



ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

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From: ACE Secretariat
To: All Member Organisations

TA1 - Access to the Profession

Public Consultation on the Single Market Act

ACE Submission - 28th February 2011

Final

Background

What follows is the text of the submission made by the ACE on the 28th February 2011 to the Public Consultation on the Commission Proposal for a "Single Market Act".

Since the submission was lodged, further consideration has been given to question 5 and additional comments have been added in red. That means that text in red did not form part of the original ACE submission.

Meta Information

Creation date : 28-02-2011

Case Number : 657337823052005911

Introduction

Please provide us with some information about yourself:

Are you replying as: Organisation
Type of organisation: Other
Is your organisation registered in the Commission's Interest Representative Register?
Yes (Register ID number : 15914681331-83)
Name of the organisation you represent: Architects' Council of Europe
Country: Belgium
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Questions

Q.1 What is your overall assessment of the Single Market Act?

Answer: Negative

Additional explanation:

The Commission consultation on the Single Market Act (the "SMAcT") is one of a bewildering multitude of disjointed and overlapping consultations – also on related Directives, policies and on a plethora of related initiatives – mentioned in the Commission's "SMAcT" Communication of 11.11.2010. The quantity and scope of Commission consultations is too much for citizens and consumers ("the public" in Commission parlance), or even for professional and governmental bodies at national and EU levels, to respond to. If the objective had been to confuse and disable constructive public participation in Commission consultations and initiatives, such overload would be perfect. If the Commission's ad hoc and disorganised approach is instead the unintended result of its own confusion, that does not excuse the Commission distracting EU and national bodies and citizens from implementing the Professional Qualifications and Services Directives ("PQD" and "SD"), and from promoting understanding of the Directives among consumers and providers of services. The unsettling effect of the "SMAcT" is the same, regardless of what has caused the Commission to change from a systematic evidence-based evaluation of these Directives, in documents published on 22 October 2010, to an apparent deregulatory crusade which Commissioner Barnier began four days later in the Parliament in the name of "growth and jobs", surrounded by an encyclopedia of vague dogma unrelated to his own evaluations,

three years and one year (respectively) after the PQD and SD became law. Work to implement the Directives at national level is suspended to participate in the consultations, so as to resist the Commission's unsettling threat to undermine those Directives in unspecified ways. Consultation fatigue has set in, even before the many more consultations promised in the SMAct have begun. The vigorous four-month public debate promised last October simply has not happened.

Q.2 The Single Market Act proposes 50 actions: please indicate the actions you consider to be the most important (up to 10 choices possible)

Answers chosen by the ACE:

4. Internal market for services
5. Electronic commerce
33. Recognition of professional qualifications
34. Student mobility
35. Recognising skills and training
11. Energy Efficiency
13. Small Business Act review
17. Public procurement
22. E-identification/authentication
23. International trade

If you wish, you can state the reason for your choice:

Proposal 33, Recognition of professional qualifications:

The Commission's "SMAct" Communication of 11.11.2010 misunderstands why the EU is "the world's biggest importer and exporter" (p.2), and misunderstands the source of the international competitiveness which (until now) sustained this – at least so far as architectural services are concerned. The Commission says (p.3) that Europe must "work even harder on developing our skills in high-value added sectors", presumably including architectural services. Yet the Commission indicated at a Conference on 3 December 2010 that the Commission will not raise the minimum duration of training for EU architects, currently set in the Professional Qualifications Directive ("PQD") at four years, which is one year less than the actual minimum of five years across almost the entire EU, the same five years as applies under the worldwide UIA Accord of 2005 (with two years pre-registration experience). The Commission proposal (23) "to push for wider adoption of international standards" will thus exclude those for architects.

