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Report

drawn up on behalf of the Legal Affairs Committee

on the exercise of the right of establishment and freedom to provide services in the field of architecture

Rapporteur: Mr A. GILLOT

1.22

English Edition PE 64.960/fin.

At its sitting of 10 March 1980 Parliament referred the motion for a resolution (Doc. 1-810/79), tabled by Mr Gillot pursuant to Rule 25 of the Rules of Procedure on a draft directive on the exercise of the profession of architect, to the Legal Affairs Committee as the committee responsible and to the Committee on Youth, Culture, Education, Information and Sport for its opinion.

At its meeting of 29 April 1980 the Legal Affairs Committee appointed Mr Gillot rapporteur.

Before the motion for a resolution (Doc. 1-810/79) had been tabled, this matter was initially considered at the meeting of the Legal Affairs Committee of 18 February 1980 - in the presence of Commissioner Davignon and a representative of the Council - and on 19 May 1980 Commissioner Davignon forwarded a note which constitutes Annex I to this report.

At its meeting of 9 July 1980 the Legal Affairs Committee heard a statement by Mr Gillot which now forms Annex II to this report; Mr Gillot's statement was followed by a discussion, and Commissioner Davignon submitted a number of written observations; these observations, which supplement his note, are attached to this report (Annex III).

At its meeting of 23 and 24 September 1980 the Legal Affairs Committee considered the draft report prepared by Mr Gillot and adopted the motion for a resolution unanimously.

At that meeting the Legal Affairs Committee unanimously instructed its chairman to ask the President of Parliament - given the question of principle raised by this report and the information received regarding the Council's work programme - to include this report in the agenda of the part-session of 13-17 October 1980.

President: Mr Ferri, chairman; Mr Luster, Mr Turner and Mr Chambeiron, vice-chairmen; Mr Gillot, rapporteur, Mr Dalziel, Mr D'Angelosante, Mr De Gucht, Mr Fischbach, Miss Hooper (deputizing for Mr Prout), Mr Janssen van Raay, Mr Malangre, Mr Megahy, Mr Seigler-schmidt and Mr Tyrrell.

The opinion of the Committee on Youth, Culture, Education, Information and Sport with be given orally in plenary sitting.

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A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the exercise of the right of establishment and freedom to provide services in the field of architecture

The European Parliament,

- having regard to its Resolution of 1 July 1968[1] on the proposals for directives (Doc. 65/67) on freedom of establishment and freedom to provide services in respect of the self-employed activities of architect and the mutual recognition of diplomas, certificates and other evidence of formal qualifications relating to the self-employed activities of architect,

- having regard to the motion for a resolution (Doc. 1-810/79),

- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Youth, Culture, Education, Information and Sport (Doc. 1-439/80).

- whereas:

  - twelve years have elapsed since the the European Parliament delivered its opinion on the proposal for a directive on the mutual recognition of diplomas in the field of architecture,

  - the draft which the Commission is now submitting to the Council for final adoption has undergone many changes since the Council submitted it to the European Parliament in 1967,

1. Calls on the Council to consult the European Parliament again, since radical changes have been made to the text on which it was consulted and delivered its opinion twelve years ago;

2. Instructs its President to forward this resolution and the report of its committee to the Council and Commission.

[1] OJ No. C 72, 19.7.1968, p.3

B

EXPLANATORY STATEMENT

1. The object of this explanatory statement, which has deliberately been kept brief[1], is to review the work of the Legal Affairs Committee during 1980 on the subject of the motion for a resolution before Parliament and to underline its political importance.

2. While your rapporteur, as the only architect member of the European Parliament, may be considered to have apersonal interest in the advancement of this matter, its importance goes far beyond the immediate professional context and assumes a political dimension by reason of the real difficulties inherent in the Community's legislative process. Where that process extends over an abnormally long period marked by numerous changes - although it may appear that the essential procedural requirements have been complied with - the consultation of our institution may in fact have no more than rubber stamp value.

I

3. The consideration of this matter by the Legal Affairs Committee arises out of the referral to it on 10 March 1980 of a motion for a resolution (Doc. 1-810/79)[2] tabled by Mr Gillot. The committee appointed Mr Gillot rapporteur on 29 April 1980 on a proposal from the political groups.

It will be recalled that the question as to whether it was necessary for Parliament to be consulted a second time on the mutual recognition of architects' diplomas was discussed in committee at the meeting of 29 January 1980 and had formed the subject of an initial discussion on the basis of detailed documentation (Notice to Members No.34/79 = PE 62.910 and Notice to Members No.35/79 = PE 63.124) at the meeting of 18 February 1980.

4. The establishment of a constructive dialogue with the Commission of the European Communities on the status of this question has not proceeded altogether smoothly, as may be seen from the answers to the written question by Mr Gillot (OJ No C 66, 17.3.1980, p. 3) and to question No 4 during Question Time on 10 March 1980 (OJ Annex No. 1-252, pp. 38 and 39).

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[1] A further view of the difficulties raised by this matter may be gained from three documents compiled by the Legal Affairs Committee and annexed hereto.

[2] See Annex IV

5. Following the Legal Affairs Committee's meeting of 18 February 1980, the Commission did initially on 19 May 1980 provide the committee with an information note on the state of progress of work on the Commission proposals for arrangements for the attainment of freedom of establishment and freedom to provide services in respect of activities as an architect. This note, which was circulated with Notice to Members No.10/80 (PE 65.400), is included as Annex I to this report.

