



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1997
COM(97) 350 final

REPORT FROM THE COMMISSION

**Review, on the basis of experience, of Council Directive 85/384/EEC
of 10 June 1985 pursuant to Article 30 thereof**

REPORT FROM THE COMMISSION

Review, on the basis of experience, of Council Directive 85/384/EEC of 10 June 1985 pursuant to Article 30 thereof

I. INTRODUCTION

In accordance with Article 30 of Council Directive 85/384/EEC, the Commission is to review this Directive on the basis of experience and, if necessary, submit proposals for amendments after consulting the Advisory Committee.

Under that Article, the report should have been submitted in 1990. The reasons for the delay are set out below.

First, certain Member States took considerably longer than allowed to transpose Directive 85/384/EEC into national law (the general deadline was 5 August 1987, but 5 August 1988 in respect of Article 22). For example, Belgium did not transpose the Directive until 1990 and Greece did so only in 1993, while Italy transposed part of the Directive in 1992 before completing the bulk of the transposal exercise in 1995.

Second, German unification on 3 October 1990 meant not only that the Federal Republic's new *Länder* had also to transpose Directive 85/384/EEC and, accordingly, that Germany had not yet completed transposal, but also that all the Member States had to transpose Article 8 of Council Directive 90/658/EEC of 4 December 1990 amending certain Directives on the recognition of professional qualifications consequent upon the unification of Germany (OJ No L 353 of 17 December 1990), which deleted Article 6 of Directive 85/384/EEC.

Lastly, the entry into force of the Agreement on the European Economic Area (1 January 1994) and the accession to the European Community of Austria, Finland and Sweden (1 January 1995) had to be taken into account. The scope and impact of these developments could not be assessed immediately, and it would have been unacceptable to submit an assessment concerning only twelve of the fifteen Member States. Austria, for example, completed transposal in October 1995.

The above reasons for the delay in submitting this report have been explained to the Member States on several occasions and have, in general, been accepted.

II. DIRECTIVE 85/384/EEC

1. Council Directive 85/384/EEC of 10 June 1985 (OJ No L 223 of 21 August 1985), was the result of lengthy, difficult negotiations lasting almost eighteen years. Inevitably, the outcome was a complex compromise between the Member States. Unlike the Directives recognizing medical qualifications, Directive 85/384/EEC does not lay down minimum training requirements for architecture but merely provides for qualitative and quantitative criteria (Articles 3 and 4 respectively) whereby a diploma can be recognized at Community level (Articles 7 and 8 contain the relevant procedural rules).

The length of the negotiations which culminated in the adoption of Directive 85/384/EEC and its distinctive character in relation to the Directives recognizing the qualifications of certain medical professions reflect the fact that architecture is a complex, sensitive and problematic area. The main reason for these difficulties was the sometimes very pronounced differences between regulations in the field in the Member States. The enlargements of 1973 and 1981 meant that four additional legal structures had to be taken into account, and this initially made the negotiations even more complex.

It also had to be taken into account that architecture is not regulated in some Member States (Ireland, Denmark, Sweden and Finland, plus Norway in an EEA context). In other Member States (including the Netherlands, the United Kingdom and Germany) only the title of architect is protected. Lastly, in yet other Member States (including Spain, Belgium and France) the title of architect is protected and, in addition, (with a few rare exceptions) architects enjoy a monopoly in pursuing their activity. What is more, architects' responsibilities and obligations vary greatly from one Member State to another. The difficulties caused by these sometimes very substantial differences in the way the profession is regulated and in the field of architecture itself explain why Directive 85/384/EEC does not contain a precise definition of architecture (see the seventh, ninth and tenth recitals and Article 1(2)).

2. It should be noted that Directive 85/384/EEC refers to qualifications enabling the holder to take up activities in the field of architecture and hence to the professional recognition of those qualifications. Such recognition applies only to qualifications awarded by Member States to Community nationals. Since the entry into force of the Agreement on the European Economic Area (1 January 1994), the same rules have applied to Iceland, Norway and (since 1 May 1995) Liechtenstein. With regard to Austria, Finland and Sweden, these rules had applied since 1 January 1994 pursuant to the EEA Agreement and since 1 January 1995 pursuant to the EC Treaty.

