

Evaluating the Professional Qualifications Directive
Experience reports from competent authorities
(ARCHITECTS): Response from the RIAI, Ireland

This questionnaire does not need to be answered in full, and respondents are welcome to address topics not included in the questions. The purpose of the questionnaire is to prompt the experience reports which are a key part of the fact-finding phase of the evaluation.

A. RECOGNITION PROCEDURE IN CASE OF MIGRATION ON A PERMANENT BASIS

1. (a) Do you accept applications from EU citizens for the recognition of foreign diplomas sent by email or requests made on line? (b) Under which conditions can they send documents and declarations electronically? (c) What are your experiences in this respect?
 - a) Elements of the submission can be made online, primarily using PDF documents
 - b) Documents that must be provided in the original are generally not accepted online, however, the majority of supporting documentation can be issued electronically.
 - c) It is important to be flexible and occasionally innovative to ensure timely decision making and to avoid adverse effects on applicants.

2. What is the yearly number of applications for recognition from 2000 to 2009? Please submit specific data for applications for automatic recognition based on diplomas, automatic recognition based on acquired rights (as from 2005), and recognition based on the general system¹. Please verify first the data in the Regulated Professions Database.

See appendix 1

3. (a) To what extent have the system of automatic recognition and the general system been a success? (b) How do you see the costs and benefits? Specify in particular whether automatic recognition based on diploma, Annex V and the current notification system represent an efficient way to facilitate automatic recognition. Please submit comments for:
 - automatic recognition based on diploma – automatic recognition based on the diploma and Annex V provision works very well. The process is relatively smooth and straightforward. The only real area where problems may arise, but have not to date, is where qualifications already awarded to graduates have not yet been included in the Annex. This is only a potential problem and has not yet arisen for the RIAI when recognising applicants' qualifications.
 - automatic recognition based on acquired rights (Art. 49 – Annex VI) – Recognition based on Annex VI has not presented any significant problems to date. Occasionally provision of certification to reflect the Article 49 derogation, for example graduates of the German fachschulen, causes problems where the time worked cannot be easily certified or delays arise. The differences between Annex V and Annex VI occasionally cause confusion but not material problems.

¹ Please provide this information unless it has already been provided to the Commission in the Database or the implementation reports.

- recognition based on the general system. To date there have been no applications from EU nationals for recognition under the general system. There have been expressions of interest from a small number of potential candidates, but the requirement for an attestation of competence from the home state could not be met in each case. Regulation, in the form of protection of title, is recent in Ireland and a small number of individuals who did not meet the basic requirements for recognition in the home State and who came to Ireland to practice because the profession was unregulated cannot now avail of the general system because of the attestation of competence issue. Systems for a combination of assessment and recognition of prior learning, combined with a minimum period in practice (7 years at the level of an architect) are available to these individuals for the purposes of registration in Ireland. Those practising in Ireland for then or more years before 1 May 2008 can also apply through 'Technical Assessment' which is a submission based assessment of work done and competencies demonstrated (Article 46)

4. (a) Is the general system applied in your country each time the conditions for automatic recognition are not met? (b) What are in your view "specific and exceptional reasons" as provided in Art. 10 (1)? (c) Are there major difficulties in the recognition procedure under the general system (e. g. burden of proof)? Please include any comments you may have on the implementation of compensation measures.

The number of EU nationals seeking recognition in Ireland has declined rapidly as a result of economic conditions. This drop coincided with the implementation of the Directive and as a result there have been no valid applications for recognition under the general system, the attestation of competence from the home state being the key stumbling block. As noted, there are alternative mechanisms in place for such individuals who have established in Ireland without qualifications or recognition in the home State.

The only potential example of 'specific and exceptional reasons' experienced to date was a case where the academic programme had allegedly been advertised as being in the process of recognition in the home state and of inclusion in the Architects Directive but this did not happen (nationally or at EU level). In this case the attestation of competence was not forthcoming and meant that the application could not proceed anyway. If the home State authorities and the applicant had found a remedy to the academic qualification problem and the authorities had provided an attestation of competence on that basis then an application could have been considered under the general system.

The key problem anticipated with the general system, as transposed under Irish law, is the requirement in the legislation (Section 16, Building Control Act 2007) to register, under the general system, an applicant who has not yet completed the Article 14 compensation measures when they are required. As the register is intended for consumer protection the legal requirements to register such applicants as architects prior to final confirmation or completion of compensation appears contrary to the principles underlying regulation and indeed the mutual trust required under the Directive that the 'certifying State' has confirmed competence.