In addition, following your rapporteur's speech to the Legal Affairs Committee on 9 July 1980 (Notice to Members No.20/80 = PE 66.729), Mr Davignon kindly furnished certain written observations (Notice to Members No.21/80 = PE 66.947). These documents form Annex II and Annex III to this report.

Your rapporteur, however, takes the view that Mr Davignon's written observations, although interesting, contain nothing to justify any substantial change to the main lines of the original motion for a resolution.

6. Although the Commission concedes that undeniable changes had been made since 1967 to the text on which Parliament gave its opinion in 1968, its view is that these amendments cannot be considered as being substantive and hence justifying a further consultation of Parliament.

However, information received by your rapporteur from the Liaison Committee of Architects in the Common Market, which has been regularly consulted by the Commission, has persuaded him that the reverse is true, particularly as regards the length of training and transitional measures even if, as it appears, some of the more doubtful points have recently been dropped.

7. The Legal Affairs Committee is aware that only by seeing the latest version of the draft directive could Parliament assess the changes which have been made and form an opinion on them.

This is why, at the request of its rapporteur, the Legal Affairs Committee has instructed its chairman to request the President of Parliament to ask the Council to forward this text. At the time of writing, no answer has been received to the letter sent to the President of the Council on 25 July 1980.

8. But above and beyond the question of whether the text now before the Council has been so substantially altered as to justify reconsultation of Parliament in the spirit of the Council's answer to Written Question No. 409/79 by Lord O'Hagan (OJ No. C 27, 4.2.1980, p. 3)[1], is not a further consultation needed in any event? Indeed, how can one consider an opinion as relevant if, since it was delivered by Parliament, both the Community membership has increased and the national legislations themselves have in many cases undergone profound changes.

9. While on a literal construction of the Treaty the mutual recognition of diplomas is but a means of securing the right of establishment and freedom to provide services, your rapporteur feels that this should be achieved only by promoting the highest possible level of training in order to preserve not only the highest aspirations of European culture in this field but also the position of the architects of the Member States in external markets.

It is inconceivable that while the harmonization of industrial standards to eliminate technical barriers to trade and the approximation of social legislation are proceeding by reference to the highest standards, the opposite approach should be adopted in relation to a major issue whose cultural implications are at least as important as its social and economic aspects.

10. This idea was being voiced as early as February 1968, as is shown by the following extract from the opinion of the Political Affairs Committee which was at that time responsible for cultural questions:

> 'The true sense of European integration is to find a new and up-to-date common denominator based on the experiences of the various Member States but at the same time transcending them, not by academic comparability studies (requiring difficult bargaining sessions) but in a spirit of renewal looking forward to an ideal more suited to the demands of our time.'[2]

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[1] The question and answer were included in Notice to Members No.43/79 = PE 63.692

[2] Report by the Legal Affairs Committee - Doc. 24 - parliamentary year 1968/69, page 30, end of paragraph 2.

11. In the absence of the updated version of the draft directive, the theme of the resolution submitted to Parliament must inevitably be to ask for the text to be forwarded to Parliament to permit a subsequent debate on its merits; that is why it contains nothing which might prejudice the conclusions of the work undertaken in the light of a second consultation.

III

12. Twelve years after the delivery by the European Parliament of its opinion on a proposal for a directive on which the Council has still not taken a decision seven years after the first enlargement of the Community, and on the eve of the entry into force of the Treaty of Accession of the Hellenic Republic, Parliament must have a full knowledge of all the facts to deliver an opinion on the Community rules to be adopted to allow the right of establishment and freedom to provide services to be exercised in respect of activities as an architect and on the requirements for the mutual recognition of diplomas, certificates and other qualifications which is a condition precedent of the attainment of such right and freedom.

13. The long delay in the Council is clearly due to the fact that the situation differs so widely in the Member States. Information received by the Legal Affairs Committee and by your rapporteur since the return of this question to the committee's agenda suggests that the conditions may now at last be favourable for the drawing up of a text likely to achieve agreement within the Council.

However, any agreement so long in the making can only have been achieved at the price of far-reaching changes to the initial text on which Parliament delivered its opinion in 1968.

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14. It would appear, therefore, that our Assembly - as the democratic voice of the citizens of the Community - is entitled to full knowledge of all the facts so as to be able to express its opinion on a draft directive which, concerning as it does a field of vital cultural importance, may affect not only the quality of life of every Community citizen but also Europe's architectural standing.

19 May 1980 ANNEX I

Note on the state of progress with the proposals from the Commission laying down the arrangements for the attainment of freedom of establishment and freedom to provide services in respect of self-employed activities as an architect[1]

INTRODUCTION

1. The situation as regards the profession of architect varies considerably from country to country. This diversity is apparent not only in the way the profession is organized but also in the training required and the powers of the public authorities.

1.1 As regards organization of the profession, in some Member States there is freedom in law to practise in the architectural field while in others the practice is controlled by a monopoly; here the monopoly is either exclusive to a single profession or shared between two or more professions.

1.2 With regard to training courses leading to the professional title of architect or engineer are generally at university level in all the Member States.

While, however, this is a long process in some Member States, in others short training cycles may exist side by side with the long.

Moreover the proportion of theory and practice in training courses varies widely from one Member State to another.

