



Response to the Public Consultation on the Directive on the Recognition of Professional Qualifications

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The mission of CEPI, the European Real Estate Council, is to support European and cross-border transactions by enhancing and strengthening the work and activities of property professionals. We represent more than forty national professional associations of estate agents and property managers based in 27 EU and EFTA countries.



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The following replies to the questions shown represent the views of CEPI and its member associations and are submitted by way of response to the consultation paper published by DG Internal Market and Services on 7 January 2011.

Question 1: Do you have any suggestions for further improving citizen's access to information on the recognition processes for their professional qualification in another Member State?

The points of Single Contact will play a crucial role in access to information. This role could be reinforced by greater uniformity in the way in which available information is sorted and made available (at present the form and structure of the PSCs is determined to a large extent at national level). Standardisation of the way that PSCs are presented on the internet could help accessibility and recognition. This would also make it easier to compare information from different PSCs and provide a better understanding of the differences. It could also be useful to increase awareness and recognition of PSCs by for example using a single name and logo. It would also be useful to have a central (European) address which could be perhaps a directorate created within the IMI system. Greater involvement by professional associations could also increase the practical value of PSCs. At present this is often limited to an internet link.

Question 3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

The Code of Conduct is an important instrument for the implementation of the Directive, as long as it is possible to adjust the code easily and relatively quickly in line with special circumstances.

Question 5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

We do not consider it realistic to develop Europe-wide codes of conduct on aptitude tests or adaptation periods.

Question 6: Do you see a need to include the case-law on "partial access" into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

For the time being the criteria of the European Court of Justice as stated in the consultation document can serve as a benchmark.

Question 7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

It is important that ample opportunity is provided to have partially completed qualifications accredited in another country in which work will be carried out, possibly following the completion of additional education or practical experience. The competencies acquired before entry into the other country must as far as possible be incorporated within the existing system of accreditation and diplomas in that country.

Question 9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

The requirement of two years of professional experience is seen by some as arbitrary although it is not clear that this is an obstacle in practice. It is seen as a minimum requirement for entry to countries where the real estate professions are regulated. There must be clear criteria also for unregulated countries on which the issue of a professional card can be based. This is important for the value of such a card. One possibility could be to give more precision to the various criteria regarding experience. The effect must not be to allow a person, in a Member State where the profession is regulated, to exercise activities via another Member State where the profession is not regulated in order to avoid legislation in his or her own country.

Question 10: How could the concept of "regulated education" be better used in the interest of consumers? If such education is not specifically geared to a given profession could a minimum list of relevant competences attested by a home Member State be a way forward?

We find the concept of "regulated education" interesting. In principle a minimum list of relevant competences could be a step forward. This could be a point of reference but not imposed unless the responsibilities of the different parties are defined.

Question 11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase transparency for consumers and employers? Should it enhance confidence and forge closer cooperation between a home and a host Member State?

A European professional card could make it easier and quicker to have qualifications recognized. It must be attractive to professionals and could have an added value for professionals in terms of providing proof of identity and recognition of training and experience. With the right content it could offer consumers a degree of assurance and information as to the quality of services which they are entitled to expect. For national authorities the issue of a card could be a form of control. Such a card should speed up the recognition process by making it easier to recognize competencies and professional background. It should also increase transparency for consumers and employers. Subject to the fulfillment of certain conditions (see below), and in particular clarification about who should deliver such a card and on what conditions, it could enhance confidence and forge closer cooperation between a home and a host Member State. It is vital that it is possible to check easily that the card is still valid and up-to-date (by being linked to a list of professionals on a public website) to avoid situations in which a professional is able to continue to use such a card in spite of having been banned from exercising the profession because for example of professional misconduct.

Question 12: Do you agree with the proposed features of the card?