Significant work is also anticipated in the formulation of aptitude testing as it must be tailored to the individual's experience, which is a detailed and expert task. The adaptation period also requires significant input. It is also dependent on the availability of work placements which are not under the control of the Competent Authority or within its capacity to provide.

The key problem with the general system is that it does not restrict itself to recognition of cognate, non-recognised qualifications. It extends to such qualifications at a significantly lower level than is required for the purposes of automatic recognition. The system must therefore deal with qualifications which have not been reviewed or passed by the Commissions' experts and which may be at a substantially lower standard than is required of those benefiting from automatic recognition. There is the safeguard that the home state must provide an attestation of competence but the system nevertheless presents significant risks to the host country and the potential clients therein, particularly in the case of Ireland where registration occurs prior to

completion of compensation measures and can be withdrawn only on failure to satisfactorily complete compensation measures. In keeping with Recital 12, measures are in place to ensure that those benefiting from registration on this basis, i.e. prior to completion of compensation measures, cannot avail of automatic recognition in other States on the basis of Irish recognition, but this does not protect the Irish consumer.

5. What is your experience with the recognition procedure for EU citizens with professional qualifications obtained in a third country and already recognised in a first Member State (see Articles 2(2) and 3(3))?

This has only occurred in one case so far where Ireland was the home state. There is one in process where Ireland is the host State. The process does not present significant difficulties based on current limited experience. It facilitates mobility and works well once all concerned are clear on the process. As this is relatively unusual thus far there tends to be a requirement for direct discussion with the other Competent Authority to ensure a clear understanding of what is required.

There have been a number of instances where non-EU nationals with non-EU qualifications have sought recognition in Ireland and, having been advised with regard to the provisions of Article 3(3), have halted the process. There is anecdotal evidence that in some cases the applicant's intention was to avoid, on the basis of recognition in Ireland, recognition procedures in the State in which they were actually operating. Advice as to the content of Articles 2(2) and 3(3) has clarified the situation.

6. Please describe the government structure of the competent authority or authorities in charge of the recognition.

The RIAI was appointed as the Registration Body and Competent Authority for architects under the terms of the Building Control Act 2007. The RIAI was a pre-existing professional body with a membership encompassing architects, graduates and architectural technicians. As part of the 'co-regulation' model there are four independent boards dealing with Admissions, Technical Assessment, Professional Conduct and Appeals established under the terms of the legislation, all have Chairs with a legal background and a majority of ministerial non-architect nominees.

The RIAI has a governing Council as well as an executive which carries out the day-to-day work relating to recognition under the guidance and review of Council.

B. TEMPORARY MOBILITY (OF A SELF-EMPLOYED OR AN EMPLOYED WORKER)

7. Are EU citizens interested in using the provisions for exercising their professional activities on a temporary and occasional basis in your Member State? How many citizens used this new system in 2008 and 2009 (per month, per year) ²?

Only limited interest has been expressed in this mode of registration, and this has only arisen with regard to competition entrants. No temporary registrations have taken place so far. This may be a result of contraction in the Irish market for architectural services.

8. How are the provisions of Directive 2005/36/EC concerning temporary mobility applied by the competent authorities in practice taking into account the relevant provisions of the Code of Conduct? For instance:

² Please provide this information unless it has already been provided to the Commission in the Database on Regulated Professions

- How is the "legal establishment" criteria foreseen by Article 5(1) (a) interpreted in practice? What conditions does a migrant need to fulfil in his home Member State in order to be able to provide services?

We have no practical experience of this as yet, however, the most obvious mode of demonstrating establishment is registration where such a system exists. Alternatives might include evidence of an office base or company registration, evidence that work is carried out in the home state on an ongoing basis.

- How are the "temporary and occasional basis" criteria foreseen by Article 5.2 interpreted in practice? Do Member States assess duration, frequency, regularity and continuity of an activity and if so according to which criteria?

Again, we have no practical experience of this, but a demonstration of the duration of work anticipated as well as the frequency of work would seem appropriate.

9. (a) Do you have a prior declaration system? (b) If so, please indicate why it is necessary? (c) What do competent authorities do with the information received? (d) Are other possibilities conceivable?

The legislation transposing Directive 2005/36/EC with regard to architects in Ireland requires that the prior declaration be provided (see Section 60, Building Control Act 2007)

C MINIMUM TRAINING REQUIREMENTS

10. To what extent are the common minimum requirements for training set out in Title III Chapter III of Directive 2005/36/EC in line with scientific progress and professional needs in the last ten years? Are the knowledge and skills outlined in Article 46 still relevant and up to date? Please specify.