1.3 As regards the powers of the public authorities, it may be mentioned, by way of example, that organization of the professions in the construction sector is the responsibility of the central authority in all the Member States except Germany, where they come under the exclusive jurisdiction of the Länder.

2. The complexity of the subject was bound to add to the long delays which tend to be the rule anyway in the mutual recognition of diplomas, between the date on which the initial Commission proposals are submitted and the adoption of directives by the Council[2].

3. As a result of this delay there has inevitably been some change in the text of the proposals, arising out of changes in the life of the Community itself; this change has not affected the original objective, but it has altered the method by which that objective is to be achieved.

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[1] See OJ No. 239, 4.10.1967

[2] This time-scale was 6 years to adoption of the directives on doctors
8 years to adoption of the directives on nurses
8 years to adoption of the directives on veterinary surgeons
9 years to adoption of the directives on dentists
10 years to adoption of the directives on midwives

I. MAIN CHANGES

On 16 May 1967 the Commission first submitted to the Council three proposals designed to lay down the arrangements for attaining freedom of establishment and the freedom to provide services in respect of self-employed activities as an architect. The first proposal dealt with the attainment of freedom of establishment and freedom to provide services, while the second concerned the mutual recognition of diplomas, certificates and other qualifications; the third governed the coordination of laws, regulations and administrative provisions.

1. The purpose of the first proposal was to abolish existing restrictive provisions in the Member States which prevented nationals of other Member States from establishing themselves in the host country or from providing services on the same terms and with the same rights and duties as nationals.

It will be recalled that in its judgments of 21 June 1974 on Case 2/74 (REYNERS) and 3 December 1974 on Case 33/74 (van BINSBERGEN) the Court of Justice of the European Communities ruled that the provisions of Articles 52 and 59 of the EEC Treaty were directly applicable from the end of the transitional period.

In these circumstances there was no longer any need for directives abolishing such restrictions. Consequently the Commission formally withdrew its proposal on 4 November 1974[1].

However, the proposal withdrawn by the Commission contained provisions of a general nature concerning requirements as to good character or good repute, financial standing, etc. These provisions were still relevant since they were intended to facilitate the actual exercise of the right of establishment and freedom to provide services. The Commission therefore proposed[2] - and the Council accepted this suggestion - that the original provisions be incorporated in the directive on the mutual recognition of diplomas, taking account of similar provisions that had already been adopted in the case of a number of directives on health service occupations.

2. The Commission's initial proposal for the mutual recognition of diplomas contained a list of architectural diplomas awarded in the Member States which were to receive mutual recognition. The proposal did not specify the criteria on which the list had been based, nor did it state what criteria diplomas should meet in the future to continue to benefit from recognition.

2.1 This formalist approach, based on the title of the diploma rather than its content, came under fire from various quarters.

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[1] See Bulletin EC No. 11 - 1974, point 2109

[2] See Doc. (COM) 4024/74, forwarded by the Commission to the European Parliament on 28.11.1974

It was pointed out that reference to the title of diplomas alone was not a sufficient guarantee of the quality of the studies and would allow the Member States to alter the content of tuition unilaterally. The profession itself was quick to notice this failing and a consensus was reached in favour of laying down in the directive the minimum qualitative and quantitative criteria which diplomas should in future meet in order to be recognized and permit the holder to practise as an architect in the host country.

This approach is not different from that adopted in a number of the Commission's initial proposals for other occupations, on which the European Parliament has delivered a favourable opinion; moreover, it has already been endorsed by the Council in several directives.

The inclusion of qualitative criteria provided the opportunity, which was unanimously welcomed, to take account of new factors that were causing concern, in particular, the question of the quality of life. It will be remembered in this connection that under the terms of the present proposal the course of studies must, inter alia, ensure that the qualified architect has acquired 'the ability to grasp the relationship between man and architecture on the one hand and between architecture and its surroundings on the other hand and the ability to understand the need to approach architecture and space bearing in mind human needs and a human scale'.

2.2 One consequence of this objective statement of the terms of recognition has been to settle the problem of persons whose engineering qualifications meet, like architectual diplomas, all the qualitative and quantitative criteria laid down. This will solve the problem of qualified civil engineers in Italy practising in the architectural sector, which the European Parliament, in its opinion on the proposals for directives on research, design, consultation and application in the technical domain[1], wanted to see resolved.

2.3 This new approach led to the introduction of specific provisions on diplomas awarded under programmes in existence before implementation of the directive (known as the problems of 'established rights').

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[1] OJ No. C 51, 29.4.1970

In the Commission's initial proposal such provisions were unnecessary, because diplomas awarded before implementation of the directive gave their holders the same right to migration as diplomas awarded after that date. But with the introduction of qualitative and quantitative criteria which diplomas should meet in order to receive recognition there was a risk that some diplomas awarded before implementation of the directive would be excluded from this entitlement.

The need to maintain the original objective whilst changing the approach has therefore made it necessary to add specific provisions on 'established rights' with the aim of safeguarding the recognition of qualifications awarded in the past which do not meet all the criteria laid down for the future.

The differences in the degree or diploma courses in the architectural sector and in the national regulations governing activities in this sector have made it necessary to differentiate the provisions normally used for established rights.

Thus the existence in the Member States of different courses of study leading to qualifications of different qualitative levels led to the proposal that architectural diplomas be treated in different ways, some receiving recognition as they stood under the established rights arrangement whilst others would be recognized subject to additional professional experience or an extra qualification.