The Commission's view is regardless of the unanimous willingness of the representative bodies for the profession across the EU to agree to match that worldwide minimum. The potential (but so far not publicly declared) opposition of two big Member State governments to the five-year minimum – regardless that most of their own courses are of five years – seems to compound the Commission's implicit belief that the agenda for "**growth and jobs**" means **risking unemployment for the growing number of architects qualified to the world standard, and lowering the quality of design and related services to EU citizens, in the hope of more jobs for less qualified persons.**

Our choice of SMAct Proposal 33 is to ask **whether the Commission SMAct consultation is a political and bureaucratic smokescreen to conceal predetermined outcomes** (to it and to the concurrent PQD consultation) regardless of the following:

- a. Damage to EU consumer protection by permitting standards of architects' qualifications lower than those prevailing inside and outside the EU,
- b. The views of the profession, e.g. on the likely lack of value of a European professional architect's card (part of **Proposal 33**),
- c. EU architects' disadvantage in international trade in those services (**Proposal 23**) due to EU minimum standards lower than the world standard of 5 years training;
- d. Continued discrimination (see **Proposal 5**) against recipients of architects' services by electronic means, compared with those receiving services by telephone, post or in person from architects registered under Title II or Title III of the PQD, and subject to obligations under Chapter V (Articles 22 to 27) of the Services Directive;

- e. That a simple alteration to bring all such services into the PQD would avoid the need for a special initiative as envisaged in **Proposal 4**, at least in this area;
- f. Commission lip service to Professor Monti's view that "a single market needs to enjoy the support of all the market players: businesses, consumers and workers". Mr Tiedje The Commission showed this assumption is false in relation to architects; for him we the Commission, architects are not among the "small businesses and other creative spirits" which the November SMAAct document see as "players in the single market who need funding to innovate, increase their competitiveness and create jobs."

While the Commission says it wants "in particular to ensure greater convergence of the rules and standards in force on the different world markets", it clearly wants to do so selectively, so as to **exclude architects, for whom convergent rules and standards already exist across the world and across Member States – almost everywhere except in PQD Article 46(1) which the Commission refuses to change.**

Proposal 17, Public procurement: The evidence base of Proposal 17 is also unclear. If "cross-border procurement accounted for only around 1.5% of all public contracts awarded in 2009", does the Commission know how this statistic stands for 2010? And how much of the 1.5% (or its 2010 equivalent) reflects changes under the PQD and Services Directive? Does the 1.5% exclude services by providers established under Title III of the PQD in two or more countries, or by those temporarily located in the importing country under Title II? **If the Commission does not publish this, how can we know the impact of what it proposes under the SMAAct?** For reliable evidence to assess Proposal 17, it seems wise to wait a year (or three) to verify presumptions in the SMAAct. Proposal 17 says it will "simplify and update European rules to make the award of contracts more flexible". But the Commission surely knows that it is steep pre-qualification requirements and high bid costs imposed at national level which mainly deny small architectural practices access to this market. In any case, the ACE plans a response to the Green Paper by the April 2011 deadline.

The SMAAct consultation itself disrupts implementation of, and information provision about, the PQD and Services Directive. Does the Commission expect professional bodies and competent authorities to continue investing in infrastructure to implement the PQD and Services Directive even while the SMAAct creates uncertainty about their future forms?

Q.3 Does the Single Market Act propose appropriate measures to address the issues/challenges that are identified?

Answer: Partly

Additional explanation:

The ACE agrees that action is needed to reinforce the single market, getting it to function better, and that the SMA contains elements relating to more effective implementation of existing legislation which could be effective to this end. Given the plethora of issues raised, and the lack of clarity in setting potential priorities, it is not possible to rationally answer this question. See answer to question 1 above.

Q.4 Are there any other issues you consider should be addressed in the Single Market Act in the chapter on "Strong, sustainable and equitable growth for business"?

Answer: Yes

Which ones?

Insurance. For architects, the vast diversity of insurance regimes and liability regimes in the EU poses a real obstacle to the mobility of professionals within the EU. There is an urgent need to address this issue and to effectively put into force the weakly expressed aspirations of the Services Directive on the subject. In that Directive (Article 23) is it said that "...Member States may not require professional liability insurance or a guarantee from the provider where he (the provider) is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose and the cover it

provides ..." The experience of architects is that such requirements continue to be imposed on mobile professionals whereby they are required to have PII for each and every country in which they work.

Role of designers/specifiers in Proposals 6 and 11, Standard Setting and Energy Efficiency: Proposal 6 mentions as stakeholders "businesses, consumers and public authorities". The work of CEN in setting standards for building products is influenced more by large product manufacturers than by the skills and knowledge of architects as building designers, who specify products on behalf of business and consumer users. The problem for businesses, consumers and public authorities is firstly to achieve user-friendly (not just producer-friendly) standards under Proposal 6 "in line with technological developments". Secondly it is to ensure that finished buildings – and entire settlements – perform efficiently.