The RIAI has not identified any difficulties with Article 46. All admission systems are based on a Standard of Knowledge Skill and competence setting out indicators to provide guidance on how the 11 competencies may be demonstrated. This, in effect, meant that Article 46 was reviewed in detail and stood the test well. The 11 items set out in Article 46 are sufficiently flexible and robust to protect the interests of consumers and to demonstrate the knowledge skill and competence requirements for entry to the profession while allowing for the inclusion of emerging areas of critical expertise such as sustainable design, universal design (access for those with disabilities), urban design, computer skills, cost management science etc

11. (a) How long is the duration of the training for architects under your national law? (b) In how many years do you cover all 11 items as listed in Article 46?

The academic phase of architectural formation requires a minimum of five years full-time study for a recognised award. This is followed by two years of experience and a professional level examination. There are some alternatives provided for in our legislation, including an option to gain an exemption from the professional level examination on the basis of 7 years practical experience post graduation and successful completion of an assessment of the competencies attained.

The five year degree addresses article 46 at the graduate level as set out in the Directive. The professional level qualification builds on the breadth and depth of knowledge of certain elements of Article 46 relating to practice, for example item (K). The five years of study are considered to be essential to cover the breadth and depth of Article 46 satisfactorily at the graduate level.

12. The Directive is based on mutual trust between Member States. (a) To what extent is such trust actually achieved? (b) Are training programmes accredited by external bodies in your

country? (c) Does accreditation of a training program in another Member State enhance trust or is it not relevant?

Trust is generally very good between architectural competent authorities. There is a very open environment for contact and enquiry between most CA's and extends to exploring how standards are applied and regulations implemented. This is due in so small part to the activities of the ACE (Architects Council of Europe) and, in particular, the ENACA (European Network of Architects Competent Authorities) which meets regularly as well as disseminating up to date information via email and the ENACA's website (www.enaca.eu).

In Ireland, academic programmes are 'prescribed' in legislation with the approval of the relevant Minister who has the option to consult either or both of two national agencies dealing with education. By legislation certain 'Awarding Bodies' provide academic accreditation for their own awards and others are accredited by the Higher Education Training and Awards Council. Accreditation of a programme by a reputable body enhances trust

13. (a) To what extent are the existing Directive provisions (see recital 39 and Article 22(b) on continuous professional development (continuous training) adequate? (b) Is continuous training mandatory in your country and what are the exact conditions?

The provisions made with regard to CPD (continuous training) could be more robust as it is very valuable to the maintenance of professional competence. At the very least, CPD is an established ethical obligation of architects across the EU, this obligation is increasingly extending beyond being an 'ethical requirement' with professional bodies and authorities making CPD mandatory and introducing monitoring systems. CPD is mandatory for architects in Ireland and monitored by the registration body/Competent Authority. This is provided for in the Code of Conduct as opposed to primary legislation. The requirements is forty hours of CPD per year, monitored with an online system, sanctions can include referral to the Professional Conduct Committee and potential removal from the register. The system used to monitor CPD compliance by members/registrants is also designed to deliver CPD opportunities to architects by providing information on courses (which are explicitly linked to elements of Article 46 which provides the benchmark for all CPD opportunities included in the system) and booking information as well as links to online CPD opportunities, some of which are actually developed by the RIAI itself, and the remainder of which have been audited, all are referenced to the relevant competency in Article 46.

D. ADMINISTRATIVE COOPERATION

14. To which extent does administrative cooperation, as outlined in Articles 8, 50, and 56 of the Directive, simplify procedures for the migrant professionals?

The obligation placed on Competent Authorities to carry out business in a particular manner and to co-operate is of significant benefit to migrant professionals. Experience to date suggests that co-operation between the majority of architects competent authorities would occur with or without the obligations established in the Directive, but it is important that they are there should they be needed.

15. (a) Is the competent authority in your country registered with IMI? (b) Under which circumstances does your competent authority use IMI? (c) What are your experiences? (d) If not registered, why not and what would be the conditions for changing this situation?

a) Yes, the RIAI is registered and uses the IMI

b) Most frequently to identify request handlers and experts in other member States, and also to verify details when an application for recognition presents a difficulty

c) Our experience of the IMI is positive to date, but we use it rarely

16. (a) How could a professional card (see Recital 32 of the Directive) facilitate recognition of professional qualifications and provision of temporary services? (b) Under which conditions could it be issued by professional associations?