The diversity of national regulations governing architectural activities raised a further complication. It appeared desirable, in the context of established rights at least, to take into account national qualifications in engineering which gave access to activities in the architectural sector even where they did not entitle the person so qualified to the protected status of architect.

3. The third Commission proposal concerned the coordination of laws, regulations and administrative provisions.

It was prompted by the diversity of national regulations governing activities in the architectural sector, which has been mentioned above.

In some Member States different diplomas, at appreciably different levels, provided the same right to their holders to engage in the occupation of architect.

To ensure that holders of non-university diplomas not included in the list contained in the directive on the mutual recognition of diplomas were not in practice denied the right of free movement, the proposal laid

down conditions in which such persons could still obtain recognition of their qualification in the other Member States.

It was proposed that these persons should undergo an examination based on qualifications in their Member State of origin.

The guiding principles of the initial provisions have been included in the current text on the mutual recognition of diplomas.

The desire to strengthen in the long term the safeguards provided by the qualifications required of migrant architects led to the decision to limit the period in which the examination based on qualifications would apply; although it was originally proposed for non-university diplomas irrespective of the date when they were awarded, this examination is now proposed only in the context of 'established rights', for diplomas awarded at the end of a course of study completed under a programme in existence before implementation of the directive.

This change has made the Commission's third proposal unnecessary.

4. An Advisory Committee on Education and Training in the Field of Architecture, which was not envisaged in the Commission's original proposals, will assist the Commission in the same way as the advisory committees in other sectors of activity for which directives on the mutual recognition of diplomas have been adopted. The committee's tripartite composition, made up of experts from the profession, university establishments and the relevant authorities, will make it an ideal forum for the exchange of information and ideas with a view to reaching a common definition of education and training in the field of architecture and adapting them to new problems arising from social, scientific and technical change and to the quality of living conditions.

The committee will also play an important role in the administration of the directive in view of its responsibility, under its terms of reference for ensuring that the minimum qualitative and quantitative criteria to be met by diplomas receiving recognition are observed.

II. STATE OF PROGRESS

Preparation of the text of the proposals has necessitated years of detailed and complex work, which makes rather heavy going of a directive.

At this stage only two difficulties remain and the Council may be able to settle these before the end of the Italian Presidency.

1. In the context of provisions to be adopted on diplomas already awarded or which will be awarded in the first years following adoption of the directive, the Netherlands Government wants the directive to treat construction engineers with diplomas from the Hogere Technische Scholen (H.T.S.) on an equal footing with those who have completed a four-year course at the Fachhochschulen, whereas as it stands the proposal equates the H.T.S. diploma to a three and a half year's course at the Fachhochschulen and requires a practical test in both cases.

2. The second issue still under discussion concerns the minimum quantitative criteria which recognized diplomas will have to meet.

It is accepted that it does not at present appear possible, and would probably be undesirable, to make it compulsory in every case for the Member States to organize courses in accordance with uniform minimum criteria, since the important point is to ensure that the different methods lead to mutually equivalent results.

The Commission and the Member States have agreed that the minimum qualitative level - the standard - should correspond to the level attained by a four years' full-time university course of study; they consider that this qualitative level may also be attained by other means.

It has already been agreed in the Council that a three-year university course, if adequately supplemented, even outside a university, may enable the qualitative level of the standard to be attained.

A two-year period is accepted for this supplementary education but there are differences of opinion as to the proportion of theory and practice to be undertaken during the supplementary period and as to the methods of testing the acquisition of knowledge.

ANNEX II

LEGAL AFFAIRS COMMITTEE - MEETING OF 9 JULY 1980

PROPOSAL FOR A DIRECTIVE ON ARCHITECTS

SPEECH BY MR GILLOT, rapporteur

It has not been possible to overcome the difficulties which we had yesterday with Mr Davignon and so it has been agreed that a transcript of my preliminary speech to our committee will be sent to him to enable him to give a written reply. We will therefore be able to submit and duly consider a report in September. But there is no reason why you should not, after my preliminary speech, express your views, which will obviously be of great help to me in drafting my report.

A draft directive concerning the recognition of diplomas, certificates and other qualifications relating to self-employed activities in the field of architecture has been under consideration for 13 years.

The Commission submitted its first proposals to the Council in 1967. The Assembly of the European Communities was consulted in 1968 and for 12 years the text has been continuously evolving and passing back and forth to COREPER. For two years it has been virtually blocked in the Council.

The Liaison Committee of Architects in the Common Market set up in the very beginning consistently voiced its objections to the successive versions of this draft. Profoundly alarmed by its recent evolution, the committee informed Mr Davignon of its opposition and then following direct elections to the European Parliament it also informed Mrs Simone VEIL and the sole architect MEP, who tabled a written question on 2 August 1979 followed by an oral question and finally the motion for a resolution which is the subject of our discussion today and for the purpose of which he has been appointed rapporteur.

This question of the directive on architects is important and it is exemplary because it goes far beyond the professional area which provides its basis and justification, to pose the question of relations between Parliament, Commission and the Council and also

that of the purpose of harmonizing procedures among the Member States of the Community.

The first question to be answered is whether the Council can adopt a draft directive in gestation for 13 years, and on which Parliament gave its opinion 12 years ago and which deals with a problem which has evolved enormously in 10 years and undergone numerous substantial amendments, without consulting Parliament a second time.

