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**List of questions
submitted by members of the Public for Europe Day
and
corresponding answers from
Departments/Organisations**

**Considered by the Joint Committee on European
Affairs
at its meeting on 12th July 2007**

Re: Architects Directive 85/384/EEC and subsequent amalgamation of the relevant sectoral directives including architects into one directive.

Dear Sirs, I am a fully qualified architect as determined by the Irish Department of the Environment, Heritage and Local Government - the Competent Authority for Architects EU Directive in Ireland. The Royal Institute of the Architects in Ireland (RIAI) are a professional architectural institute and have been included in this directive even though c. 20% of its members when it was introduced in 1985 had no academic qualifications - just like some members in the United Kingdom and the Netherlands. I am an architect have been seriously discriminated against over the past 21 years by the EU and part by the Irish Government by not being included in this directive (85/384/EEC) when I should have been included. My legal rights as an architect and as an Irish and European citizen have been very seriously trampled on by vested interests, i.e. the RIAI, the European Union etc, plus Irish Government. I demand a full explanation and full compensation, etc, etc, for not being included. I regard the E.U. as some sort of a club / mafia who look after certain influential persons / corporations. professional institutes, etc, with no regard for fair play. As a qualified Architect I demand at this late stage (21 years on) a full explanation - no guff, bluff, or side stepping please, this very important issue, I am fully entitled by law to be included in the Architects Directive, so that I can have all the benefits of Irish and European law in this matter. Please reply.

Reply received from the Dept. of Environment & Local Government

Architects Directive (85/384/EEC)

The content of a Directive is primarily a matter for the EU. Initiation of any amendment of a Directive is primarily a matter for the EU Commission

Directive 85/384/EEC of 10 June 1985 provides for the mutual recognition of diplomas, certificates, and other evidence of formal qualifications in architecture. This allows persons with specified qualifications in architecture the right to practice in other EU Member States where the profession is regulated by law.

The Irish qualifications specified in the Architects Directive are:

- Degree in Architecture from National University of Ireland (NUI);
- Diploma in Architecture awarded by Dublin Institute of Technology (DIT), Bolton Street;
- Associate or Member of the Royal Institute of Architects of Ireland (RIAI).

Implementation in Ireland

Regulations implementing the Architects Directive in Ireland were made in 1989 by the Minister for the Environment, Heritage and Local Government

Current Position in Ireland

At present, neither the *title* nor the *function* of architect are regulated in Ireland.

Accordingly, recognition under the EU Architect's Directive (85/384/EEC) is not necessary for Irish (or overseas) architects seeking to establish or supply architectural services in *Ireland*.

The recognition criteria of the Directive only apply where Irish Architects wish to establish themselves or to provide architectural services in *another EU Member State* where the profession is regulated (e.g. UK).

Proposed Amendment to Architects Directive

A draft amendment to the Architects Directive was submitted by DOE/HLG to the EU Commission in 1990. The draft amendment sought to extend recognition under the Directive to certain Irish architects whose established right to practice was overlooked when the Directive was being negotiated.

Pending a decision on the draft amendment, a Circular Letter was issued by DEHLG in 1993 to all Local Authorities, Semi-State Bodies and Financial Institutions requesting them not to discriminate against architects in domestic practice without the qualifications listed in the Architects Directive.

There are 170 architects who would have benefited from the proposed amendment and whose names are on a List (which is known as the "Ministers List") compiled by an Advisory Panel, established in 1996 by the Minister for the Environment, Heritage and Local Government and comprising:

- (1) members of the Irish Architects Society (IAS), Architects and Surveyors Institute (ASI), and Association of Building Engineers (ABE); and
- (2) architects who, on the basis of their education/ training and practical experience /portfolio, had been assessed as suitable by the Panel

A copy of the Minister's List is available in the Oireachtas Library

The proposed amendment was ultimately rejected by the European Parliament and Council of Ministers in 2000.

Proposed Domestic Registration System

The proposed **Building Control Bill 2005**, which is scheduled for Committee Stage in Dail Eireann on 28 June 2006, provides for the registration and statutory protection of the title of "architect".

