

INTRODUCTION

These comments to the Internal Market Directorate General arise from:-
Direct experience that is limited to Ireland and to the Irish transposition of the PQD in regard to architects - see the Building Control Act 2007, Statutory Instrument 21 of 2007 (BCA 2007).

GENERAL

The inclusion of architects among the seven sectoral professions is anomalous and lacks logic. The reasons given in the Directive are truly empty. Unlike engineering which is not included as a sectoral profession (but is specially identified in the Consultation Paper Introduction) the practice of architecture in its totality by an individual is not readily transferred from one country to another. First there are the various practical matters of national law, construction law, construction licensing, building documentation, oversight of construction, certification, etc which will apply in part or entirely according to the local regime for architects.

Secondly there is the challenge of creating a design that is appropriate to the setting. In the normal run of things this demands more than an expert site appraisal. What is required first is an understanding of local traditions, habits, expectations, history, demographics etc. It is only the most exceptional of architects who can drop-in from overseas and develop a truly appropriate design in a foreign setting. (I am ignoring competition and other picture-book constructions, which in every case depends upon partnering with a local architect.) Thus, the typical migrant architect is a person who offers what is known here as Partial Services. That understanding should guide the making of Europe wide regulations about access. In other words barriers at the level of Full Services (which in any case vary widely across Europe) are counterproductive to the facilitation of access for architects. For the self-employed migrant architect, the public interest can be secured through localised Professional Indemnity Insurance. The market can establish the risks and the charges that shall apply to migrant architects according to the scope of services to be provided in each case and the individual's history.

The inclusion of architects among the seven sectoral professions is also used in Ireland to justify the making of a Closed Shop. On the one hand compliance with Article 46 is used as the cudgel against prior-established, non-RIAI architects. On the other hand the new registration regime sets the barrier at the most non-inclusive of the four Annex V qualifications for Ireland viz. MRIAI which is the membership standard of the private body that is now the Registration Body and the Competent Authority. (See relevant Government Committee transcript and/or the EJOC video record under DATA at www.architectsalliance.ie)

EXPERIENCE REPORT (IRELAND)

I wish to first comment on the unilluminating Experience Report from Ireland, prepared by RIAI Limited (which body continues its long-standing refusal to fully declare its Limited Liability status despite November's undertaking to the Irish Office of the Director of Corporate Enforcement – ref. Company No. 3498 and its obligations under EU law).

Q1(a) – Seeing a list of the “documents that must be provided in the original” would allow a reasoned view of the answer given by RIAI LTD. (Presumably scanned copies are accepted subject to the submission of originals near the end of the process?)

Q2 - Appendix 1 is misleading because applications for recognition were impossible until the opening of registration of title on the 15th November 2009. Until then the practice of architecture in Ireland was not regulated by special statute and transposition into law of this part of the Directive was unnecessary. Consequently, none of the pre-November 2009 data shown is meaningful and its inclusion is simply misleading.

Note 3 in Appendix 1 means that EU nationals with Directive compliant qualifications are forced to take an Irish examination. It appears to be either the UCD/DIT post-graduate examination (€1,800 to attend the preparatory lectures + exam fee) or the private ARAE LTD examination (€11,500 exam fee + optional €1,200 to attend the UCD/DIT lectures). Aside from the fees, neither examination is appropriate for testing migrant architects. Both are examinations of Irish work practices. In fact non-RIAI LTD work practices established over years of actual trading in Ireland, or those of alternative professional bodies are automatically deemed inadequate. The intention appears to be to emphasize the imagined superiority of the RIAI LTD methodology. The consequence is the erection of a further barrier to recognition.

Q3 - The recognition requirements under Article 47 para. 2, appear to be exceeded in the BCA 2007 – see S.15.1(g)(ii)(I) where the supervisory architect must be eligible for registration in the Irish State and S.15.1(g)(ii)(III) which demands the passing of an examination which is not mentioned in the Directive.