With access to the IMI and the need for up to date information the RIAI has not, to date, identified benefits for professional recognition using a professional card. As noted above, mutual trust between competent authorities is very important and takes work to establish. Where the professional card would stand in relation to this is unclear.

17. How do you share information about suspensions/restrictions with competent authorities in other Member States?

On specific request and in writing

E. OTHER OBSERVATIONS

18. (a) How and when are the necessary language skills of migrants checked after recognition of the professional qualifications? (b) Are you aware of any complaints (especially from patients/clients/employers) about insufficient language skills of migrants? (c) If serious doubts about language skills have arisen which action do competent authorities undertake towards the migrant?

Verification of language skills is built into our registration legislation (see sections 15 and 16 of the Building Control Act 2007) and is part of the registration process, it is the final matter considered by the Admissions board having addressed recognition of the qualifications of applicants and confirmed the status of the qualifications prior to considering language.

There has been some anecdotal feedback from employers regarding capacity to engage with clients presenting a problem where language skills are low, but no formal complaints have been made.

19. Are there any considerable cost implications for the migrant? Please specify the fees involved with establishment and the fees involved with temporary services.

The annual registration charge is €490, The admission fee for establishment under automatic recognition provisions is €145. There is no fee for considering an application for recognition on a temporary and occasional basis, but Section 60 of the Building Control Act requires registration of such persons, there is only one register (by law) and there is no provision for remission of registration fees in Section 60.

20. What is your experience with training provided by franchising universities?
No significant experience to date

21. Have you encountered particular problems with non-EU nationals with qualifications listed in Annex V being treated differently to EU nationals with the same listed qualifications?

This problem has not arisen to date

22. (a) What are the experiences of (outgoing) architects from your country who (would like to) practice in another Member State? (b) Are there in particular problems if the profession of an architect is not regulated in your country? (c) What feedback do you have from incoming migrants on the assistance they have been given by their home

Competent Authority? (a general response without naming any Competent Authority in particular is expected)

No problems have been formally reported, however, with regard to outgoing migrants some problems have been encountered with making contact and establishing a process with the Competent Authority of one EEA state and there have also on occasion been issues for incoming migrants securing the necessary documentation from the Competent Authority in the Home State within a reasonable time period.

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Additional issues

The Irish transposition legislation (the Building Control Act 2007), in a marginal note (to Section 15), restricts the application of automatic recognition procedures to nationals from Member States other than Ireland. The RIAI sought legal advice on this matter and secured advice that the marginal note could be disregarded in light, among other things, of Article 1 of the Directive establishing the state of qualification as the home state. This interpretation was discussed with the Commission and is currently being applied and Irish Nationals with qualifications from other Member States can avail of the provisions for automatic recognition. However, it is the RIAI's experience that Ireland is not the only State to have had a difficulty clarifying the implications of, or processes for, upholding Article 1. This problem is reinforced by the current structure of Annex V.7.1 which appears to require that all qualifications, up to and including the accompanying certificate level, must be secured in a single State. A literal interpretation of the Annex can place a barrier in the way of individuals completing their academic and professional training across a number of States as there is no explicit provision for establishing equivalence at successive stages (where qualifications are acquired across states) or recognising Article 1 within the Annex. It would benefit professional recognition and mobility, as well as student mobility greatly if this could be addressed and resolved appropriately soon. Apart from administrative simplification this would contribute to the acquisition by individuals of architectural knowledge, skill and competence across States within the EU which would be of benefit to European architecture.

Appendix 1: Statistics

	Total Number of Applicants	Total Number of EEA Applicants	Automatic Recognition based on Diplomas Annex V.7 - 15(1)(a)	Automatic Recognition based on acquired rights as from 2005 Annex VI - 15(1)(b)	Partial Recognition (PP Exam) ³	Recognition based on General System
2000	63	Detail not available at this time	Detail not available at this time	Detail not available at this time	Detail not available at this time	0
2001	113	"	"	"	"	0
2002	137	"	"	"	"	0
2003	120	"	"	"	"	0
2004	100	"	"	"	"	0
2005	125	"	"	"	"	0
2006	133	"	"	"	"	0
2007	310	100	73	1	19	0
2008	209	24	21	1	2	0
2009	151	33	27	1	5	0

³ Indicates EU nationals with listed qualifications but without the accompanying certificate where one is required. In such cases the qualification is recognised for the purpose of access to the professional level qualification (professional practice examination) on the basis of which the applicants is registered/becomes an architect member of the RIAI