The proposed Bill will provide for the domestic registration of –

- (i) Architects with qualifications listed under the EU Directive 85/384/EEC (now incorporated in Directive 2005/36/EC of 7 September 2005);
- (ii) Architects (170) included in the "Ministers List" compiled in 1996;
- (iii) Architects with at least 10 years practical experience who are determined as eligible for registration by a proposed Technical Assessment Board (TAB). The TAB is expected to take into account the relevant education, training, experience, portfolio of work done (or substantially contributed to) of applicants for registration.

Architects refused registration will have a right to appeal to (a) an Appeals Board; and (b) the High Court

All registered architects will have the legal right (but will not be required) to become members of the RIAI, following registration. These who exercise this right will automatically gain recognition under the EU Architects Directive, for the purposes of practising in other EU Member States.

Recognition under Architect's Directive 384/85

Reply received from the Dept. of Education & Science

I wish to refer to the complaint you received regarding the non inclusion of an individual under the Architect's Directive. You will be aware from the material supplied by the D/Environment Heritage and Local Government, which now has responsibility for the Architect's Directive, that the issue refers to practice in the EU as an architect, rather than practice in Ireland, where the profession is not currently regulated. This issue has been the subject of protracted correspondence over a long period, and I enclose a note on the matter.

In summary, the core issues are that

The person concerned is not eligible for recognition as an architect under the qualifications criteria set out in the Directive as he does not meet the minimum criteria of having a higher education qualification in this area of 4 years duration.

The acquired rights aspect of the Directive for those with less than the minimum qualifications apply only in Member States where the profession is regulated and where the designated competent body is in a position to attest to competence.

Ireland is unique in not regulating the profession under domestic law. While the question of registration has been mooted as far back as the 1970s, the Building Control Bill providing a framework for the regulation of the title of architect was only published on 22 December 2005.

If the person concerned were admitted to membership or associate membership of the RIAI, he would become eligible under the Directive. The RIAI is not prepared to admit at present those who do not have the minimum qualifications specified under the Directive, but will do so in the context of a regulatory regime. They cannot be compelled to do so in the interim in the absence of legislation regulating the profession.

The qualifications of members of other professional bodies were not overlooked when the Directive was being negotiated. They were deliberately not included on the basis that they were not considered eligible for appointment to public sector contracts in Ireland or the UK.

Attempts to resolve this through the medium of the Directive failed, and the Commission was strongly of the view that the solution lay in Ireland's own hands through introducing legislation to regulate the profession

This issue has been the subject of representation from the 1980s to the present day, and the professional bodies were active in this process prior to the implementation of the Directive and thereafter. The position has been explained fully to the complainant but he is understandably dissatisfied and continues to press the matter. The framework set out in the recently published Building Control Bill has the potential to resolve the issue.

The Department of Environment, Heritage and Local Government has responsibility for the Directive 384/85 and this has been the case since early 1987. The Department of Education and Science was responsible for determining qualifications in the lead up to the adoption of the Directive on Architects, and did so in the context of inter-departmental consultations with D/Environment and D/Foreign Affairs. The Directive did provide for the inclusion of persons with less than the minimum qualifications, but only in the context of a regulatory regime where a designated competent authority with a function under law. Regulation or administrative procedure would be in a position to certify competence. At the heart of the difficulty is that Ireland did not have such a regime in place.

Note on recognition of qualifications as an Architect for purposes of access to work in other Member States under the EU Directives on Mutual Recognition of Qualifications.

1 Background

The Department of Education and Science has an overall role in co-ordinating the implementation of the EU Directives on Mutual Recognition of Qualifications under the General System, and in negotiations on these issues at EU level. There are also sectoral directives which fall within the remit of other Departments. More recently a composite Directive 2005/36 has been agreed which replaces the Directives in this case. The new composite Directive was adapted on 30 September 2005 and will fall to be implemented by 20 October 2007.

A proposal for an EU Directive for architects was first mooted in 1967 and was not adopted until June 1985. During that time much of the debate focused on resistance to accepting the German qualifications of 3 years vocational training plus supervised practice, on the basis that this was lower than the norm prevalent across the EU of 4-5 years higher education followed by examinations in addition to practical experience.

Prior to joining the EEC Ireland's involvement in the Directive was handled by the Department of Local Government, but the issue of qualifications (and the Directive) was transferred to the Department of Education in 1974, and remained in this Department until June 1986. At that stage the Department of Labour assumed responsibility, and responsibility for the implementation of the Architect's Directive was handed over to the Department of the Environment in early 1987.