Q4 - No EU nationals would have sought recognition prior to the implementation of the Directive in Ireland (registration was not opened until the 15th November 2009) because no barriers to access existed before then. I understand there can be insurmountable problems in securing attestations from France because these are granted by each awarding Préfecture only to residents and not to those who have already relocated. (I confess this is second-hand information which I have not checked.)

The para. 2 answer about ‘specific and exceptional reasons’ suggests that RIAI LTD will not accept attestations under the General System unless those attestations relate to academic programmes included in the Directive! You will see from the overall answer that RIAI LTD does not approve of the General System, that it almost boasts of having secured in the drafting of the BCA 2007

a conflict over the General System between the Directive and the transposition legislation, that barriers have been devised to block recognition via the General System, that the principles of mutual recognition are not acceptable unless RIAI LTD's private membership standards, which have been made law in Ireland, are the norm for all migrant architects.

The supposed threat to the Irish consumer brought by the General System is plain, emotive rubbish of course. The profession in Ireland was not-regulated until 1st May 2008 and registration itself was opened on the 15th November 2009. The most serious of publicised consumer complaints concerned Shangan Hall, a Dublin City apartment block designed by the office of a past President of RIAI LTD. Under the transposition law (BCA 2007), the Registrar for architects was himself automatically registered despite having not practised for over twenty years. How does that protect the Irish consumer?

More seriously perhaps, RIAI LTD has been long aware of substantial shortcomings in the consumer redress provisions of the transposition legislation (Part 6 of the BCA 2007). Far less than best practice procedures are provided when compared with other Irish legislation e.g. the Medical Practitioners' Act 2007 & the Dentists' Act 1985. RIAI LTD has completely disregarded its own legal advice that the BCA 2007 must be corrected in this (and other) regards. How does that neglect protect the Irish consumer?

Q5 - Mention of supposed "anecdotal evidence" is utterly inappropriate.

Q6 - RIAI LTD is the intended Registration Body and Competent Authority as regards the Directive. It played a significant part in the drafting and finalisation of the relevant legislation, the BCA 2007, to the exclusion of all other interested parties. However, it is not correctly named in the legislation and therefore lacks statutory authority to perform its roles of Registration Body and Competent Authority as regards the Directive.

This has not deterred RIAI LTD from proceeding under the pretence of having the requisite statutory authority nor in issuing threats to non-registered architects over continued use of title and to registered architects over CPD compliance which is not of course a requirement of the legislation.

In addition it is important to note that the legislation neglects to make any distinction between RIAI LTD's three identities viz. RIAI LTD - the private Institute, RIAI LTD - the Registration Body and RIAI LTD - the Competent Authority. I believe that failure is seriously damaging to the public, to architects, to the profession and to the objective facilitation of Ireland's duties under the Directive.

Although four "independent" boards do exist as claimed, there is also a sub-board known as the Technical Assessment Panel. It is composed of RIAI LTD architects alone. This Panel is responsible for assessing all applications under the Technical Assessment provisions of the BCA 2007. RIAI LTD has a policy of neglecting to mention this dedicated RIAI Panel in public.

Q7 - The limited interest shown in temporary registration is likely to be influenced by RIAI LTD's obvious aversion to this means of access. Under Irish law (the BCA 2007) the use of the title architect is protected in a specified manner. Function as an architect is specifically not 'protected' in any way (reliance on existing consumer and public safety legislation is naturally deemed sufficient). Thus anyone who is competent under the common law test may provide the services of an architect (and be subject to all the normal laws governing contract, etc) but only registered architects may use the title in business.

This fact was underlined in the Minister's Written Answer to PQs 998, 1024, 1057, 968 given on the 16th Sept 2009:-

<http://debates.oireachtas.ie/dail/2009/09/16/00523.asp>

"Once statutory registration has formally commenced it will be an offence under subsections 18(1)(a) and 18(1)(d) of the Act to use the title of "Architect" unless registered on the statutory register.