The next question is to ask what are the reasons for the virtually unanimous opposition - which is particularly unusual - to the draft from architects in the Member States who have criticized the direction in which the present draft is pointing on the ground of the public interest in the quality of architects' services. This is an important issue because, as I have said, from the outset it poses the problem of relations between Parliament, Commission and Council.

Since the Liaison Committee of Architects in the Common Market referred the matter to Mrs VEIL and Mr GILLOT and since Mr Gillot's intervention, the Commission has been consistently evasive, going so far as outright withholding of information from Parliament, although according to Mr Davignon everything is for the best in the best of possible worlds, or almost so.

His reply to Mr Gillot's first written question was:'The Commission has not been asked by the Council to draft a new text and is not planning to recast its proposal as it considers that the latter is currently the only possible basis of agreement between the Member States'.[1] This reply is a brush-off. The Council has not asked the Commission to prepare a new text. Does this mean that the Commission thinks that it can change the draft based on the text on which Parliament delivered its opinion, as it pleases? One might think so when reading that it is not planning to recast its proposal despite the opposition from architects and in the countries concerned and that it considers this draft to be the only possible basis for an agreement between the Member States despite the reservations which several of them have expressed. In any event this reply shows clearly how little importance the Commission seems to attach to Members' views and to Parliament itself.

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[1] Written Question No. 348/79 and answer, OJ No.C 66,17.3.1980,p.3 and Notice to Members No. 34/79 PE 62.910/Ann.2

This first skirmish was followed shortly afterwards by a confrontation at a meeting of our committee with Mr Davignon, during which, despite the Commission's withholding of documents, I was able to produce to the meeting the latest version of the draft passed on to me by the Architects' Liaison Committee. Our colleague, Mr d'Angelosante, was thus able to determine that the 1978 draft which I showed to him was very different from the 1968 text. Unable to deny this evidence, Mr Davignon was then obliged to modify his reply to my written question and to admit that the project had evolved but without, however, saying how far.

In his answer to my oral question, he said: 'In spite of the undeniable changes made to the texts submitted for the European Parliament's approval, the Commission does not consider it necessary to consult Parliament a second time. The changes made do not affect the substance of its initial proposals but essentially only the form (....). The Commission is nonetheless prepared to keep Parliament informed of all developments concerning its proposal.'[1]

It should be noted in passing that it is not for the Commission to decide whether to reconsult Parliament but for the Council, as is shown by the Council's answer to Lord O'Hagan of 20 December 1979[2], which states that the procedure applicable to consultations of the Assembly is also applicable to reconsultations and that if the amendments contemplated by the Council have a bearing on questions of fundamental importance not yet submitted to the Parliament, the Council would certainly consider the possibility of further consultation. However, according to the Commission's answer to my oral question, the undeniable changes affect the form and not the substance. This assertion, I would note in passing, has at least the merit of admitting by implication that changes of fundamental importance would justify further consultation.

One cannot fail to notice the Commission's condescending attitude towards Parliament when it states that it is nonetheless prepared to keep Parliament informed of all developments. There can be no more elegant expression of the low esteem in which it holds its partner. In France when children play with smaller children they tell them 'Your opinion doesn't count'. Clearly, in this case at least, in the eyes of the Commission, the European Parliament does not count.

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[1] See Notice to Members No 14/80 (PE 66.232)

[2] See Notice to Members No 43/79 (PE 63.692) and OJ No C 27, 4.2.1980, p.3

This condescending attitude, I say plainly and without any animosity towards the Commission to whose work I pay tribute, is quite unacceptable. Parliament is a partner of the Commission and as such deserves respect. Having said that, is it or is it not true that the draft has undergone changes which are not only undeniable but concern matters of fundamental importance?

Mr Davignon told us no. But he refused to make available to the Legal Affairs Committee the latest version of the draft and only comparison of that draft with the initial draft will permit us to form an opinion. We did in fact receive a note[1], dated 19 May 1980, referring to the last version of the draft which then was that of 7 May. But what use to us is this study, I was going to say this argument for the defence, without the texts to which it refers and which in any case have evolved since, as I have just learned on receiving from the Architects' Liaison Committee a new text dated 12 June 1980? The reason given for refusing to pass on the draft to Parliament confirms the Commission's disdain for us. Who will believe that the Commission, whose independence, especially in relation to Parliament, has been demonstrated does not have the power, if and when it wishes, to pass on a document which it has drawn up itself? The reason given for the refusal, that the document was supposedly the property of the Council, is pure form. Either it is quite ridiculous or we must accept that the Commission has two radically different languages and attitudes depending on whether it is dealing with the Parliament or the Council, which I of course refuse to believe. Whatever the reasons may be, I formally protest against this arbitrary and unjustifiable discrimination and I would ask our chairman, after the committee has considered this point, officially to request the President of the European Parliament to ask the Council to transmit the latest version of the draft directive on architects so that we may continue our work.

I would also ask that this question should serve as an opportunity for clarifying the relations between Parliament, the Commission and the Council in order to avoid any repetition of situations as unseemly and damaging to the credibility and effectiveness of our European institutions.

We are therefore constrained in the first instance to compare unofficially the recent versions of the draft. There have been at least three since 1978. In this connection we must recognize that the attitude of the Commission with its refusal to communicate the texts can only add to our growing doubts aroused by the soothing noises made by the Commission.