2 Regulation of title of architect, 1970s

In a separate development, the Department of Industry and Commerce had been dealing for some time with the domestic question of legislation to provide for the registration of the title of Architect in Ireland. However the Minister for Industry and Commerce wrote to Education and Environment Ministers in 1979 indicating that he was abandoning his efforts to reach

agreement on a scheme. He stated :

Some progress was made in devising a scheme but following consultation with other departments and in the light of certain feedback from the smaller bodies representing Architects, it was decided that the scheme proposed was fraught with difficulties. The RIAI (Royal Institute of Architects in Ireland – the largest professional body representing the sector in Ireland) were informed that difficulties had arisen with the type of scheme envisaged by them and suggestions were made by my Department to the RIAI about tackling the matter in a manner considered to be more acceptable. These suggestions did not however prove acceptable to the RIAI.

3 Qualifications proposed for inclusion in EU Directive

In the negotiations which were ongoing at EU level on a Directive for Architects at that time (late 70s, 1980) , the qualifications recommended for recognition were

The degree of Bachelor of Architecture awarded by the National university of Ireland

(B.Arch.NUI) to architecture graduates of University College Dublin

The diploma of degree standard in architecture awarded by the college of Technology Bolton St, Dublin (Dipl. Arch.

The Certification of Associateship of the Royal Institute of Architects of Ireland (ARIAI)

The Certificate of Membership of the Royal institute of Architects of Ireland (MRIAII))

There are records on file at that time indicating that there were complaints from the Irish Architects Society, representing approximately 100 architects, and the Incorporated Association of Architects and Surveyors on the grounds that their membership was not listed among the qualifications for Ireland in the draft text of the Directive. A note for the Minister prepared in 1980 indicated that the Irish Architects Society had been asked repeatedly for information on the qualifications of members but had not provided this, (further data indicates they were asked again in mid 1980, 1981, 1982 and 1983) and that the qualifications of the Incorporated Association of Architects and Surveyors had not been included on the basis that they were not recognised for appointment by the Civil Service and Local Appointments Commission, nor was the parent body in the UK recognised by the British Civil Service Commission. The note for the Minister highlighted that there was unlikely to be agreement on this issue in Ireland given the difficulties the Minister for Industry and Commerce and Energy had already experienced in reaching agreement in regard to domestic legislation. The file records interaction with UCD, Bolton St, the Incorporated Association of Architects and Surveyors and the Irish Architect's Society in regard to the text of the Draft Directive, and the Department of the Environment..

Throughout the late 70s and early 1980s complaints continued to be received about the non inclusion of qualifications of these bodies. D/Foreign Affairs had been briefed on the issue also. During the Italian Presidency (January to June 1985) discussions at Coreper level (Foreign Affairs counsellors) progressed rapidly at short notice within a constrained timescale and agreement on the Architect's Directive was reached at the last meeting under the Italian Presidency in June 1985. Ireland resisted agreement because considerable domestic difficulty was foreseen, but agreed after being politically isolated on the issue. The rationale for inclusion of the qualifications listed in the Directive 384/85 for Ireland was explained by the Department of Education's Chief Architect as follows:-

"The qualifications put forward, and the qualifications as listed in the Directive are the only qualifications which met and meet the conditions of the Directive they are the only qualifications recognised by the State – the school academic qualifications are the only ones emanating from third level bodies approved by this Department and the four listed are the only ones recognised by the Civil Service Commission for posts as a qualified architect in the public service."

4 Directive 384/85

This is a sectoral Directive which sets the minimum qualifications for the profession of architect in Member States which regulate that profession. Articles 3 and 4 set these standards generally as requiring a minimum of 4 years university level training or equivalent in the field of architecture which meet a range of criteria in terms of content. The Directive lists the specific qualifications which will automatically be recognised for the profession of architect and for Ireland, lists the qualifications set out above. There are special provisions for the recognition of training in Germany. There are also special arrangements under Article 11 for architects over 40 years of age in the Netherlands who had pursued the activities of architect for at least 5 years prior to the date of entry into force of the Directive, the nature of which guarantee in accordance with Netherlands requirements that they are competent to pursue those activities. The Netherlands regulated the profession and had competent authorities in place.