Architects may still continue to practice but will be unable to use the title."

In its answer to question 7, RIAI LTD mentions architectural competitions. I therefore draw your attention to the rules of a recent architectural competition, administered by RIAI LTD on behalf of a State-sponsored body, the Irish Architecture Foundation.

The rules misleadingly suggest that it is necessary to register in Ireland in order to "manage the project in Ireland".

Compliance with the Directive is repeatedly given by RIAI LTD to excuse its tightening control of the profession. Too many people and bodies accept those assertions without question. (See conflicting barristers' Opinions enclosed.)

http://www.riai.ie/competitions/detail/killybegs_playspace_architectural_design_competition/
"The PlaySpace is an Architectural Public Art Commission made possible by a partnership funding arrangement utilising the Per Cent for Art Scheme budget, a disability budget and a budget secured by the Killybegs Playground Committee. The competition is open to architects and architect-led design teams."

Eligibility:

This competition is open to persons who are currently included on the Irish Register of Architects; those who hold a qualification listed in the EU Qualifications Directive 2005/36/EC; those who are established in another EU Member State and eligible to provide services in Ireland; those persons outside the EU/EEA who are registered with a national registration body.

Please note that the winners of the competition will be asked to begin the registration process (to manage the project in Ireland) if they are not already on the Irish Register of Architects."

Q8 - blank

Q9 - Provisions for access on a "temporary and occasional basis" are made in Part 7 of the BCA 2007 - Miscellaneous Provisions. I have found no mention of this on the RIAI LTD Registration webpage. According to Part 7, the process is not straightforward in the least and prior declaration is mandatory in every case. Furthermore, Part 7 S.60(1) refers back to Part 3 in which there is no mechanism for registering on a "temporary and occasional basis".

Q10 - see Q11

Q11 - The architect membership standard of RIAI LTD has been made the national standard. Of the four Irish qualifications established in Annex V.7, only one, MRIAI (which is the most non-inclusive of the four) is recognised in the transposition legislation. RIAI LTD has concocted the expression "the academic phase" to reinforce its self-serving proposition that Irish architecture graduates are no longer to be regarded as architects, despite their compliance with Article 46, which is after all an explicitly academic standard! It is instructive to note RIAI LTD's confirmation that Article 46 compliance is met under all its admission systems. Also that "The five years of study are considered to be essential to cover the breadth and depth of Article 46 satisfactorily at the graduate level." The Directive makes no additional demand under Article 46 for automatic recognition purposes. For access purposes, Europe quite correctly does not support a distinction between graduate and so-called professional levels especially as the latter are simply derived from the admission rules of private clubs.

RIAI LTD has, thus far, succeeded in having its own elitist standards made law in the State, thus securing its control of the profession and the income that flows thereby. At home it has excused all its doings by falsely evoking the Directive. To Europe it blandly admits to the discrepancies between the transposition law and the Directive by pretending that consumer protection would otherwise be in jeopardy. At the same time it is taking steps to resolve those discrepancies (but not the injustices nor the secure income stream) by having the Directive modified. First through alterations to Annex V.7 and second under the guise of satisfying the demands of the Bologna process.

Q12 - Presently RIAI LTD (the Institute) is preparing to accredit a privately run examination for the purpose of providing the PRAE route to registration which is required under the BCA 2007 -S.14(2)(f)(iii). Over the last 12 months some €400,000 in fees has been collected by that private company (which calls itself the ARAE) from candidates who trust that the €11,500 apiece examination they have taken will indeed be prescribed by the Minister merely on foot of RIAI LTD's blessing of its friends' enterprise.