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[1] Notice to Members No. 10/80 PE 65.400

Comparison of the texts of 12 June, 7 May 1980, that of 1978 and that of 1967 regrettably shows that, contrary to what Mr Davignon has said, the changes are not merely of form but of substance and in some cases changes to the aim of the initial project, whose merits we do not have to decide for the moment at least but whose scope we must assess in order to determine whether or not they justify a further consultation of Parliament. Clearly they do. In 1967, the mutual recognition of diplomas provided the purpose for the directive and the basis of freedom of establishment for architects by direct application of Articles 52 and 59 of the Treaty of Rome. The intention was to define the minimum level of qualification for architects and to compile a list of diplomas providing evidence of such qualification. This was a logical and coherent objective. The note of 19 May[1] sent to us by Mr Davignon recognizes that a criticism was made at that time, and rightly so, that mere reference to a list of diplomas was an excessively formal approach which did not allow the necessary level of architectural qualification to be defined and that this approach must be supplemented by a definition of the content and duration of an architect's studies. This has since been done and constitutes an absolutely fundamental change from the original text.

What is the situation in 1980? The note of 19 May tells us clearly. The object now is to fix the terms and conditions for achieving freedom of establishment and freedom to provide services for self-employed activities by architects. It is therefore quite clear that the levels of priority accorded to the aims of the directive have been entirely reversed, as is confirmed by the draft answer to Mr van Miert's Written Question[2] No. 207/80 to the Council of 16 April 1980. This should come as no surprise to us since for the Commission the aim of freedom of establishment apparently takes precedence over all other considerations. Admittedly, it is important but it should not be confused with the free movement of persons, of which it is a consequence, because the problems that it raises are of a quite different order.

This clear change of objective is accompanied by a flood of new proposals intended to define an architect's qualifications by reducing them to their simplest terms finding the lowest common denominator and associating other activities with architecture in order to widen the scope of the directive to embrace the greatest possible number of different professions and at the same time to settle sectoral problems in this area in some Member States.

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[1] Notice to Members No. 10/80 PE 65.400

[2] EP Bulletin of 18.4.1980, p.21

The note of 19 May leaves no room for doubt as to these new intentions stating: 'The diversity of national regulations governing architectural activities raised a further complication (still in relation to the basic draft). It appeared desirable, in the context of established rights at least, to take into account national qualifications in engineering which gave access to activities in the architectural sector even where they did not entitle the person so qualified to the protected status of architect'[1]. There I was quoting. No one could confuse all these issues with more innocence or simplicity. Can you imagine such a merger for example of the medical professions which have been the subject of five separate directives? Could anyone conceivably put nurses or veterinary surgeons on the same footing as doctors under the pretext of unifying procedures and facilitating the right of establishment for a greater number of qualified persons in the field of public health. Like public health, architecture comprises a variety of specific and complementary activities in which the architect plays the major role, comparable to that of the doctor in public health.

The Commission, sensing that it has ventured onto shifting ground, has backed down somewhat in its latest version of 12 June, passed on to us unofficially, in that it has dropped the general assimilation of engineers provided for in the text of 7 May to which Mr Davignon's note to us refers. Here we see the speed of developments, their importance and the total confusion in which this draft is being prepared. To top it all, the latest text leaves blank Article 4 which is probably the most important in the new draft since it defines the duration of an architect's training!

I could mention many other aspects of the profound changes which the draft has gone through and in particular the measures contemplated in the name of social advancement which would admit technicians with seven years of experience of work in an architect's office, on passing an examination, to the same rights as persons having obtained a recognized diploma.

To return to my comparison with medicine, it is more or less the same as giving nurses with seven years experience of working with doctors the opportunity to take an examination entitling them to the same rights as doctors. I could also mention the transitional measures whose effects would last 50 years, the measures taken in the name of established rights, all of which, to say nothing of their probable consequences which we should not discuss today, show that since 1968 the draft has undergone profound changes of fundamental importance. We are therefore dealing with a new draft which justifies and necessitates a further consultation of our Assembly as is demanded by the motion for a resolution which I have submitted for your approval[2].

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[1] Notice to Members No. 10 PE 65.400, point 2 (end)

[2] Doc. 1-810/79

Further and alternatively, a reconsultation of Parliament would also be fully justified by the way in which the background to the directive has evolved over ten years. Throughout Europe, public opinion has become aware of the importance of the questions concerning the quality of architecture and more generally the quality of life and the public interest therein. This concern has led the Architects' Liaison Committee to demand that the public interest should be taken into account in the directive. The Commission's reply to this request is significant and revealing. It has confined itself to inserting into the draft the following sentence: 'Training should ensure inter alia that the architect has acquired the ability to grasp the relationship between man and architecture on the one hand and between architecture and its surroundings on the other hand and the ability to understand the need to approach architecture and space bearing in mind human needs and a human scale'[1].

Thus the Commission can state in its answers to my questions and in the note of 19 May that it has settled the problem and taken account of the new factors all in a few lines!

The main aim of the directive should be, as we have seen, to define a new common reference level, a standard for European architectural qualifications. This is important because international competition is becoming increasingly lively in this field and the architects' training requirements deemed necessary in the world as a whole are becoming stricter and stricter. It is also important because public opinion demands a higher quality of life. The level and period of training vary greatly in the nine Member States and consequently the situation differs considerably from one Member State to another. Clearly this requires transitional solutions but it does not justify a change of aims resulting in a mass of special cases to the detriment of the qualitative goals which Europe has a duty to set itself in a field in which it has accumulated a cultural capital which influences the entire world.

