



ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

Presidente da Comissão de Economia e
Obras Públicas
Deputado Pedro Pinto
comissao-economia@ar.parlamento.pt

Brussels, 4 March 2015

Ref 065/15/IDP/LL

Dear President,
Dear Sir,

We were made aware of the public discussion going on at this particular moment in Portugal regarding the new law proposal 227, which revokes the prior 31/2009 on professional qualifications and responsibilities.

The draft on the table interprets the European Directive 2005/36/EC as enabling Portuguese engineers to engage in currently reserved functions of Architects in Portugal.

The Directive 2005/36/EC was transposed to the Portuguese law by the Decree 9/2009 (March 4). However it applies **ONLY** in relation to the recognition of qualifications for the purpose of practice in any other European Country. In other words the Directive and its annexes **do not apply to the internal market of one specific country where no cross border practice is involved**.

This is clearly stated in the recitals of the directive:

(12) This Directive concerns the recognition by Member States of professional qualifications acquired in other Member States. It does not, however, concern the recognition by Member States of recognition decisions adopted by other Member States pursuant to this Directive. **Consequently, individuals holding professional qualifications which have been recognised pursuant to this Directive may not use such recognition to obtain in their Member State of origin rights different from those conferred by the professional qualification obtained in that Member State, unless they provide evidence that they have obtained additional professional qualifications in the host Member State.**

Furthermore, Annex VI of the Professional Qualifications Directive is **an historic transitional measure** designed not to exclude individuals who had been active in the provision of architectural services when regulation was first introduced to control intra-EU recognition of professionals. Recognition of Annex VI qualifications is limited in that the qualifications must have been attained before a specified date.

SECRETARIAT GENERAL

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The Directive also states that:

(28) National regulations in the field of architecture and on access to and the pursuit of the professional activities of an architect vary widely in scope. In most Member States, activities in the field of architecture are pursued, de jure or de facto, by persons bearing the title of architect alone or accompanied by another title, without those persons having a monopoly on the pursuit of such activities, unless there are legislative provisions to the contrary. These activities, or some of them, may also be pursued by other professionals, in particular by engineers who have undergone special training in the field of construction or the art of building. With a view to simplifying this Directive, reference should be made to the concept of 'architect' in order to delimit the scope of the provisions relating to the automatic recognition of the qualifications in the field of architecture, **without prejudice to the special features of the national regulations governing those activities.**

To quote a legal precedent, on 9 January 2014 the Italian highest Court reiterated that ONLY architects can intervene on monuments and listed buildings. Other professions may participate (e.g. structural engineers) but an architect must always be the coordinator for the project. The sentence also unequivocally clarifies that this is in no way contrary to the Council Directive 384/85/EEC on mutual recognition of diplomas, because this is an internal matter that does not impinge on the principle of mutual recognition. This sentence was a result of an engineer's appeal against exclusion from a public work.

FINAL CONSIDERATIONS

For the above reasons, the Architects Council of Europe considers that the objectives and the aim of a European Directive regulating cross border mobility have been wrongly interpreted and cited as a legal mechanism to be applied to the regulation of any one Member State in the proposed Portuguese draft legislation.

To allow for a transitional instrument of a European Directive, in this case specific contents of Annex VI, to be turned into permanent condition of a national law, applicable only to the Member State cited, is against the structure and intent of the Directive itself.

Yours sincerely,



Luciano Lazzari
ACE President