3. Directive 85/384/EEC comprises two sets of provisions on formal qualifications enabling the holder to take up activities in the field of architecture. The first set (Chapter II) sets out the common arrangements described in paragraph 1 above. The second (Chapter III) describes the arrangements for so-called "established rights", i.e. the mutual recognition of certain qualifications (listed exhaustively) which need not meet the minimum requirements set out in Chapter II (Articles 3 and 4) but for which the relevant studies commenced during the third academic year at the latest following notification of Directive 85/384/EEC (5 August 1985), namely during the 1987/88 academic year. Under the Agreement on the European Economic Area and the Treaties enlarging the EC in 1986 and 1995, the list of "established rights" qualifications was extended to include qualifications awarded in the countries concerned by those three treaties (for the 1986 enlargement, this took the form of two Council Directives, namely 85/614/EEC of 20 December 1985 and 86/17/EEC of 27 January 1986).

The Directive in question also contains provisions to facilitate the effective exercise of the right of establishment and freedom to provide services (Chapter V):

4. However, the Directive does not provide for complete harmonization of training in architecture. Other training courses in architecture which do not comply with the Directive but are quite lawful may therefore also exist. It may also be that an individual completed part of his training in one Member State and another part (e.g. the practical training) in another Member State, in which case he may not possess the diploma referred to by the Directive (either the "new" one or the "established rights" one). All these courses (and the qualifications awarded on their completion) must be taken into account in accordance with Article 52 of the EC Treaty, as interpreted by the Court of Justice in its judgment of 7 May 1991 in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357. In this case the Court held that, when an application to take up a regulated profession is submitted to a host Member State by a migrant who is authorized to practise that profession in his home State, the migrant's diplomas, certificates and other qualifications and the professional experience he has acquired must be taken into account by that Member State. If those qualifications are equivalent to those required under the host Member State's legislation to work in the field of architecture, the migrant must be authorized to do so. If that is not the case, he must be afforded the opportunity to remedy any shortcomings in his training. Lastly, the reasons on which any administrative decision is based must be given and it must be possible to make it the subject of judicial proceedings in which its legality under Community law can be reviewed.
5. The recognition provided for under the Directive (along with the recognition based directly on Article 52 of the EC Treaty) applies only to diplomas acquired by Community nationals in a Member State of the Union. Where diplomas were acquired in a third country, recognition is optional and determined by each Member State. The fact that a diploma awarded by a third country has been recognized by one Member State does not oblige the others to do so (cf. Court judgments of 9 February 1994 in Cases C-319/92 *Haim* and C-154/93 *Tawil-Albertini*).

6. The legal definition of the field of architecture and the legal arrangements governing the profession of architect (e.g. rights, obligations, duties, incompatibilities) are covered by the national law of the host Member State. Accordingly, migrants have the same legal status as members of the profession who acquired their qualifications in the host Member State. This may mean that certain activities that the migrant was entitled to carry out in his home country may not be carried out in the host Member State.

III. TRANSPOSAL INTO NATIONAL LAW

As stated above, transposal of Directive 85/384/EEC has been delayed - substantially in certain cases. But the current state of transposal can be regarded as quite satisfactory overall. Problems have arisen particularly in Italy as a result of the excessive length and complexity of procedures.

Transposal of Directive 85/384/EEC has given rise to a number of Court judgments. For instance, the Court found that Italy had failed to fulfil its obligations under the EEC Treaty by not taking measures to transpose Directives 85/384/EEC, 85/614/EEC and 86/17/EEC within the prescribed period (judgment of 11 July 1991 in Case C-296/90).

The Court also declared that Greece had failed to fulfil its obligations under the EEC Treaty by failing to take measures to transpose those same Directives within the prescribed period (judgment of 7 November 1991 in Case C-309/90). It further held that Greece had failed to fulfil its obligations under Articles 50 and 59 of the EEC Treaty by retaining legislation which did not expressly confer on the nationals of other Member States the right to register as ordinary members of the Technical Chamber of Greece, whereas access to and exercise of the profession of architect in Greece is subject to, and facilitated by, such registration (judgment of 14 July 1988 in Case C-38/87); subsequently, in its judgment of 30 January 1992 in Case C-328/90, the Court stated that Greece had not fulfilled its obligations under Article 171 of the EEC Treaty by failing to comply with the aforementioned judgment of 14 July 1988.