We have no right knowingly to sacrifice the future in order to solve sectoral problems which can be solved gradually within each Member State without jeopardizing the proposed Community provision. That would be all that was needed to complete the destruction of our countryside and the urban explosion which has taken place in the course of the delirious economic expansion of the last 30 years. That would be all that was needed to ensure the rapid rise to superiority of Japanese and Korean architects, for example, and then the architectural invasion of Europe. Such are the implications of this draft directive; they go far beyond the narrow professional interests at issue and concern more than architects alone.

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[1] Article 3(5)

There is no question of Parliament taking over the role of the Commission in drafting a directive. Rather Parliament must demand that the directive be drawn up in collaboration with interested parties and not against them, in the spirit of the Treaty of Rome and not just according to its letter, taking account of the interlocking responsibilities of the various organs of the Community and not disregarding the role of Parliament.

Amazing is the only word to describe the Commission's obstinate determination to persist with a text rejected by those for whose benefit it has been prepared and far from being accepted by the governments. Equally amazing is its refusal to consult the European Parliament and the Liaison Committee of Architects in the Common Market. Amazing also is its intention to give priority to the right of establishment while jeopardizing Community interests which are infinitely more important and to which in any case that right should be subject. What does the Commission want? To assert its power? To harmonize at any price? Parliament cannot accept this attitude. It is within its rights in recalling the basic aims of the Community of which it can and must be the conscience. I do not seek the creation of a limitless unchecked supranational entity but I believe deeply that we can and must build Europe in gradual stages by setting up common policies in every sector where that is possible and desirable. Culture, quality of life and architecture are obviously special areas in which we can pool our resources and influence the rest of the world and in which our heritage by its very richness obliges us to pursue high ambitions. Parliament can therefore not allow a directive on architecture to contribute to the devaluation of this cultural capital, to an eclipse of Europe in the face of world competition which would be a European failure which I for my part could not accept. These are the reasons for which I have tabled a motion for a resolution which we now have to consider. These are the reasons for which I would urge the chairman of this committee to invite the President of the European Parliament to ask the Council to let us have all documents relating to the present version of the draft directive.

19 August 1980

ANNEX III

N O T E

Information provided by the Commission of the European Communities to the European Parliament's Legal Affairs Committee on certain points raised by Mr GILLOT in his introductory speech on the proposal for a directive on architects[1]

In view of the importance of the problems raised by Mr GILLOT, the Commission feels that one of its Members should discuss them in person with the Legal Affairs Committee.

One question raised by the rapporteur was whether the Commission's original proposal had been substantially altered since the European Parliament delivered its opinion on 1 July 1968[2]. In Mr GILLOT's view the proposal had undergone several substantial changes.

This note has therefore been drawn up in response to the main arguments put forward by Mr GILLOT in an effort to supplement the information given in the note sent on 19 May 1980 by Mr DAVIGNON to the Legal Affairs Committee[3] and to provide the committee with a more detailed basis for discussion.

I. Replacement of the original list of diplomas by the definition of a level of qualification (see page 5, PE 66.729/Ann.)

Mr GILLOT's argument is mentioned as a reminder. The necessary information has already been provided in paragraph 2.1, pages 2 and 3, of the note of 19 May 1980.

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[1] See PE 66.729/Ann = Annex to Notice to Members No. 20/80

[2] OJ No. C 72, 19.7.1968, p. 4

[3] See PE 65.400 = Notice to Members No. 10/80

II. Change in the aim of the proposal as it now stands compared with the original proposal (see page 5, PE 66.729/Ann.)

There seems to be some misunderstanding. The aim of the proposal for a directive as it now stands is the same as that of the original proposal, and we can cite as proof the fact that the Commission's original proposals were published in the Official Journal under the general heading 'Modalités de réalisation de la liberté d'établissement et de la libre prestation de services pour les activités non salariées de l'architecte'. ('Arrangements for the attainment of freedom of establishment and freedom to provide services in respect of the activities of self-employed architects)[1].

For reasons given in the note of 19 May 1980 (see page 2 of PE 65.400/Ann.) the first of these Commission proposals, for the removal of restrictions, was withdrawn, but the proposal currently under consideration in the Council retains the aim of the corresponding original proposal whose third recital states that mutual recognition would facilitate access to the activities in question and the exercising of them.

There would therefore appear to be no reversal of the order of the directive's objectives. It might also be observed that freedom of establishment and mutual recognition of diplomas are inseparable since in some Member States access to or pursuit of an activity is conditional on possession of a diploma awarded by the national authorities.

III. Architects and engineers (see last paragraph of page 5 and first paragraph of page 6, PE 66.729/Ann.)

1. In order better to understand why certain engineers have been taken into account in the proposal, certain facts should be recalled.

In Member States when access to the activity is not restricted to a specific professional group, architects and engineers sign the plans and have equal status as qualified persons for the purpose of obtaining building authorizations.

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[1] See OJ No. 239, 4.10.1967, p. 15

In Member States where access to the activity is restricted, a variety of situations exists, ranging from the absolute monopoly of the architect (France), through the possibility of a civil engineer gaining access to the architect's monopoly by following a training course (Belgium), to a monopoly shared by the architect and the civil engineer (Italy and Germany).