Q13 - Article 22(b) is admirable and needs no amplification. 2010 was the first full year of compulsory CPD for registered architects. It proved to be a failure and large concessions were granted by RIAI LTD to its members (all but one registered architect in Ireland is a member of RIAI LTD probably because the private membership fee is engrossed in the Statutory annual registration fee – proposed at €490 p.a. but not sanctioned by the Minister and therefore has been charged and collected by RIAI LTD without due authority). An ongoing difficulty in Ireland over CPD is that it's a money-spinner for RIAI LTD. It should be understood that attendance alone is sufficient for the gaining of CPD points. Sometimes, just signing-in is sufficient. Its practical value is not in

the certainty of knowledge transferred and appreciated. Instead it's a potent confirmation of the conspiracy against the laity proposition. The only worthwhile CPD is that which is examined independently or conducted on a self-imposed, professional basis.

Q14 & 15 = blank

Q16 - You will see that RIAI LTD is concerned that a Professional Card system would weaken its own standing through empowerment of the cardholder.

Q17 = blank

Q18 - Supposed anecdotal evidence rears its head again in this formal Report-why?

Clearly informal and formal language testing is a handy barrier to access. In architecture local language skills can be easily over-rated. Salaried architects are allocated tasks according to individual strengths. For example, native speakers with poor spelling are either double-checked or not given spelling critical duties. A deaf architect might speak unclearly at all times. In essence, no-one except for sole traders needs to apply all the skills one might attribute to a professionally trained architect. Everyone specialises, first here and then there. Why shouldn't client and architect conduct their business in a tongue other than English or Irish? Why isn't language performance left to the employer to decide upon?

Frankly it becomes plain that language skills need not be included among the checks on salaried migrants. For the self-employed perhaps it's a matter that can be safely directed to the Professional Indemnity insurers instead?

Q19 - I think this is a guarded admission that there is actually no mechanism under the BCA 2007 for registering on a temporary and occasional basis.

Q20, 21 & 22 = blank

Additional Issues - Regarding the "marginal note": The position is that Irish nationals with Directive compliant qualifications awarded outside of the State were overlooked in the drafting of the transposition legislation (BCA 2007). With a little ingenuity and by ignoring the marginal note, S.15 can be used to fill the gap. But doing so does also require ignoring, not a marginal note, but part of the entry itself given under S14(2)(c).

However, a robust resolution can be made when the BCA 2007 is amended to correct its other defects - absence of a Grandfather Clause in Part 3 unlike Parts 4 & 5, mis-naming of the Registration Body, inadequate protection for consumers in Part 6, discrimination against other EU citizens (CHAP(2010)02912 – IRELAND), the Royal Trinity's lack of accountability, no general provision for the appointment of a Registration Body to ensure future continuity, the transposition defects revealed by the Experience Report from Ireland, etc.

It beggars belief that any reputable European representative body dares claim to have difficulties in upholding Article 1. RIAI LTD is actually giving warning of its desire to undermine the principle of mutual recognition. It is determined, I think, that its private membership standard should be made paramount. That involves bringing an end to the graduate standard as the general measure for

access. Instead access will be granted only to those who also meet the so-called professional standard. RIAI LTD has recently achieved this within Ireland and secured the disenfranchisement of all 'plain' graduates. A notice is with Europe to amend the Annex V entry for Ireland. I don't yet know the details but it will amount to negating the three graduate classes through an additional demand for a special RIAI LTD certificate. Of course that certificate will not be granted to 'plain' graduates. Graduates will be forced to pass a so-called professional practice examination in order to qualify for the additional certification. You may choose to see these manoeuvres as merely raising of a standard. Its impetus is quite, quite different. It is devised to disempower everyone else and to put all Irish based architects in thrall to RIAI LTD. I suspect however that this will be promoted on a broader front through ACE or ENACA.

The difficulty alluded to over the structure of Annex V.7 is a fiction. This is still about undermining the graduate standard. University awarding authorities are quite free to take account of student work/study gained at other, approved institutions Worldwide. The single, Home State degree, as indicated throughout Annex V is the result. There is no difficulty whatsoever except in the case of non-teaching, private awarding authorities (which perhaps should not be permitted) such as RIAI LTD. Please be aware that any proposal to alter Annex V will be motivated by self-interest.

