country are covered by the codes of conduct of this host state. The addresses of those foreign architects who have submitted their prior declarations are listed in the public domains of the competent authorities, so that these are available to the clients or other citizens. In addition these declarations give to the competent authorities the possibility to check the necessary scope of coverage of PII, which is necessary in the host country; this gives certainty to the clients' needs to rely on the PII of their architect. In countries which regulate the professionals (such as architects) who can certify the fire safety of a large building, or who can submit or permit building applications, there is a strong conviction that it might make sense that even e-commerce services should be evaluated with regard to the professional qualifications of the service provider.

Chapter 4: Injecting more Confidence into the System

4.1. Retaining automatic recognition in the 21st century

Q.21: Does the current minimum training harmonization offer a real access to the profession, in particular for nurses, midwives and pharmacists?

The minimum professional requirements for architects are sufficiently harmonized by the 11 points stipulated in Art. 46 and need no revision for the time being.

Q. 22: Do you see a need to modernize the minimum training requirements? Should these requirements also include a limited set of competences? If so, what kind of competences should be considered?

As stated in the answer to Q.21, and further clarified at Q.10 above, there is no need to change for architects the eleven requirements of skill and knowledge set out in Article 46 (1) PQD. The system for competences to be specified (and mapped to the "11 points") is developing at national level, and a model has also been developed by the ACE.

But the minimum duration of study ought to be reconsidered. Given the growing variety and complexity of tasks architects need to execute in the pursuit of their profession, the current minimum duration of 4 years of academic studies needs to be increased. Since the Architects' Directive came into force in 1985, the architects' professional profile has grown much more complex, so that today basically identical subjects must be taught in much greater depth. This includes issues like sustainability, energy saving, new building materials and planning methods.

In the course of implementing the Bologna process, most (perhaps 95%) of the Architectural Schools in the EU have adapted to these conditions and offer predominantly 5-year courses in architecture.

It seems that in the discussion about minimum training requirements not only some EU-Member States but also DG-Market are unaware about the implications of this issue, and of the harm it does to architects in negotiations on international trade of services.

This is can be seen in the EU-Commission's "Single Market Act Communication" of 11th November 2010 in its misunderstanding of why the EU is "*the world's biggest importer and exporter*", and its misunderstanding of the source of the international competitiveness which (until now) sustained this – at least so far as EU architectural service providers are concerned. The Commission says that Europe must *"work even harder on developing our skills in high-value-added sectors",* presumably including architectural services.

Q.23: Should a Member State be obliged to be more transparent and to provide more information to the other Member States about the future qualifications which benefit from automatic recognition?

The ENACA welcomes the pressure from DG-Markt on EU Member States to fulfill their duties in the area of Chapter III sectoral professions, by notifying both their diplomas and their accompanying certificates for Annex V.7.1 to reflect actual home market access requirements for architects. That pressure needs to continue, but new and further obligations for the Member States to regularly transmit contents, to regularly evaluate study courses or to accredit the Schools of Architecture would overtax their resources disproportionately, and may not have a real benefit for students or graduates. At present in relation to architects, a key task for Member State Governments and for their universities in relation to architecture courses is to expedite overdue notifications of diplomas for inclusion in Annex V.7.1 of the PQD. The ENACA and the competent authorities will encourage them in this task.

Q.24: Should the current scheme for notifying new diplomas be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.

The reorganization of architectural studies leading to Bachelor and Master degrees according to the Bologna process imposed an additional workload on the notification process. This situation is partly due to bad communication and information on several levels. At the beginning of the so called Bologna Process, most of its authors were national ministries as well as the (architects') schools, who were badly informed about the consequences of their changing the complete university education system. Even today, schools ignore to a high degree their responsibility for the notification process, and especially to young students, because it is ultimately the schools' task to start (and to provide the information for) the notification process. The universities' reluctance to deal with the matter was evident at the common hearing of the EUA - European University Association and the EU Commission in the EU-Parliament building on October 14, 2010 in Brussels. Although most universities do check in advance the compliance of each new architectural study course with the minimum competences stipulated by article 46 of the PQD, there is no guarantee that all newly developed courses respect and fulfill the compliance. So as to create trust in a system of automatic recognition the notification process must be retained, and not unduly overhauled.

The ENACA agrees that the process of notification is slow. Two reasons are evident:

- The poor awareness among universities and at national level on issues concerning the PQD, resulting in a laissez-faire on the side of many universities and
- The procedures to deal with notification in the diplomas subgroup of the article 56 PQD coordinators, which are now on the way to being improved.

On the issues of awareness and information, the competent authorities themselves are trying to help: the ENACA is helping to circulate as a template for successful notification the application for the Bremen diploma from Germany, which was recently added to Annex V.7.1. On the national level lot of work is done by the Member Organizations of the ENACA also, to convince their schools to become active in the matter.

The EU Commission in its consultation paper wonders whether the process could be speeded up if the notifications were made at a much earlier stage; e.g. in the national approval process. This proposal has some weaknesses. In some instances – e.g. where an existing course is being restructured – a notification can be made rapidly. In completely new diplomas, there is a dilemma about whether to expedite a notification when the diploma is not yet awarded by a School, and when the curriculum still constitutes mainly a plan, whose implementation cannot yet be verified by the accreditation authorities and/or competent authorities. This proposal to do things at an earlier stage therefore does not seem really to offer a means to improve things radically.

4.2. Automatic recognition based on professional experience

Q.25: Do you see a need for modernizing this regime on automatic recognition, notably the list of activities listed in Annex IV?

This question does not pertain to the architectural profession.

Q.26: Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?

This question does not pertain to the architectural profession, but rather to those covered by PQD Annex IV.

4.3. Continuing professional development

Q.27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

The obligation concerning continuing professional development stipulated in Art. 22 letter (b) of the PQD is sufficient, because obligatory continuing training and education is not a question of access to the profession, but one of maintenance of the qualification to safely and effectively practice it.

Q.28: Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use of IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions.

ENACA members' primary source for information exchange is IMI-PQD. The need to improve the IMI was evident at the "cluster training" event last 8 December on technical IMI issues. The IMI-SD is not user-friendly (reflected in low usage); its alert system does not interface with the IMI-PQD; and a recent Court ruling appears to have stopped automatic translation of free text in IMI.

The IMI has only stood the test for the PQD, and then only (in most cases) as a key supplement to other processes in areas such as escalation in case of delay. The IMI for the SD is rarely used by competent authorities, but most gave positive opinions on IMI-PQD in their experience reports delivered in the process of the PQD evaluation. The revision of the PQD may be a good opportunity to make the utilization of IMI obligatory for all professions. But it also needs to be improved. In particular a proactive alert mechanism is needed, to cover both individual professionals and professionals providing services as directors or employees of companies.

The competent authorities presume that making the IMI compulsory for the PQD will help to enable the EU-Commission to improve it, notwithstanding present shortcomings. It is important for the EU-Commission to verify the competent authorities' presumption in this regard, so as to avoid creating a new compulsory burden which will worsen administrative cooperation under Article 56 PQD.

Q.29: In which cases should an alert obligation be triggered?

It would be very helpful to have a more proactive and more accessible alert mechanism in the IMI, which could be used both under the PQD and under the SD. This would assist competent authorities to inform each other about individuals who have, for example, attempted fraudulent applications or have been convicted of professional misconduct; in case those individuals attempt to register in another Member State.

Q.30: Have you encountered any major problems with the current language regime as foreseen in the Directive?

The current language regime set down in the Directive is not a problem for architects. The language test is not part of the recognition process according to the PQD.

Dublin, 15 March 2011