In addition to the above, three sets of infringement proceedings are currently pending, against Spain, Italy and Luxembourg, the first two for faulty transposal (for the proceeding against Spain, in which only one specific issue is still outstanding, see Section V below), and the third for failure to apply the Directive properly.

Since 1987 the Commission has received a total of 42 complaints, which chiefly hinged on failure to transpose Directive 85/384/EEC, late or faulty transposal, or failure to apply the Directive properly in practice. Some of these complaints gave rise to the infringement proceedings already mentioned, others were resolved following the Commission's intervention with the Member State concerned, and the remainder proved unfounded or irrelevant. Four complaints are under investigation at the time of writing (two against Belgium and two against Austria).

In conclusion, transposal of Directive 85/384/EEC has proved to be lengthy and sometimes problematic. It has still not been officially completed and difficult cases are still arising. The Commission is in touch with complainants and Member States on a regular basis and, where appropriate, infringement proceedings will be instituted under Article 169 of the EC Treaty.

IV. ASSESSMENT OF THE DIRECTIVE'S IMPACT

1. Since 1987 (the general deadline for transposing Directive 85/384/EEC), the Commission has set up a mechanism whereby Member States can exchange statistics on the migration of architects. These statistics point to what is, after all, a fairly complex situation.

Although migration of architects within the Community does not appear to concern large numbers of people, particularly as regards establishment, it may be that the statistics do not give the full picture. In countries where the profession is not regulated, it is very difficult, not to say impossible in some cases, to obtain reliable data since architects are not obliged to register or join a professional organization. In addition, the provision of services is often difficult to identify, even in countries where the right to practise in the field is regulated, since the relevant formalities are less burdensome and simpler (and, in some cases, even non-existent, *de jure* or *de facto*). All these factors must be taken into account when assessing the impact of Directive 85/384/EEC.

2. In any event, migration of architects within the Community clearly does not involve large numbers of people. The available statistics mainly cover establishment, and the small number of cases is explained by economic, financial, social and cultural constraints.

The Directive has nevertheless allowed a certain number of architects to move freely and ensured the automatic mutual recognition of the qualifications in architecture which it covers. Between 1987 and 1995 at least 1 500 architects benefited from the Directive. What is more, Article 3 in particular is still an important reference point for training in architecture within the Community and even elsewhere.

The Directive thus forms part of the existing body of Community law and represents a definite advance on Directives 89/48/EEC and 92/51/EEC, which set up a general system for the recognition of diplomas. That system does not provide for automatic recognition of diplomas in so far as there is no coordination of training, but it does allow the host Member State to impose additional requirements on migrants where the content or length of their training differs substantially from that required in the host country in order to take up and practise the profession or activity in question. In addition, unlike the "general system" Directives, Directive 85/384/EEC lays down specific arrangements for the provision of services, which is very important in the field of architecture. It provides migrants with more extensive rights than Directive 89/48/EEC.

For all the above reasons, Directive 85/384/EEC continues to serve a genuinely useful purpose in spite of the adoption of the two aforementioned Directives. The general system is far more recent and is not yet fully operational in all Member States. Accordingly, the Directive should be retained as one of the sectoral directives for the recognition of professional qualifications.

3. Directive 85/384/EEC refers to the Advisory Committee on Education and Training in the Field of Architecture set up by Council Decision 85/385/EEC. The Committee is composed of three experts from each Member State, representing the practising profession, the universities and the competent authorities. Its task is to help to ensure a comparably high standard of education and training for architects throughout the Community. It adopts reports and recommendations on training and delivers opinions in cases where the conformity of a diploma is disputed (see below the discussion of Articles 7 to 9 of the Directive). Two working parties have been set up under the Committee, to discuss training and diplomas. The Committee has met eight times since 1987 and has adopted the reports, recommendations and opinions listed in the Annex to this report.

V. ANALYSIS OF THE DIRECTIVE'S MAIN ARTICLES

ARTICLE 1

This Article defines the material scope of Directive 85/384/EEC. It refers to architecture as opposed to architects because, in a number of Member States, architects are not the only individuals authorized to work in the field. That fact, combined with the marked differences in regulations between Member States, explains the use of the term "usually" in Article 1(2) (see also the ninth and tenth recitals).