Article 12 provides for acquired rights for persons who had practiced as architects for at least 3 of the preceding 5 years where there were

“Certificates issued to nationals in Member States in which there are regulations at the time of notification of this Directive governing the taking up and pursuit of the activities ...under the professional title of architect”

“Certificates issued to nationals by Member States which between the time of notification and implementation of the Directive introduce regulations governing the taking up and pursuit of the activities ...under the professional title of architect”

authorising them to bear the title of architect.

However, Ireland has not regulated the title of architect, so in practice the acquired rights under Article 12 could not be applied.

It should be noted that the Directives on recognition of professional qualifications provide for a competent authority for making decisions on the recognition of qualifications. Decisions of that body can be challenged in the High Court, and appeals can also be taken through the EU procedures. It is the norm for a member State to designate a single professional body for this purpose, and it was not surprising given the relative memberships of the different bodies, that the RIAI should have been designated as a competent authority in this case.

5 SI 15/1989

On 24th January 1989 the Minister for the Environment introduced (SI 15/1989) regulations designating the Minister for the Environment (Article 5) as the competent authority for communications with the Commission and/or other Member States regarding lists of eligible qualifications and awarding establishments, as well as actions and communications in regard to serious issues of concern governing rights to practice and the good character of persons. Under Article 6, NUI, College of Technology Bolton St and the Royal Institute of Architects in Ireland were designated as the competent authorities for the purpose of issuing certificates that the holders have qualifications in compliance with the Directive. However, there is no legislation regulating the title of Architect, and, in practice, the bodies mentioned in Article 6 carry out the functions listed in relation to their own graduates or members/associate members.

6 High Court Case 1987/88

3 Members of the Irish Architects Society took a High Court case applying for an order of Mandamus requiring the Minister for the Environment to make regulations under Article 12 of the Directive entitling them to recognition as architects. The 3 persons concerned had considerable experience but no formal qualifications. The case was heard on 10 and 11 December 1987 and judgement was given on 10 May 1988. The ruling was that an order of Mandamus could not be made, and that Article 12 of the Directive was not relevant as there was no legislation governing the title or qualifications for architect in Ireland.

7 Fair Trade Commission – Report of a Study of restrictions in the Professions -- Architects, Surveyors, Auctioneers and Valuers

There is no date on this report, although it refers in the text to developments which occurred in December 1988, so a date of 1989 is assumed. As part of its programme of ongoing work, the Commission on 31 March 1987 advertised its intention to review the professions of architects, surveyors, auctioneers and valuers, including the issue of education, training and other requirements for admission to the professions, and invited submissions on the issue. Chapter 3 sets out the various professional bodies for architecture and Chapter 4 sets out the qualifications. Chapter 6 deals with the EU Directive on Architects.

It will be seen that 4 major bodies are listed for architects :-

RIAI – Royal Institute of Architects of Ireland – founded in 1839 with 1016 members, entry to which was governed by a requirement to pass the final examination of a 5 year full time course in architecture in a recognised school, or the final examination of RIAI after 3 years training : a minimum of 2 years professional practice and a post graduate examination in professional practice based on a published syllabus.

Irish Architects Society (IAS) – founded in 1964 with 101 members, entry to which was open to those teaching or practicing architecture who satisfied the Council as to their qualifications. From 1979 onwards entry was confined to recognised degree or diploma holders with 5 years post graduate practice. Candidates were required to present their work for scrutiny. Membership included architects employed in the Statutory sector.

The Faculty of Architects and Surveyors (FAS), a UK professional body with an Irish branch which was established in 1958 and had 22 architect members, 3 of whom were registered with the Architect's Registration Council of the United Kingdom. (ARCUK). Entry to FAS was on the basis of scrutiny of the degree of training, if any, and experience together with presentation of examples of work, and an oral examination. Alternatively, candidates could do the UK ARCUK exams. In the implementation of the Directive in the UK, the qualifications of Architects registered with ARCUK are recognised.

The incorporated Association of Architects and Surveyors (IAAS) – a UK based body the Irish branch of which was formed in 1964 with 58 corporate and 17 non corporate Irish members across a range of professions in the construction sector. The corporate sector is quoted as having 20 architects. The number of non corporate architects is not stated. Admission was by way of IAAS examinations, with exemptions for recognised degree or diploma holders, and those holding ARCUK registration. Paragraph 3.18 of the report infers that it was possible for graduates (presumably of other disciplines) to be admitted to the IAAS examinations and to corporate membership in advance of professionally qualifying in the discipline.