Proposal 11 mentions building renovations and the role of energy suppliers; but needs to include also the key role of designers and specifiers to help targeting and use of public funds. The "sustainable energy-supply solutions (co-generation, heating and cooling)" mentioned can only be optimised through urban design, architecture and engineering services integrated for a community or commissioning agency, as well as by better product standards.

Electronic procedures generally: Deferral until 2012 of the Commission's Proposal 22 for a Decision to ensure mutual recognition of e-identification and e-authentication (including electronic signatures) means delay in consolidating the Points of Single Contact under the Services Directive.

*(12th March 2011):
Further consideration of question 4 after the submission of the answers has led the ACE to believe that a better answer would have been as follows:
Deferral until 2012 of the Commission's Proposal 22 for a Decision to ensure mutual recognition of e-identification and e-authentication (including electronic signatures) means delay in consolidating the demands deriving from Article 8 of the Services Directive (2006/123/EC)*

Q.5 Are there any other issues you consider should be addressed in the Single Market Act in the chapter on "Restoring confidence by putting Europeans at the heart of the single market"?

Answer: Yes

Which ones?

Graduate mobility: Proposal 34 says that the Commission wants to help young people "to acquire the knowledge, skills and experience they need to find their first job", but only under the heading "Student mobility". The Commission can clarify and improve the cross-border mobility of diploma holders in architecture who are not yet eligible to register as architects in their home state as we will explain in our response to the PQD public consultation, by clarifying and amending PQD Article 1 and/or PQD Title III. We assume we need not to repeat our submissions and evidence in this consultation.

Duplication: In the unclear Proposal 35 is a 'European Skills Passport' to record lifelong learning. This may be (for all we know) a better idea than the 'professional card' in Proposal 33. Having two such cards would be bad and confusing, especially for new graduates. This is one of several overlapping proposals in the SMAAct.

SME access to finance and investment: Proposal 40 on bank charges and services for consumers leaves a lacuna, between it and Proposals 12 to 16 on finance for SMEs. Proposals 12 to 16 envisage conventional companies using capital markets useful to larger enterprises in the manner of the 1990s. Neither they nor Proposal 40 recognise **firms' urgent need after recent banking failures for working capital in the form of bank loans** or some widely available substitute if growth and jobs are to be achieved. The SMAAct also neglects the opportunity (in lieu of failed Public Private Partnership models) to promote equity partnerships in which small enterprises (such as architects) can invest their money or 'sweat equity'.

Q.6: Are there any other issues you consider should be addressed in the Single Market Act in the chapter on "Dialogue, partnership, evaluation: the keys to good governance of the single market"?

Answer: Yes

Which ones?

Evaluation of the IMI: Part 3 of the SMAAct Communication repeatedly refers to evaluation but, in Proposal 45, proposes extending the IMI without first evaluating it. The need to improve the IMI was evident at the "cluster training" event last 8 December on technical IMI issues. The Services Directive IMI is not user friendly (reflected in low usage); its alert system does not interface with the PQD-IMI; and a recent Court ruling has stopped automatic translation of free text in IMI for (we hear) the next two years. The Commission invited 400 people to a Conference on the Services-IMI on 27 January, and said it will extend the IMI regardless of its defects.

Case Law and legislation: The Commission website is unhelpful in relation to Case Law, both on the PQD and on the Services Directive. The PQD Case Law lists only cases which predate the PQD, from 2004 or earlier. Citizens and authorities ought to assume that the PQD itself embodies or supersedes case law which predates it. The SMAAct ought to require the Commission to update its website not only with all relevant cases, but also with an opinion (and as many caveats as may be necessary) on the application of each case in 2011. It is nonsense for Proposal 47 to speak of resolute enforcement until EU authorities first clarify what we are to enforce.

Alternative dispute resolution: Architects support (and provide) ADR services, and welcomed Arts. 22-23 of the Services Directive which require information (and, by inference, further clarification and development) on available ADR. Our Proposal 5 comments raise an objection to discrimination between recipients of architects' services based on whether they receive these by electronic means, by 'phone, on paper, or in person. Proposal 46 likewise needs to be amended to bring all such disputes within the Services Directive, where voluntary convergence and access to information is already being promoted.

End of Submission