ARTICLE 2

Article 2 affirms the fundamental principles of equivalence of diplomas and their mutual recognition by the Member States. As a result, migrants have the same rights, responsibilities and duties in the host country as architects who obtained their qualifications in that country.

The Commission has instituted infringement proceedings against Spain, where the transposal legislation provides, with regard to certain activities in the field of architecture, that the migrant's obligations are those spelt out by the legislation of the home Member State as opposed to the (more favourable) arrangements provided for under Spanish law.

ARTICLE 3

This Article sets out the conditions which must be met by courses leading to diplomas, certificates and other evidence of formal qualifications mutually recognized by the Member States. These conditions are fairly general and merely set out the main qualitative principles which courses must meet in order to qualify for recognition under Directive 85/384/EEC.¹

ARTICLE 4

1. Article 4 sets out the requirements as to course length that training courses must meet in order to be recognized under the Directive. The derogation granted to "*Fachhochschulen*" in Germany has been discussed in a separate Commission report (COM(95) 672, 15 December 1995). Judgments by the Court of Justice have clarified the conditions under which practical training can be validly integrated into architecture courses (see Cases C-310/90 of 21 January 1992 and C-166/91 of 8 April 1992).

The length of education and training in architecture must consist of a minimum of four years of full-time studies, or six years of part-time study of which at least three must be full time, at a university or comparable educational establishment. Education and training has to be concluded by successful completion of an examination of degree standard.

2. In 1992 the Advisory Committee on Education and Training in the Field of Architecture adopted a recommendation to the Member States which advocated increasing the length of education and training in architecture to five years, to be followed by mandatory practical training of two years.

The recommendation was discussed by the Member States in 1993 and 1994 (on the latter occasion by the Ad Hoc Group of Senior Officials Responsible for the Free Movement of Architects, with the participation of the countries which were then candidates for accession). It emerged at the time that no country was in favour of establishing mandatory practical training of two years. Regarding the length of training, there was no consensus in favour of making five years mandatory.

As to substance, there is no apparent need to make binding that which is already allowed under Directive 85/384/EEC. Those countries wishing to do so may set up a training system based on the recommendation (as the Netherlands did in 1995). The Commission therefore does not propose to amend Article 4(1).

¹ It should be noted that, in December 1993, the Dutch authorities commissioned York University (Institute of Advanced Architectural Studies) to carry out a comparative study on training in architecture in the Netherlands, Spain, Germany, Belgium, France and the United Kingdom. The study was based on the criteria set out in Article 3 and was carried out independently of the Dutch authorities. It showed that the training in architecture provided in the Netherlands enabled students to reach a level of competence which met the criteria of Article 3 and was comparable to the level achieved by students in the other countries covered. Practical training in the Netherlands could be improved further.

3. Article 4(2) sets out special arrangements for alternatives to the traditional training route. Two qualifications have been accepted to date under the procedure described below (Articles 7 to 9), namely the Part II examination of the RIBA (Royal Institute of British Architects) (in 1988) and the French DPLG (architecture diploma awarded by the Government) as part of the continuing vocational training and upward mobility programme (1994), and this despite a negative opinion from the Advisory Committee (see below).

ARTICLES 7 TO 9

These Articles deal with the procedure leading to recognition of diplomas, certificates and other evidence of formal qualifications in the field of architecture (excluding "established rights"; see under Articles 10 to 15 below). It is a complex procedure whereby Member States communicate new qualifications which they consider to meet the criteria laid down in Articles 3 and 4 of the Directive. The other Member States and the Commission then have three months in which to dispute compliance. If doubts are expressed, the matter is brought before the Advisory Committee, which delivers a (non-binding) opinion within three months. The Member State can then withdraw or amend the communication or the Commission may institute proceedings pursuant to Article 169 of the EC Treaty (within three months of the opinion being delivered). If no doubts are expressed, the diploma is published on the list provided for in Article 7 and is mutually recognized by the Member States (see also Article 8).

With regard to the withdrawal of a diploma from that list (Article 9), if a Member State or the Commission considers that a diploma no longer complies with the Directive, it may bring the matter before the Advisory Committee, which delivers a (non-binding) opinion within three months. The Commission can withdraw a diploma from one of the lists published in accordance with Article 7 either with the agreement of the Member State concerned or following a ruling by the Court of Justice.