CONSULTATION PAPER

Q1

"Points of Single Contact" would fail to deliver in Ireland unless they are entirely independent of the respective professional bodies. An informed analysis of Ireland's Experience Report readily shows the level of ambiguity commonly adopted to ensure that control is not diluted by mere honesty.

Q2

It should be made a duty of each Competent Authority to declare to the EC, shortly after appointment:-

- a) That the State transposition legislation has been examined by the authority and found to be in full accord with the requirements of the Directive(s);
- b) That the State transposition legislation has been examined by the authority and found to be in full accord with the spirit and intent of the Directive(s);
- c) That the State transposition legislation does not indulge in "gold-plating" nor, through any other means, does it tend to the creation of a Closed Shop or private Monopoly;
- d) That the recognition charges are appropriate.

The need for declarations such as these before a Competent Authority commences its duties (or indeed before it is recognised by the EC) would encourage additional diligence in the drafting of State transposition legislation and might avoid inexcusable difficulties from arising.

Q3

I have not examined the Code of Conduct and can make no specific comment. (I did not know of its existence before now.)

I suggest that it be made a first duty of each Competent Authority to inform its constituency (stakeholders) that there is a Code of Conduct and that there is an independent Contact Point.

Q4, 5 & 6

I understand that the removal of barriers to access is a central purpose of the Directive. Rules about compensation measures, aptitude tests, etc must therefore not raise higher barriers than they are intended to remove. Presumably that is your measure for deciding on the adoption of any additional bureaucratic control.

I feel more account might be taken of market responses and market common sense. For example, is there a need to say anything about language skills in the case of salaried staff i.e. where the employer is surely bound to make a commercially sensible decision? Shouldn't the holding of appropriate Professional Indemnity Insurance by the self-employed be recognised as evidence of market acceptability?

Q7

Yes, of course it is necessary to facilitate mobility for undergraduates. Consider creating an EU title that applies to migrant undergraduates and erect as few barriers to their movement as possible. (European Student Butcher/Baker/Candlestick Maker).

Q8

This needs to be regarded as being part of formal education, not access into a profession. Accordingly it can be left as a matter for the student's college to decide upon e.g. by way of the home school's own list of accredited places of work abroad.

Q9 & 10 = blank

Q11

I support the objectives of a European Professional Card.

Speed up recognition = Of course.

Increase transparency = Yes.

Forge closer co-operation = This admirable outcome depends upon willingness between the parties.

Q12

Proposed features = Yes

Q13

Essential for it to be readily checked in the host State e.g. by matching against an internet accessible, official record. Also essential that it contains only the minimum personal data required for the specific purpose alone i.e. that the person named is authorised to use the professional title "European Registered Architect" and is authorised to perform the functions of an architect in accordance with the laws of the Host State. It should not become an Identity Card. Proof of identity should be left to established, separate means.

Q14

Passport implies that there are national barriers to be crossed. It also suggests necessity, like a work permit, whereas it's intended as a convenience and evidence of a right rather than a licence.

However, Professional Passport is kind of snappy in English.

Personally I am against the use of "Professional" in this portmanteau way (as is the case in the Directive itself). I'd be happier with "Europe Business Card". I think it's true that visiting or business cards are now offered by many categories of workers, not just those "in business" – academics, tradespeople, craftworkers, artists, sportsmen/women, civil servants, healthcare workers, priests, MEPs, etc.

Q15

I feel that European curricula may prove troublesome if they over-ride essential local/national considerations. These can be justified in different ways e.g. topography, climate, population density/dispersal, cross boundary trade with non-EU States, non-regulated professions. In addition, Ireland cannot be alone in having influential vested interests anxious for self-promotion rather than perceived demotion under a European procedure such as this.

Q16

In Ireland the regulation of professions is officially justified on the grounds of enhancing consumer protection. Of course its effects in architecture are to protect the profession and to enrich/empower the registration body.