FAS argued that RIAI had been given favoured status in the Directive on the basis that representatives of their organisation were not nominated (by D//Education) as experts on the EU Advisory Committee on Education and training for the Directive. IAS argued that Netherlands had succeeded in including members over 40 with no qualifications in Article 11 of the Directive and there was no reason why Ireland should not have done the same. All the

organisations felt the profession needed to be regulated in Ireland. RIAI highlighted that Ireland was alone in the EU in not doing so. RIAI indicated that FAS UK members were eligible under the Directive only on the basis of ARCUK registration. The UCD representative (who was a member of the EU Expert Advisory Committee) considered that the credentials of the bodies other than the RIAI might not have been approved by the EU Committee even had their Court action been successful

Both the Departments of Environment and Education insisted that bodies other than RIAI had been consulted in the development of the Directive.

The Report concluded it was "*likely that the non inclusion of any of the architect members of the above bodies has been unfair and unjust*" It recommended that proposals be put forward to the Commission to have additional persons recognised and suggested 4 possible approaches – inclusion as members or associate members of RIAI, introduction of a registration system in Ireland, insertion of a clause in the Directive similar to that of the Netherlands, or recognition of the membership of some or all of the bodies not recognised. Any assessment process should be fair and transparent and should include academics, RIAI nominees, and distinguished lay persons. If the persons concerned could not be included under the Directive, an Irish registration system should be introduced..

8 Amendment Sought to EU Directive

Ireland (D/Environment) sought in 1990 an amendment to the Architect's Directive to include a clause allowing for recognition where the competent authority gives a certificate indicating that the person had, for a period of 5 years before the Directive, *pursued architectural activities the nature and importance of which in the opinion of the competent authorities give that person an established right to pursue those activities*. This was lobbied strongly against by the RIAI and the EU bodies. This was overwhelmingly defeated on 5 July 2000 with only 25/30 votes in favour of 556 MEPs present.. The amendment had been sought by the Department of the Environment "*to protect the right of practice of certain architects whose established right to practice was overlooked when the Directive was being negotiated.*" The Department used this phrase throughout the 1990s in correspondence on the issue with various professional bodies, individuals and Dail Deputies on the issue.

The Commission opposed the request on the grounds that the solution to the problem was already available in terms of the Irish system, and that the Irish authorities could introduce a system of registration for the professional title of Architect. It stated furthermore that the persons concerned were not overlooked in 1985 but instead were knowingly not included on the list of Irish acquired rights. The Commission also cited the High Court ruling in May 1988 which rejected the claim for redress by 3 members of one of the other professional bodies in a similar situation.

9 Panel to review qualifications

In the context of the amendment to the EU Directive being sought by Ireland, the Minister for the Environment and Local Government established a panel in 1996 to review the qualifications of c170 architects who would have been covered by the amendment sought to the Directive.

The Report of the Sub Committee (Architect's Directive Review Panel) considered the entry criteria of the Architect's and Surveyors Institute operable on 10 June 1980 and concluded they were satisfactory vis a vis the proposed amendment to the Directive, and "*that persons who were members of the Institute prior to 10 June 1985 with the requisite 5 years experience should have the protection of the Directive*"

A Circular letter was issued by the Department of the Environment to all local authorities, semi State bodies, and financial institutions urging them not to discriminate against these architects in the practice of the profession, and indicating that the names of the persons approved by the

Panel could be verified on contacting the D/Environment on a case by case basis. The full list of architects approved by the panel has never been circulated, as the information is regarded as confidential. The list became known as “the Minister’s List”.

It is on the basis of inclusion on the Minister’s list that the complainant asserts that he is a qualified architect.

