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Regulation of Professional Services and Consumer Protection

Draft Speaking Notes of

**Katarina Nilsson,
President, Architects' Council of Europe (ACE)**

Introduction

1. The Architects' Council of Europe (ACE) is the representative organisation of the architectural profession in the EU, having over 40 architectural organisations from all of the EU Member States and Candidate Countries as Member Organisations. Hence, the ACE represents more than 380,000 architects. The Member Organisations are drawn from both regulatory bodies and professional associations.
2. The question to be addressed today is: Does regulation of the profession protect the consumer or does it protect the profession? Our opinion is that there is no conflict between consumer protection and regulation of the profession of architects. ACE regards the protection of the consumer interest as a fundamental part of the architects' work and of the role of their representative organisations.

Regulation versus protection

3. The approach to regulation of the architectural profession varies in the different countries of the Union. In some countries, there is more regulation, in some countries there is less compare differences. The IHS study ranges the architectural profession as the least regulated among the professions examined.
4. But, in order to really compare differences you must put the different types of regulation of the profession in the context of different building regulations in the respective countries. The regulation of the architect's profession is primarily aimed at securing quality and safety in the built environment in some countries the quality control is delegated to a profession in others the authorities use other means of control. It is important in discussing regulation of the profession to be well informed of the range and type of services provided by the architect. These can be summarised as being the ability to find and manage sustainable and qualitative solutions to building, which include observing the client's budget and managing the project to fulfil the requirements of the client. However a seriously limiting factor in the IHS (Vienna) Study is the fact that it was merely focused on the service provided by the profession and not, in any respect, on the effects of the service on society, and of the context in which the service is used and the scope of the service.

Interaction of different factors and holistic approach

5. Architects' services do not only affect the client who commissions the architect (whether it is a public entity, business or a private person), it always affects third parties. These third party effects are not only felt now, they are also felt throughout the future. The consumer of architectural services is also the user, society, and future generations. It is for this reason that, when regulating this profession and the building sector, politicians must take their responsibility to safeguard the interest of society seriously and ensure that they are appropriately protected. The market has only a limited self-interest in this domain. The cost of the architects' services is only a small fraction of

the cost of the building and a truly tiny fraction of the life cycle cost of the building but the quality of the service has a major effect on the quality and cost of the result..

Registration and guarantees for the consumer

6. The consumer of architectural services – again, public entities, private and business clients – are more often than not “one-off” clients – they do not know the market and they do not know how the building sector functions.
7. Any consumer, and indeed any client, expects that the architect will act in their interest by using their best endeavours to provide good advice, by being an experienced and educated professional who conducts his or her services in a trustworthy and ethical manner. The simplest way to ensure that architects are this kind of service provider is to ensure that the architect is duly registered and regulated in a professional organisation.
8. The important question then is: Does registration hinder competition? In our opinion, the answer is “No”. The architects professional bodies are open to any professional that meets the requirements of qualifications and training (i.e. in accordance with the Directive 85/384/EEC that covers these matters and allows for automatic recognition) and they do not discriminate in their decisions. The only condition to registration or membership is education, length of practice and that the architects’ undertakes to comply with the Codes of Conduct of the organisation. None of these conditions could be said to hinder competition and that is therefore in the interest of the consumer. The consumer has a clear and justified interest in knowing that any one who is an architect will comply with certain standards which have been established to meet the needs of the society and of the consumer, not just in the country in questions but throughout Europe and the world.
9. Architects by nature are very much in favour of fair competition (see for instance the long tradition of architectural competitions). This is true also in trade of services and the ACE is currently working to open the EU Market for architects even more in a global context through negotiations with other professional organisations in third countries. A mutual recognition agreement was recently concluded with Mexico, and we aim at concluding agreements with the USA, Canada, Chile and China soon, to start with. These are agreements concluded at the level of the profession that pre-figure official, bilateral agreements to be concluded between the EU and its Member States and third countries. They are based on standards of professionalism adopted at world level.
10. An important vehicle in these negotiations for keeping the quality of the profession at a high level and enabling mobility in an international market is, of course, the Architects’ Directive. It acts both as a benchmark for education and skills and as a fundamental tool for mutual recognition of qualifications and other proofs of competence. This, by the way, shows the enormous importance of retaining all the principles of the Directive in the new framework Directive on Qualifications currently in the legislative process, notably as regards the involvement of the profession and education in the consultation procedures, to ascertain that the levels of quality and guarantees to the client are not lowered in any way.

