



Presidente da Ordem dos Arquitectos
Arch. José Manuel Pedreirinho
Travessa do Carvalho 23
1249-003 Lisboa

Brussels, 30 June 2017

Ref: 145/17/LL

Dear President,

We have heard of the public discussion going on at this time in Portugal regarding the new draft law 495/XIII – the second amendment to law no. 31/2009 on professional qualifications and responsibilities.

The draft under consideration interprets EU Directive 2005/36/EC as enabling Portuguese engineers to engage in functions that are currently reserved to architects in Portugal.

Directive 2005/36/EC was transposed into Portuguese law by Decree 9/2009 (4 March). However, it applies ONLY in relation to the recognition of qualifications for the purpose of practice in another EU Member State. In other words, the Directive and its annexes, **do not apply to the internal market of any one Member State where no cross-border practice is involved.**

This is clearly stated in the Recitals of the Directive:

(12) This Directive concerns the recognition by Member States of professional qualifications acquired in other Member States. It does not, however, concern the recognition by Member States of recognition decisions adopted by other Member States pursuant to this Directive. **Consequently, individuals holding professional qualifications which might have been recognised pursuant to this Directive, may not use such recognition to obtain, in their Member State of origin, rights different from those conferred by the professional qualification obtained in that Member State, unless they provide evidence that they have obtained additional professional qualifications in the host Member State.**

Furthermore, Annex VI of the Professional Qualifications Directive is **an historical transitional measure** designed to avoid the exclusion of individuals who had been active in the provision of architectural services when regulation was first introduced to control intra-EU recognition of professionals. Recognition of Annex VI qualifications is limited in so far as qualifications must have been attained before a specified date.

The Directive also states that:

(28) National regulations in the field of architecture and on the access to and pursuit of the professional activities of an architect vary widely in scope. In most Member States, activities

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in the field of architecture are pursued, *de jure* or *de facto*, by persons bearing the title of architect alone or accompanied by another title, without those persons having a monopoly on the pursuit professionals, unless there are legislative provisions to the contrary. These activities, or some of them, may also be pursued in the field of construction or the art of building. With a view to simplifying this Directive, reference should be made to the concept of “architect” in order to delimit the scope of the provisions relating to the automatic recognition of qualifications in the field of architecture, **without prejudice to the special features of the national regulations governing those activities.**

To quote a legal precedent of 9 January 2014, the Italian High Court confirmed that ONLY architects can intervene on historical monument and listed buildings. Other professions may participate (e.g. structural engineers) but an architect must always coordinate the project. The ruling also clarifies, unequivocally, that this is in no way contrary to Directive 284/85/EEC on the mutual recognition of diplomas, because this is an internal matter that does not impinge on the principle of mutual recognition. This ruling was a result of an engineer’s appeal against exclusion from a public work.

Final considerations

For the above-mentioned reasons, the Architects’ Council of Europe considers that the objectives and the aim of the EC Directive regulating cross-border mobility have been wrongly interpreted and cited as a legal mechanism to be applied to the regulation of any one Member State in the proposed Portuguese draft legislation.

To allow for a transitional instrument of a European Directive, in this case, the attempt to turn the specific (but transitional) contents of Annex VI into a permanent condition of a national law, applicable to the Member State cited, is against the structure and intent of the Directive itself.

Yours sincerely,

A handwritten signature in blue ink that reads "Luciano Lazzari".

Luciano Lazzari
ACE President