Between 1987 and 1997 the Advisory Committee delivered ten opinions (nine under Article 8 and one under Article 9) on compliance by diplomas with the criteria laid down in Articles 3 and 4 of the Directive. Two opinions were positive and eight were negative (including the opinion delivered under Article 9). Two of the opinions (one of which being the opinion delivered under Article 9) were not followed.

The list of diplomas, certificates and other evidence of formal qualifications in architecture which are mutually recognized by the Member States (see Article 7(2) of Directive 85/384/EEC) is given in communication 96/C 205/05 (OJ No C 205 of 16 July 1996, p. 6).

One aspect of the procedure requires clarification. When a diploma's compliance with the Directive is disputed, it follows from the wording of Article 8 that the matter must be brought before the Advisory Committee before the three-month deadline for disputing compliance expires. This has often proved impossible in so far as Member States have often waited until the last day of that deadline before communicating their doubts about a diploma. Provision should therefore be made for the Commission to bring the matter before the Committee no later than two months after expiry of the period during which compliance with Directive 85/384/EEC can be disputed.

ARTICLES 10 TO 15

1. Chapter III of the Directive sets out the "established rights" arrangements, which are designed to ensure the recognition of qualifications in architecture obtained on completion of training prior to the adoption or entry into force of the Directive. The reason for this was that it was necessary to preserve the rights of those individuals who were already authorized to work in the field or were about to be authorized to do so, when the Directive was adopted/came into force. Accordingly, Article 10 refers to the qualifications specified in Article 11 where their holders already possessed them at the time of notification of the Directive (5 August 1985) or where they had commenced their studies leading to those qualifications during the third academic year at the latest following such notification (i.e. up to and including the 1987/88 academic year). These time-limits also apply to Spanish and Portuguese qualifications, given that Spain and Portugal joined the Community on 1 January 1986. For the countries which joined the Union in 1995, that is the key date when calculating the time-limits for established rights in respect of persons holding qualifications awarded by them. The deadline by which studies leading to those qualifications must have commenced is therefore up to and including the 1997/98 academic year. In the case of the EFTA countries to which the EEA Agreement applies, the deadline is up to and including the 1996/97 academic year for Iceland and Norway and up to and including the 1997/98 academic year for Liechtenstein.
2. In its case-law, the Court of Justice has drawn a clear distinction between the "established rights" arrangements (Chapter III) and the common arrangements provided for in Chapter II in respect of qualifications awarded after the aforementioned dates. According to the Court, the open arrangements enshrined in Articles 7 to 9 of the Directive contrast with the closed, special and exceptional arrangements by virtue of "established rights". The articles setting out those arrangements must therefore be interpreted strictly and rule out any broader interpretation or any interpretation by analogy. The Court clearly spelt out those principles in its judgment of 9 August 1994 in Case C-477/93 *Dreessen v Conseil National de l'Ordre des Architectes de Belgique*.
3. In that connection, Ireland requested in 1990 that an additional qualification be added to the list of Irish diplomas, certificates and other evidence of formal qualifications recognized by virtue of established rights. This request was worded as follows:

"the following additional qualification to Article 11(f) of the Directive - a certificate issued by the competent authorities to the effect that a person, who, on the date of entry into force of this Directive, had, over a period of at least five years prior to that date, pursued architectural activities, the nature and importance of which in the opinion of the competent authorities give that person an established right to pursue those activities".

The Commission rejected the Irish request. As has already been pointed out, the arrangements in question are special and exceptional, and qualifications can be added to the list only in genuinely extraordinary circumstances, as when countries join the Union. Throwing the matter open more than ten years after the Directive was adopted would be tantamount to calling its overall balance into question.

In addition, the qualification proposed by the Irish authorities consisted of a simple attestation to the effect that the persons concerned had pursued architectural activities (a field neither defined nor regulated in Ireland) which, in the opinion of the Irish authorities, gave them an established right. This is therefore a different case to those described in the seventh and eighth indents of Article 11(h) (Netherlands) and the second and third indents of Article 11(i) (United Kingdom) given that, in those two Member States, the qualifications concerned by the indents in question (which appeared to be somewhat similar to the amendment proposed by Ireland) referred to attestations of competence and/or registration, such registration being required in order to hold the professional title of architect and being non-existent in Ireland.