We are in broad agreement with the proposed features of a card as set out in the consultation as follows:

1. The professional card could be voluntary for professionals, so that a professional receives such a card only if she or he wishes. In such a scheme, a professional would have the right in principle to enter another EU market, and he would be given the possibility to ask for a card; there would be an obligation on the competent authority of the country of origin to issue such card, and the host authority would be obliged to accept it (as long as the requirements of the Directive are met). This requirement could replace the obligation to make a declaration and ensure some possibility of control. In particular it could facilitate checks and requirements by a host Member State upon the first delivery of services and so make a prior declaration a formality for temporary mobility.

2. It is very important to us that the professional card is available to all interested professionals whether they come from regulated countries or not. In the real estate sector we have professionals working in countries where they are highly regulated, for example Belgium. In other countries, such as the Netherlands, there is no regulation. That means that it is difficult to establish the "common rules of the game" which we see as being in the interests of both professionals and consumers. Professionals should know what to expect when they cross borders, and consumers should know what to expect of them. A common European educational level should be established.



3. As to who should issue the card, we suggest that it be issued by the competent authority in the home Member State of the professional in collaboration with professional associations, if the professional association is sufficiently representative of the sector. We particularly like the suggestion that this could be applied in situations where the home Member State does not regulate the profession.

4. Such a card would have to be linked to an efficient central system of registration. CEPI's Belgian member association IPI has practical experience of such a system, as it serves as a competent authority and as all Belgian RE brokers and property managers are required to belong to this semi-public body. In Portugal, APEMIP has an agreement with the public authorities to register professionals. In the Netherlands, 85% of all real estate agents are certified by one of two certification institutes, about 80% of certified real estate agents being members of the NVM which therefore could provide a lot of information. In other countries again such as Austria and Italy, real estate associations are members of the national Chambers of Commerce which operate registration systems. In principle these systems could be made available to competent authorities and possibly be interlinked.

Question 13: What information would be essential on the card? How could a timely update of such information be organised?

A European professional card (for the real estate sector) should contain the following information as a minimum:

- Name of agent/manager
- Title of the actual profession exercised
- Education (with details as to type of education and date completed)
- Name of organisation to which the professional belongs
- Location from which the profession is practised
- Details of most recent ongoing education (within the last one or two years)
- Identity of responsible local body
- Registration number of the professional including VAT registration number
- Provision as to the settlement of disputes by court proceedings/arbitration
- Details of civil liability insurance and financial guarantee
- A link (perhaps via an access code) to an address where the consumer or public authorities can get more information and to a code of ethics.

The card should be updated every two years. This could be organized by a local Chamber of Commerce subject to that organization being able to carry out the necessary checks and controls.

Question 14: Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?

The title professional card is appropriate.

Question 15: What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to national requirements? What conditions could be foreseen for its development?

We are afraid that common platforms, as currently defined, just will not work because of the way they are defined in Article 15 of the current version of the Directive. We do not think that this means that it is necessary to abandon Article 15 and the ideas behind common platforms. It remains important to have a legal provision in the Directive which creates a system which everybody can use. One solution is to simplify the requirements to make it easier for professional associations to create common platforms. Most obviously the requirement to examine the systems in at least two-thirds of the Member States must be changed because this does not reflect the realities of the semi-regulated professions.

We welcome the new idea in the consultation document, a European curriculum. We think that this fits well with the concept of "regulated education". CEPI has been working for years now on a European education regime (a

28th regime for real estate professionals), which we call Eureduc. It establishes minimum criteria of basic educational requirements, which have been worked out on the basis of the requirements set out in Article 15 of the 2002 draft version of the Directive and are the results of the consensus between professionals and academics. 54 universities and high vocational schools have now countersigned the Eureduc criteria and integrated them in their programmes. Graduates of such programmes receive a certificate which recognizes this.

This is of course limited to the real estate sector, but we see no reason why such a system should not be developed for other professions with similar needs on the basis of common sets of competences. If an individual meets the standard and requirements of a 28th regime, then recognition can be automatic, provided that this level of qualification is also perceived by regulated countries as reasonable and sufficient. Professionals wishing to establish themselves in another country would then be able to prove easily and quickly that they have the necessary level of competence. This could be mentioned on the professional card. Certainly for the real estate sector and professionals this would be a major step forward. It could also represent a real advantage for consumers, because in each country they would know the level of minimum education he/she can expect in the sector.

