

15 May 2009

Peter Mihok
C/O Pilot Project
European Commission
Internal Market and Services DG

Our Ref: 090515RHPM
Your Ref: 197/08/MARK

Dear Mr Mihok,

EU Pilot Project Case: 197/08/MARK - Conformity of the Architect Regulations 2008

1. Thank you for your letter dated 8th April 2009 concerning the conformity of the Architects Regulations 2008 with Directive 2005/36/EC.
2. We are grateful for the clarification provided in your letter. Specifically, you have expressed in very clear terms that a migrant should be entitled to carry out the profession of an architect in his home Member State before he can benefit from automatic recognition under the terms of the Directive in a host Member State. We agree entirely with you on this point.
3. You have raised concerns that the wording of section 4(2A)(a) in amending the Architects Act 1997 does not respect that principle on the grounds that it requires individuals to provide additional evidence – ‘a certificate of eligibility’ – and documentation beyond that permitted by the Directive.
4. We would suggest that the issue at hand is one of interpretation of the provisions in section 4(2A)(a) which require an individual to produce evidence that they are ‘lawfully established’ or ‘eligible to practise’. We do not consider that there is any difference between the UK and the Commission on the fundamental principles of the Directive.
5. The purpose of this letter is therefore to clarify two matters. Firstly, we will explain the intention behind the drafting of section 4(2A)(a) and explain why in our view it is in accordance with the terms of the Directive.
6. Secondly we wish to explain that the provisions in question are also in practice applied in a way which accords with this interpretation of the Directive and that no ‘certificate of eligibility’ is sought from those wishing to register as an architect in the UK. What is sought is simply an Annex VII certificate.

7. Our intention in drafting the provisions in section 4(2A)(a) of the Architects Act 1997 as amended is to ensure that a Member State national who is either already registered to practise in their home Member State (described in the UK provisions as lawfully established) or who would be eligible to do so (described to as eligible to practise) has access to rights of recognition under the directive and as a result may be registered in the UK. This position was adopted in order to avoid requiring that a Member State national who would be entitled to practice in their home Member State and who had not yet registered in their home Member State, but who intended to both register and then practise in the UK would not be subject to the cost of registration in both their home Member State and in the UK. We took the view that requiring an individual to pay for registration in two countries when they only intend to practice in one would be restrictive.
8. The wording of section 4(2A)(a) is therefore intended to allow a person who is already registered (lawfully established) or eligible to be registered in the home Member State (eligible to practise) access to rights of recognition under the Directive.
9. We do not consider that the migrant must have been actually carrying out his profession, or in fact be registered to do so in his home Member State, we require only that if he were to apply for registration in his home Member State, he has the correct qualifications including, where relevant, practical work experience. In other words, on the face of it he is eligible to be part of the profession there. We consider that this view is in accordance with Article 1 and Article 4(1) of the Directive which states that *'the recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State....'*
10. Within the UK Regulations, "lawfully established" is therefore an alternative term for being registered in the home Member State and such registration would necessitate the individual holding the relevant qualifications required by Article 1 of the Directive. Similarly "eligibility to practise" is simply a shorthand reference to holding the relevant qualifications required by Article 1 of the Directive (but not actually having gone through the registration exercise). We have differentiated between these two types of individuals in order, as explained above, to avoid the applicant incurring the duplicated cost of registering in both the host and home Member States.
11. Accordingly we share your view of the Directive's requirements, which we consider have been correctly applied in the UK i.e so that the only proof that can be required in order to benefit from Directive rights in the UK are those documents identified within the Directive. These include evidence of formal qualifications, a certificate of conformity from the home Member State Competent Authority indicating that the evidence of formal qualifications is that covered by the Directive, and evidence of good character as described in Annex VII(1d) of the Directive. It is therefore important to note that in practice the UK Competent Authority is applying section 4(2A)(a) in accordance with the Directive.

12. We think you may have misinterpreted the provisions in section 4(2A)(a) since they do not in our view require a certificate of eligibility. Rather the 'evidence' we seek in that provision are the documents and certificates which may be required in accordance with Article 50(1) as listed in Annex VII to the Directive. These include at 1(b) "*copies of the attestations of professional competence or of the evidence of formal qualifications giving access to the profession, an attestation of the professional experience of the person concerned where applicable*".
13. It is for these reasons that we consider that the Architects Regulations 2008 which amend the Architects Act 1997 properly transpose the requirements of Directive 2005/36/EC.
14. In taking matters forward, we would kindly ask the Commission to consider the explanation and clarification which we have offered above, in particular, the fact that the UK does not require a 'certificate of eligibility' or other documentation unforeseen by the Directive 2005/36/EC for the establishment of a migrant professional.
15. If you continue to have concerns about the provisions in UK legislation, we would be happy to meet with you to discuss them further.

Please do not hesitate to contact me should you require anything further. I look forward to your response.

Yours sincerely,

A black rectangular redaction box covers the signature area. To the right of the box, there is a handwritten mark that appears to be the number '1'.

Richard Harral
Principal Architect
Communities and Local Government

cc Mr Ian Salisbury