4 The Dutch authorities have also proposed amendments in respect of "established rights". They would like Article 12 to be simplified as its wording is so complex that it is difficult to determine which documents ("certificates") have to be recognized by the Member States. This concerns (at least) two certificates:

1. A certificate to the effect that its holder was authorized to bear the professional title of architect before the implementation of this Directive, and
2. A certificate to the effect that its holder exercised the activities in question for at least three consecutive years during the five years preceding "the issue of the certificate".

The problem is how to determine the connection between these two certificates and the exact scope of the second certificate. Should it be understood as meaning that the interested party effectively exercised the activities in question for at least three consecutive years during the five years preceding the issue of the first certificate (consequently, in any event, prior to 1985/87) or during the five years preceding the issue of the certificate required of him, for example in 1995 (i.e. between 1990 and 1995)?

In the first case, the requirement that a certificate be presented attesting to professional experience can be withdrawn, according to the Dutch authorities. Mutual trust between the Member States is required, whereby established rights acquired in the more or less distant past in a Member State must be recognized by the other Member States as well. In the second case, this requirement should be explicitly included in Article 12. The Dutch authorities therefore propose that Article 12 be simplified or reworded.

The article in question was clarified by Advocate-General Darmon in his conclusions (points 28 to 32) in the Dreessen case (C-477/93), where firstly, he stated that the regulations in question were those of the Member State that awarded the certificate in question, which could refer only to the activity carried out on the territory of that Member State. While Article 12 "requires each Member State to give effect to a certificate issued to a Community national by another Member State relating to the exercise by that national of activities as an architect for a specified length of time, such a certificate - as is shown by the reference to '*such regulations*' - can relate only to activities exercised in the territory of the State issuing the certificate. Consequently, a Community national who has exercised his professional activities in one Member State exclusively cannot rely on any certificate which may have been issued by another

Member State relating to such activities" (points 31 and 32 of the conclusions). In addition, the decisive period is that preceding notification of Directive 85/384/EEC - 5 August 1985 - as regards the first indent and that preceding implementation of the Directive (in any event, by 5 August 1987 at the latest) as regards the second indent. By those dates (at the latest) the interested parties must have been authorized to hold the professional title of architect and also meet the conditions governing the right to take up activities in the field of architecture. For these reasons, the Commission takes the view that it is not necessary to amend the article in question.

The Dutch authorities have also requested an amendment to the eighth indent of Article 11(h) on the grounds that the age condition is an impediment. They propose deleting it and replacing it by a reference to relevant professional experience of ten years prior to the entry into force of Directive 85/384/EEC. However, the final sentence of Article 11(h) shows that the provision in question is transitional and provisional in nature and will ultimately be repealed within the Netherlands. To replace it at this juncture would be contrary to the general disposition of this provision and to the general equilibrium of the established rights arrangements.

Accordingly, the Commission does not envisage proposing any amendments to the list of established rights, although Article 15, which is evidently now obsolete, should be repealed.

ARTICLES 16 TO 32

The Commission takes the view that any amendments concerning freedom of establishment and freedom to provide services must essentially be designed to clarify the procedures for authorizing persons to take up architectural activities with a view to streamlining them, and to amend or repeal articles which no longer serve any purpose.

To this end, it is proposed that Article 24 of the Directive be amended so as to make a clear distinction between cases of establishment and cases of provision of services (a point also raised by the Netherlands). Article 24 stipulates that migrants must furnish proof of no previous bankruptcy and of their sound financial standing. This requirement is often extremely onerous for providers of services. In addition, the reference in Article 24(1) to the prior application of Articles 17 and 18 (provisions specific to the right of establishment) is not consistent with the provision of services.

It is therefore proposed that a sentence be inserted into Article 24(1) to the effect that the information furnished pursuant to Articles 17 and 18 applies to cases of establishment and that, in cases of provision of services, it is Article 22 that applies.

By contrast, the Commission cannot accept the Dutch request that the central registration system existing in the Netherlands be made mandatory. This is because, assuming that it is correctly transposed into national law, Article 28 in its present form is sufficient to resolve any problems arising in this connection.

Lastly, traditional provisions concerning transposal of the Directive are to be added. The time-limit for transposal is 31 December 1999.