10 Consolidated Directive 2005/36.

On the basis of commitments in the EU Action Plan on Skills and Mobility the Commission presented proposals in 2002 for a consolidated directive on Mutual Recognition of Qualifications. This was to include in a single directive the terms and conditions which were spread over 15 different directives, to make explicit issues of case law which had emerged in the implementation of the Directive, to liberalise trans frontier access to temporary services, and to streamline administrative arrangements in the context of EU enlargement. The D/Education and Science was responsible for representing Ireland in the EU Working Group on Diplomas and for chairing that committee during the Irish Presidency. Political agreement on the Directive was achieved during the Irish Presidency. The Irish position was informed by (a) seminars and consultations with the designated professional bodies, (b) an inter-Departmental Group which included the D/Environment, and an informal Government Decision relating to the critical element (liberalisation of temporary services) of the Directive.

The complainant has argued that the Department of Education and Science was negligent in not using this opportunity to pursue again the inclusion in the text of the Directive of an amendment to provide for acquired rights for those on the Panel list. Such an amendment was not sought on the grounds that

- The Directive was a consolidation exercise, not one where new measures were being negotiated. It did not present the opportunity for re-negotiation.
- There was no reason to deduce that the amendment which was overwhelmingly rejected in 2000 would have had any prospect of success,
- The Directive already provides for rights for members of RIAI. Admission to the RIAI would therefore solve the problem
- The Building Control Bill planned to copper fasten right of registration for those assessed under the 1996 Panel.

Indeed, the inter-Departmental Committee had not sought any adjustments to the Directive in this respect when the negotiations were under way over the period 2002-2004.

The RIAI had signalled to D/Environment that it was prepared to admit to membership the 170 persons approved by the Panel, if the amendment to the Directive were approved i.e. if there was a legal provision justifying their departure from the long established criteria regarding 5 years approved higher education, or 3 years approved higher education plus RIAI examinations. However, when the amendment was defeated, they were unwilling to do so, but signalled they would do so when the Building Control Bill was enacted. Applications for membership were invited and held on file, pending the implementation of the planned legislation.

It should be noted that, on foot of EU case law, Article 10 of Directive 2005/36 requires that where a person holds a qualification which is not listed in the sectoral aspects of the Directive, the competent authority is required to examine all their qualifications and experience to determine whether it would be deemed equivalent. However, the minimum criteria for architects, apart from the exceptions provided for in the Directive, require 4 years higher

education in the field of architecture. Applying the principles of the General system would not guarantee eligibility of Mr Lynch under the Directive either.

The Department of Education and Science took up directly with the RIAI its stance on admission to membership Mr Lynch.. The RIAI responded that it admits to membership only those qualified under the EU Directive, that a significant change in entry standards would require the agreement of the general membership and it was difficult to envisage this being secured in the absence of a comprehensive solution, and that "*the generally unsatisfactory nature of the assessment process would certainly lead to other persons in the same category seeking membership which would lead to legal challenges and possible diminution of the credibility of the EU internationally recognised affix MRIAI.*" It was also pointed out that the 3 organisations concerned, as UK organisations, could have sought recognition of their qualifications under the UK provisions of the Directive but did not do so.

The complainant has had sustained contact on his case over a period of years with the D/Environment, and more recently with the D/Education. He has been informed on numerous occasions that the solution to the problem lies with the enactment of the Building Control Bill. The main difficulty is that the Bill has been in gestation for a considerable period.

11 Building Control Bill

The Building Control Bill was published on 22 December 2005. It proposes the regulation of the title of architect, with the RIAI being the registration body under Section 10. Section 11 provides for registration of persons with the requisite qualifications under the EU Directive, but Section 11(2)(d) provides for the inclusion of those approved on the "Minister's List". This should resolve the problem when the Bill is enacted. Section 11.3 provides that such persons will be eligible for membership of the registration body, which in turn will grant EU recognition under the Directive.

The complainant has recently alleged that some 20% of the members of RIAI at the time of the Directive being agreed, did not hold the requisite academic qualifications either, and they were therefore no different from the members of the other professional bodies for the sector. However they, as members of RIAI were eligible for EU recognition under the terms of the Directive, while his members were not. This is being investigated at present.

Reply received from the Dept. of Enterprise, Trade & Employment

(In relation to question 2, both the draft Services Directive and Directive 2005/36 on the recognition of professional qualifications, which is not the responsibility of this Department, cover architects. The Services Directive will cover the right of service providers to establish in another Member State or to provide services to another Member State without being established there. The Professional Qualifications Directive deals with the recognition of qualifications across EU borders. Both Directives, when implemented by the Member States, will operate side by side.)