Services and charges

11. Today discussion also covers the issue of the charges and the cost for architectural services. The IAS (Vienna) Study claims that fees when the professions are non-regulated are lower than when regulated ones. While this might be true in certain cases, the study has not taken into account the scope of the services charged for which, as we have seen, can vary, at least when it comes to architectural services. In regulated countries architects often have to take on more responsibilities than in less regulated ones where the authorities’ control of the built is more extensive. Furthermore, as already underlined the study does not, in any way, consider the impact of the service in terms of quality and costs of the project.
12. Information on charges, linked to the type of services to be provided, helps the consumer and the ACE is of the opinion that the use of charging systems does not distort competition. We would go further and say that all types of charging systems that are covered by law, and/or delegated to a

professional organisation under agreed rules, and which fulfil the requirements for protection of the public interest, or are founded on them, should be accepted as judged by the European Court of Justice. One important consideration here is a market issue: there is a need to ensure fair competition, but also to avoid as much as possible perverse effects of distortion of competition. Comparison of price of an architect's service in a bidding process only gives a limited information of the scope and quality of the service. Adequate charging systems also gives the client enough information to understand what scope of service to expect..

A new societal role for the professional bodies

13. Professional organisations have an important role. Clients can then seek information on fees, standard contract conditions, the scope of the architects' service etc. from that Organisation and can look to the Organisation for redress, should the architect fail in his duties to the client.
14. That is definitely what the representative organisations of the profession, and certainly ACE at the European level, are all aiming for. Such a role for the professional bodies, which is further progressing throughout Europe, also covers other issues, such as for instance: control of cross-border services, Ethics and professional indemnity insurance. ACE has recently carried out a survey among its Member Organisations to find out how the Organisations deal with consumer protection. Even though many organisations do not have a dedicated consumer protection policy as such they do, in fact, work with these issues on a daily basis. The requirements for competence are the basic ones, but also giving information to clients/consumers on what to expect of the architect is important as is the need to ensure that the members develop their competencies through continued professional development etc.
15. Most architects' Organisations also work as mediators between clients and architects when things go wrong between them. Or as "ombudsman", as is the Swedish modern function that has been given a key importance when discussing fair trade and consumer protection.
16. The ACE aims at further developing these functions of its Member Organisations, primarily because we think that it is very important that the consumer gets the best quality service from the architect. This is also fundamental for the quality of architecture, the quality of the built environment and the wellbeing of our citizens and society while while promoting the role of architects.
17. It is with a holistic and comprehensive approach to the issues mentioned here that it will be possible to implement the philosophy that was underlying the recommendations of the OECD to its Members in 1997 in a document called "The Regulatory Reform", namely that it is not so much about debating whether or not deregulation is necessary or useful, but rather to guarantee good regulation. The EU will not be moving away from that philosophy when adopting such a holistic approach. It will be coherent with the European knowledge based competitiveness called for by the Lisbon Agenda whose mandate the DG Competition now claims it is acting on. By giving the regulated professions, and their representative organisations, adequate consideration the Commission will also be implementing the new Governance approach that it has itself been promoting.

In concluding, I would like to emphasise the following: we are well aware of the market realities and of the rules; we certainly welcome competition, as long as it is based on quality. However, it must always be borne in mind -and that goes far beyond any market considerations- that the architects have special responsibilities towards the society, something that we share also with the other professions that have been speaking today. In particular, it should be remembered that architectural services have an impact on the quality of life of European citizens, not only today but for the generations to come. In that context, it is worthwhile making a reference to the Council resolution of 12 February 2001 on Architectural Quality of the Urban and Rural Environments, which states that "architecture is a fundamental feature of the history, culture and fabric of life of each of our countries" and that "...it constitutes the heritage of tomorrow". The resolution calls on the Commission to "ensure that architectural quality and the specific nature of architectural services are taken into consideration in all its policies, measures and programmes."