VI. THIRD COUNTRIES AND ENLARGEMENT

1. The Commission does not envisage taking action on a French proposal that diplomas awarded by third countries be assessed by the Advisory Committee. Council Recommendation 85/386/EEC of 10 June 1985 concerning holders of a diploma in architecture awarded in a third country is not legally binding. In addition, under the Council Decision setting it up, the Advisory Committee on Education and Training in the Field of Architecture is not competent to assess diplomas awarded by third countries. In any event, it does not have decision-making powers, even where Community diplomas are concerned, but is empowered merely to issue non-binding opinions.

Regarding Directive 89/48/EEC and the general system for the recognition of diplomas, such recognition is not automatic, as it is under Directive 85/384/EEC. In addition, diplomas awarded by third countries qualify for Community recognition under the general system only after the holders of such diplomas (Community nationals) have acquired three years' professional experience attested by the Member State which first recognized the diploma.

It should be noted that a similar proposal concerning the medical professions was rejected by the authorities of the Member States and that the French position failed to win support at the October 1995 meeting of the Ad Hoc Group of Senior Officials Responsible for the Free Movement of Architects.

Lastly, the matters referred to fall within the remit of the Community and the Member States (Opinion 1/94 of the Court of Justice of 15 November 1994) in so far as the Community does not have exclusive competence in cases involving third-country nationals. And the fact is that a not inconsiderable number of cases concern nationals of third countries.

For the above reasons, the Commission does not feel that the responsibility for assessing diplomas awarded by third countries can be assigned to the Advisory Committee on Education and Training in the Field of Architecture.

2. It should also be borne in mind that in June 1994 the Advisory Committee adopted a declaration in which it expressed the wish to be consulted, in the event of future enlargements, on the list of qualifications in architecture awarded by countries applying for accession and recognized by virtue of established rights. The Committee also expressed its concern with regard to certain qualifications in architecture recognized under the EEA Agreement and at the time of the 1995 enlargement, also by virtue of established rights. The declaration was transmitted to the representatives of the Member States at the October 1994 meeting of the Ad Hoc Group of Senior Officials Responsible for the Free Movement of Architects.

VII. CONCLUSION

In the light of the above, the Commission is considering presenting a proposal for a directive amending Directive 85/384/EEC. In accordance with Article 3b of the EC Treaty, this proposal will comprise only amendments which are necessary. Ultimately, once the general system is operating more smoothly, thought should be given to whether architecture should be integrated into the general system set out in Directive 89/48/EEC. In this connection, it should be noted that the Commission has submitted a report on the state of application of the general system for the recognition of higher-education diplomas (COM(96) 46) drawn up in accordance with Article 13 of Directive 89/48/EEC and which states that it is not yet possible to reach any final conclusions on the general system and that the review of Directive 92/51/EEC which is scheduled to take place in 1999 will afford the Commission an opportunity to re-examine the functioning of the general system as a whole.

In view of the accession of new Member States, it will also be necessary to discuss the future of the Advisory Committee and to envisage replacing, in the longer term, the current procedure for assessing diplomas (Articles 7 to 9 of the Directive) by a committee procedure along the lines of that provided for in Article 15 of Directive 92/51/EEC.

The draft proposal for a European Parliament and Council Directive would probably be structured along the following lines:

- (1) Reminder that, pursuant to Article 30 of Directive 85/384/EEC, the Commission is obliged to review that Directive on the basis of experience and, if necessary, to submit proposals for amendments after consulting the Advisory Committee;
- (2) Clarification of the procedure provided for in Article 8 of the Directive, by setting for the Commission a deadline by which to contact the Advisory Committee, given that doubts are very often expressed towards the end of the period allowed for the purpose;
- (3) Repeal of Article 15, which is now obsolete;
- (4) Amendment of Article 24(1) in order to draw a clear distinction between cases of establishment and cases of provision of services, since the requisite formalities concerning financial standing are unduly onerous for providers of services and may duplicate the arrangements provided for in Article 22(3) and those (concerning establishment only) set out in Articles 17 and 18;
- (5) Deadline for transposal set at 31 December 1999.

The intention at present is to transmit this report initially to Parliament and the Council, for information, and to the Economic and Social Committee and the Advisory Committee on Education and Training in the Field of Architecture so that any observations made by them can be taken into account before a formal proposal amending Directive 85/384/EC is presented.