Question 16: To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

The real estate sector is one in which the professions are semi-regulated, ranging from strict formal requirements and a high level of education and training in some countries, to none at all in others. This gives a certain perspective. From that perspective we see that there are extremes, from what some may consider excessive regulation, to what others see as too easy access to the professions. Setting light regimes against those which are highly regulated is not the correct option to meet the combined challenges of mobility, legal security and quality service. We do not see free access as an option, it would never be accepted. What we would like is minimum harmonization which we see as "fair rules of the game", open to all. This represents a "middle way" which needs to be defined. Reaching agreement on such a minimum is probably the most challenging part of the debate. We must be careful that the obligations or requirements imposed upon professionals of the host Member State are not stronger than those imposed on those from another Member State. The consumer must also be able to have faith in the qualities of the professional.

What we need is provisions which are reasonable and acceptable. When expressing a need for minimum harmonization, we also look for some legal provisions at European level that facilitate mobility, ensure legal security and strengthen quality of service. These will also serve to protect the consumer.

Question 17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?

We see this as part of the discussion on temporary and occasional mobility.

Question 18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential parts of the services are provided online without declaration? Is it necessary to clarify the terms « temporary or occasional » or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified.

Temporary or occasional mobility is important in the real estate sector. This is partly because of the development of different forms of investments such as second homes. It is very difficult to give accurate figures concerning this, but we do see this as a clear trend.

Therefore we welcome clear and sensible rules on temporary mobility. We are concerned that, without them, the rules may well be ignored. We welcome the attention given to this aspect in the consultation and suspect that, in reality, the way in which the current regime is being applied is inconsistent and can cause problems.

We would like to add here that as well as professionals dealing with consumers, professionals also deal with other professionals, and then it is important that they know who they are dealing with and what the rules are.

The aspect of online services is something which is likely to develop further in the future and should also be considered. What rules apply if an agent offers a property in another country but does so only on an online basis? As mentioned in the consultation the E-Commerce Directive allows for provision of online services without a declaration. However any related physical movement could require a declaration. Therefore it seems that a professional who is regularly providing online services for properties in another Member State does not have to make a declaration, but if he or she then has for example to visit one of those properties then a declaration is required.

We would like to see more clarity on the terms "temporary or occasional"; we would also like to see more guidance on the current declaration scheme. The professional card, if recognized by a host Member State could be of help here, we see all the points mentioned about the professional card as being applicable to temporary mobility. We think however that it is very important to maintain a distinction between temporary or occasional services and permanent establishment, or what we refer to as permanence.

Permanence (rather than permanent establishment) must be clearly defined and if the meaning of this is clear then it also helps clarify the situation concerning temporary and occasional services. One way could be to define permanence according to turnover according to the necessary criteria for each profession. For real estate professionals this could be based on a comparison of the turnover of the professional in the host and home Member States, that is to say taking into account the professional's volume of activities in the host Member State but also the volume of his activities in the home Member State.

If the rules on temporary mobility are simplified, it must remain clear that in cases of establishment that must be based on the national rules which prevail. These are all issues which can also be developed in the discussions on the professional card. Such a card could be particularly useful in the case of temporary mobility. Once a professional has such a card, all the necessary information is recorded and the procedure has to be much easier.

Question 25: Do you see a need for modernising this regime on automatic recognition, notably the list of activities listed in Annex IV?

The list of activities in Annex IV needs to be updated. It also needs to be made clear what the distinction is between activities for inclusion in the Annex rather than in the general system. However for real estate professionals, without agreement on minimum criteria, inclusion in Annex IV is somewhat limited. We remain doubtful that there is any need for them to be included.

Question 27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

We see continuing professional development as very important and this should be taken more into account as a means of avoiding possible damage.

Question 29: In which cases should an alert mechanism be triggered?

An alert mechanism should be triggered in the event of a professional ban.

Question 30: Have you encountered any major problems with the current language regime as foreseen in the Directive?

We are not aware of any major problems.