It is therefore very difficult to make a clear distinction between architects and engineers who within their own country often have equal professional status; the relationship of engineers to architects is thus completely different from that of nurses to doctors.

2. At the outset, the Commission's original proposal referred only to diplomas that allowed the holders to call themselves architects in the countries in which they were issued.

However, Parliament itself, in its opinion of 9 April 1970[1] on the proposals for directives on research, design, consultation and application in the technical domain, found it regrettable that the directives in question still did not resolve the problem of Italian engineers carrying out their activities in the architectural field, a problem that the directives in respect of architects had also failed to resolve, and it again hoped that the problem could be resolved satisfactorily in the near future.

During discussions in the Council the responsible Italian authorities have also always demanded equal treatment in the direction for Italian civil engineers and Italian architexts. Their main argument was that in Italy the quality of the architectural training of civil engineers is at least as good as that of architects, that their field of activity is comparable to that of architects and that their professional reputation is at least as high as that of architects.

3. It is true that during the initial stage of the Council's deliberations, there was a tendency to extend the scope of application of the directive to other engineering diplomas issued in other Member States. But this trend has now been reversed and it is now proposed to restrict the directive's scope to Italian civil engineers alone.

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[1] See OJ No. C 51, 29.4.1970, p. 18

The Commission intends to give all its support to this limitation.

IV. Social advancement (see last two paragraphs, page 6, PE 66.729/Ann.)

The social advancement measures were included in the directive at the insistence of one Member State which was then setting up a system of continuing education.

The Commission did not feel it should oppose such a request. In view of the limited scope of the directive, the effect of the provisions in question could not be to foist on Member States a social advancement ladder that is alien to them, but merely to ensure recognition, subject to certain conditions of such training in the other Member States.

Training provided under social advancement programmes will have to meet the standards laid down for full-time university architectural diplomas; such training will lead to a university-level examination equivalent to the examination taken at the end of a university course.

These guarantees seem to be sufficient to enable the Member States to recognize such training, even if it does not exist within their own countries.

V. Duration of the transitional measures (see last paragraph, page 6, PE 66.729/Ann.)

It is true that the effects of the transitional measures proposed to ensure the recognition of diplomas which do not meet all the minimum qualitative and quantitative requirements and which have been granted before the implementation of the directive should not be limited in duration.

1. The solution proposed is no different from that adopted by the Council in all the directives on the mutual recognition of diplomas that it has issued so far. In the case of nurses[1] for instance, the recognized diplomas must provide evidence of at least three years' professional training. If there had been no transitional measures, no diploma issued in France before the directive was implemented would have been would have been recognized in the other Member States, as the training period in France was then less than three years.

The same principle has been applied in the directives relating to physicians, veterinarians, dentists and midwives.

2. The main purpose of the transitional measures is to ensure that no professional person carrying on his activities in the Community in accordance with the legislation of a Member State which is in force at the time that the directive is adopted should be automatically deprived of the benefit of recognition of his qualifications. As in the case of the proposal for a directive on architects, this does not prevent the introduction of additional professional practice requirements or of scrutiny of documentary evidence of qualifications to offset any divergencies from the qualitative and quantitative standards set by the directive.

3. If these provisions were deleted, the effect would be to create two categories of professional persons among those currently carrying out their activities in the Community; only those holding diplomas which already meet the qualitative and quantitative standards of the directive could have their qualifications recognized in the other Member States. The question is whether such a solution would be in the interests of the profession as a whole.

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[1] OJ No. L176, 15.7.1977, p.1 and p.8

22 February 1980

ANNEX IV

MOTION FOR A RESOLUTION (Doc. 1-810/79)

tabled by Mr GILLOT

pursuant to Rule 25
of the Rules of Procedure

on a directive on the exercise of the
profession of architect

The European Parliament,

Whereas:

- a draft directive on the exercise of the profession of architect has been under consideration for more than 15 years,

- the draft which the Commission is preparing to submit to the Council of Ministers for final adoption has undergone so many changes that it now bears only a slight resemblance to the text submitted to the Assembly of the European Communities in 1968,

- it takes into account neither the importance which has come to be attached to matters relating to the environment in the last 15 years, nor the public concern which these generate, nor the national statutory provisions which have been in force for some years,

- it engenders an unacceptable degree of confusion between a university qualification and the exercise of a profession which plays a major role in society,

- the period of study prescribed cannot ensure that future architects within the Community are qualified as befits their task and would place them at a disadvantage on external markets,

- this draft entitles persons with various technical qualifications to act as architects without adequate safeguards,

- it provides excessively long transitional derogations in respect of recognized qualifications,

- it fails to observe the important distinction between the qualifications of architects and engineers,

- recent efforts to have this text adopted by the Council failed to take account of the resistance from the Liaison Committee of Architects in the Common Market (L.C.A.C.M.), which was originally set up to present the views of all the professional organizations in the Member States to the Commission,

Urges the Commission:

1. To amend its draft to take account of the proposals from the Liaison Committee of Architects in the Common Market and the necessity of ensuring that architects within the Community are qualified as befits their task and in such a way that they are able to face competition from abroad;
2. To initiate a new process of consultation of the Assembly of the European Communities which has become necessary in view of the growing concern about the quality of the environment, the major changes made to the original text which was considered by the previous Assembly and the changes which are still required to the present text.