Enhanced consumer protection could be more surely provided if there was a single competent authority and single registrar for all construction professionals in the State. This is realistic because the duties of the different construction professionals to consumers/the public are, after all, alike.

On the other hand there remains the question of whether regulation is actually beneficial to the public. George Bernard Shaw's observation that "All professions are a conspiracy against the laity" remains appealing. The case against the regulation of architects is admirably put in this Wikipedia article by Ian Salisbury and titled 'Architects registration in the United Kingdom'. Although about the long-established UK system, its arguments are readily transposed to Ireland and elsewhere.

In relation to statutory protection of title, three aspects of the field in which architects practise invite examination. In summary:

The design quality of the built environment: This is essentially a cultural concern which was and remains one of the principal reasons for the formation and continuance of the Royal Institute of British Architects as a chartered body. It has connotations not only for the United Kingdom but worldwide. It is beyond the ambit of statutory protection of title.

The technical sufficiency of buildings: The public interest is secured in the United Kingdom under building regulations and other enactments. This too is beyond the statutory protection of the title 'architect'.

The business of architectural practice: Contracts of engagement for professional services are always between a business entity (whether individual, firm, partnership, or company) and the client, and are governed by the general

law, including consumer protection legislation where applicable. Protection of the title 'architect' for business entities is of no practical relevance for securing the performance of architectural services.

In the light of experience since the inception of the register under the 1931 Act, and more particularly under the Architects Registration Board's regime from 1997, the recurring question has been whether protection of title serves useful purposes in respect of the three aspects mentioned above.

Q17

Yes, especially if the services being rendered relate to a single, visiting consumer and if consumer redress is not compromised.

Q18, 19 & 20 = blank

Q21 = blank

Q22

I am aware that the Bologna process is being used to improve protectionism in the profession of architecture. The moves include inflation of academic qualifications, which as we know means dilution of otherwise higher awards and automatic elevation of all participants as the bottom-line is raised i.e. higher salaries and pensions and grander titles for regulators and professional administrators.

The growing emphasis on academic standards, which includes the supposed measure of outcomes (which is inevitably achieved on a pedantic, academic basis) is harmful to a profession where working experience, perception and self-discipline should be promoted on the one hand and the actual requirements of the real market given prominence on the other.

Q23 & 24 = blank

Q25 & 26 = blank

Q27

No, I see no need whatsoever, unless there is a wish to create new barriers and new difficulties (in regard to States where the profession is not regulated by special statute).

I will point out that there is no qualitative assessment in regard to CPD - in Ireland at any rate. Here, 10% of the annual quota of points was awarded by the Registration Body itself last year for attending a single political lobbying training session against a Bill to improve access into the profession. Statutory CPD is a money-spinner and, as regards migrant professionals, it is an additional tool for exclusion.

Statutory CPD, as opposed to the voluntary CPD that (architecture) professionals are inevitably engaged in, is a modern day device for endorsing George Bernard Shaw's observation that "All professions are a conspiracy against the laity".

Q28 & 29 = blank

Q30

In Ireland there is a blanket requirement for knowledge of language by migrants - BCA 2007 S15(2). This appears to stand in contradiction to the EC expectation that "language requirements should be justified and proportionate".

It is very important to recognise that the practice of architecture in its totality does not lend itself to instant transference from one country to another. Thus when we make rules for migration we must configure a regime which facilitates access into the Host State for those whose skills are inevitably incomplete upon arrival – regardless of language skills and regardless of professional qualifications. We must accept that the individual will temper his/her endeavours in the Host State, and/or will seek assistance from local professionals and/or will find that the market devises pragmatic constraints on the migrant professional's scope of work.

Therefore I see every good reason for ensuring that language requirements are justified and proportionate to the individual's anticipated scope and not, as presently given under Irish Law, as "a knowledge of language necessary for practising architecture in the State". This is an example of gold-plating of the Directive for the purpose of greater control by the non-independent Registration Body.end