REPORTS AND RECOMMENDATIONS		
III/D/5149/4/88	Report and recommendations on training in architecture: practical training and experience (adopted on 30 May 1989)	
III/D/5244/5/89	Recommendation on the duration of architectural education and training (adopted on 14 March 1990)	This recommendation was not accepted by all Member States
III/D/9033/3/89	Report and recommendations on relationships in the teaching and practice of architecture (adopted on 14 March 1990)	
III/D/9125/3/89	Reflections and recommendations on Article 3 (adopted on 14 March 1990)	
III/D/5009/3/90	Report and recommendations on post-diploma education and training in architecture (adopted on 14 March 1990)	
III/F/5326/7/90	Report and recommendations on training of teachers: ethics and practice (adopted on 23 October 1991)	
III/F/5359/8/90	Report and recommendations on education and training as preparation for full practice as supervisors of works (adopted on 23 October 1991)	
III/F/5184/4/92	Report and recommendation for amending Article 4 of Directive 85/384/EEC (adopted on 6 October 1992)	This report and recommendation was not accepted by all Member States

III/F/5043/6/92	Report and recommendations on project work in faculties of architecture (adopted on 20 October 1993)	
III/F/5182/3/93	Report on the amendments to the sixth, seventh and eighth recitals and to Article 23 of Directive 85/384/EEC to take account of the report and recommendations on amending Article 4 (doc. III/F/5184/4/92) (adopted on 20 October 1993)	This report was not accepted by all Member States
III/F/5168/5/93	Report and recommendations on training in architecture - personal end-of-course work: content and assessment (adopted on 20 October 1993)	
III/F/5172/7/92	Report and recommendations on access to architectural studies (adopted on 15 June 1994)	

OPINIONS

III/D/1661/1/87	Opinion concerning compliance of a Belgian diploma with Articles 3 and 4 of Directive 85/384/EEC (adopted on 29 July 1987)	Negative opinion Diploma not published in the OJ
III/D/1662/1/87	Opinion concerning compliance of a Belgian diploma with Articles 3 and 4 of Directive 85/384/EEC (adopted on 29 July 1987)	Negative opinion Diploma not published in the OJ
III/D/1663/1/87	Opinion concerning compliance of a German diploma with Articles 3 and 4 of Directive 85/384/EEC (adopted on 29 July 1987)	Negative opinion, but diploma published in OJ C 88, 19.10.1988
III/D/1664/1/87	Opinion concerning compliance of certain Portuguese diplomas with Articles 3 and 4 of Directive 85/384/EEC (adopted on 29 July 1987)	Negative opinion Diploma not published in the OJ
III/D/1665/1/87	Opinion concerning compliance of certain United Kingdom diplomas with Articles 3 and 4 of Directive 85/384/EEC (adopted on 29 July 1987)	Positive opinion Diploma published in OJ C 88, 19.10.1988
III/D/895/1/88	Opinion concerning compliance of certain Italian diplomas with Articles 3 and 4 of Directive 85/384/EEC (adopted on 13 April 1988)	Negative opinion Diploma not published in the OJ
III/D/8303/3/93	Opinion concerning compliance with Articles 3 and 4 of Directive 85/384/EEC of the Italian diplomas in "Ingegneria edile" (adopted on 19 October 1993)	Negative opinion Diploma not published in the OJ
III/D/8304/3/93	Opinion concerning compliance with Articles 3 and 4 of Directive 85/384/EEC of the French architecture diploma DPLG (adopted on 19 October 1993)	Negative opinion, but diploma published in OJ C 350, 10.12.1994 (94/C 350/06)

III/D/8314/1/94	Opinion on compliance of the "Licenciatura em Arquitectura" awarded by the Escola Superior Artística of Oporto with Articles 3 and 4 of Directive 85/384/EEC (adopted on 15 June 1994)	Positive opinion Diploma published in OJ C 65, 16.3.1995 (95/C 65/03)
-----------------	--	--

ISSN 0254-1475

COM(97) 350 final

DOCUMENTS

EN

04 13 16 06

Catalogue number : CB-CO-97-343-EN-C

ISBN 92-78-22389-1

Office for Official Publications of the European Communities

L-2985 Luxembourg