



15 March 2011

Our ref: ICAEW Rep 32/11

Your ref:

Jürgen Tiedje
Head of Unit – Professional Qualifications
DG Internal Market and Services
European Commission

Via e-mail: MARKT-PQ-EVALUATION@ec.europa.eu

Dear Jürgen

European Commission's Consultation Paper on the Professional Qualifications Directive

ICAEW is pleased to respond to the *European Commission's Consultation Paper on the Professional Qualifications Directive*. ICAEW is listed in the Commission's Interest Representative Register (ID number: 7719382720-34).

Please do not hesitate to contact me or my colleague Pablo Portugal at the ICAEW Europe Region Office in Brussels (pablo.portugal@icaew.com; +32 (0)2 230 3272) should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

CONSULTATION PAPER ON THE PROFESSIONAL QUALIFICATIONS DIRECTIVE

Memorandum of comment submitted in March 2011 by ICAEW, in response to the European Commission's Consultation Paper on the Professional Qualifications Directive published in January 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the *Consultation paper on the Professional Qualifications Directive* published by the European Commission.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. ICAEW is a competent authority in the UK with responsibility for the implementation of the Professional Qualifications Directive. ICAEW is listed under Annex I of the Directive on the list of professional associations or organisations fulfilling the conditions of Article 3(2) of the Directive.
4. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
5. ICAEW is a member of the Common Content Project and has contributed to its submission to this consultation. However, it is the present submission which represents ICAEW's views on the issues raised by the Commission.
6. ICAEW is listed in the Commission's Interest Representative Register (ID number: 7719382720-34).

MAJOR POINTS

Support for the initiative

7. ICAEW has consistently supported the European Commission's policy regarding mobility, professional recognition and the broader Internal Market for Services agenda. This consultation is an important opportunity to assess the functioning of the recognition system to date. We believe that the current recognition procedures in the framework of the Directive are broadly appropriate and do not see scope for major simplifications in the law. The focus should rather be on ensuring that the framework is implemented in the manner most efficient and proportionate to both consumers and national authorities.
8. We believe that the debate launched through this consultation is also an opportunity to raise broader questions regarding the approach which Member States can take in relation to regulating and reserving professional activities. We are supportive of the European Commission's desire to promote a debate about the potentially excessive degree of fragmentation of professions, and especially in areas of activity where service provision is reserved to one profession without public interest grounds for doing so.

Clarification regarding statutory audit services

9. We do not provide detailed commentary in this consultation on situations relating to statutory audit as its regime for recognition is specifically addressed in Directive 2006/43. For our broader views on mobility and recognition for statutory auditors as well as the potential for an EU internal market for statutory audit, we refer to our response to the Commission's 2010 Green Paper *Audit Policy: Lessons from the Crisis* (available as ICAEW Rep 136/10 at icaew.com/representations).

Clarification regarding ICAEW-related qualifications and activities

10. As an organisation listed under Annex I of the PQ Directive, we wish to provide some comments on the situation in the UK regarding specific professions. We provide specific clarification on:
- the status of accountancy and tax services in the UK
 - the status of insolvency services in the UK
11. The framework in the PQ Directive regarding the concept of free provision of services is not applicable in the UK regarding accountancy and tax services given that there are no market access rules in the UK in these areas. ICAEW will therefore not comment on questions relating to how the regime in these areas is implemented in the UK.
12. In relation to qualified professionals seeking freedom of establishment in the UK for accountancy and tax services, an applicant may contact the professional bodies, including ICAEW, listed in Annex I of the PQ Directive to apply for membership of the body and the right to use the respective professional title.
13. To facilitate recognition between European bodies, ICAEW is a participating member of the Common Content project which is an open project to which other bodies are able to join should they meet the required criteria¹. The project seeks to internationalise and harmonise the high quality educational outcomes for relevant skills of premier accountancy bodies participating in the project. Through this, it facilitates recognition between ICAEW's ACA qualification and the qualifications of the other participating bodies.
14. Insolvency is a regulated activity in the UK reserved to members of a number of professional bodies, of which ICAEW is one, and subject to specific authorisation requirements. UK authorities acknowledge that if the professional is authorised to practice insolvency in his home country, he will be authorised to practice in the UK, subject to Articles 5 to 9 of the PQ Directive. The UK Insolvency Service requires that the authorised insolvency professional should make a declaration in advance of the intention to provide temporary and occasional services and that the declaration should be accompanied by the relevant documents referred to in Article 8. The service provider should be required to furnish the recipient of the service (e.g. creditors, debtors and directors) with relevant information as allowed by Article 9. The Service also considers that it is in the public interest for a central and accessible record of service providers to be maintained.

¹ The other bodies currently participating in the Common Content Project are: Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC), Compagnie Nationale des Commissaires aux Comptes (CNCC), Conseil Supérieur de l'Ordre des Experts-Comptables (CSOEC), Koninklijk Nederlands Instituut van Registeraccountants (NIVRA), Institut der Wirtschaftsprüfer (IDW) and Wirtschaftsprüferkammer (WPK).

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1: Do you have any suggestions for further improving citizen's access to information on the recognition processes for their professional qualification in another Member State?

15. We believe that EU citizens and employers would benefit from a more efficient, integrated and user-friendly approach to accessing information on cross-border mobility. Information to the public must be easily-accessible and presented and explained in a clear and practical format addressed to citizens and employers rather than authorities.
16. We would propose creating a single EU online portal to access all relevant information and external links pertaining to professional mobility in the EU. This website should be available in all official languages. It should integrate information regarding all relevant pieces of legislation and case law as ordinary users may find it difficult to understand the interaction between the Services Directive, PQ Directive and the various ECJ judgements. The single online resource should clearly set out the information, procedures and contact details, also in referring to the specific professions and Member States. We believe that this portal should be ideally developed and maintained by the Commission in order to ensure accuracy and consistency. Citizens and employers should also be able to submit queries or seek further information via phone or email.

Q2: Do you have any suggestions for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence.

17. As noted under the Main Points section, we believe that the current recognition procedures in the framework of the Directive are appropriate and do not see scope for major simplifications in the law. The focus should rather be on ensuring that the framework is implemented in the manner most efficient and proportionate to both consumers and national authorities. In this regard we would draw the Commission's attention to the issues noted in the paragraphs below where we see potential for efficiency gains.
18. The need to provide certified copies and/or translations of documents can be a source of complexity and high costs for users and authorities that process applications, such as ICAEW. We note that applicants applying for ICAEW membership can in some instances have considerable difficulties in acquiring appropriate supporting documentation from their home authorities. This could partly be addressed through improved communication between requesting authorities and applicants to ensure the applicant knows exactly what documents are expected of them. But the main improvement needed is that of home authorities to better assist their members in the requests for supporting documents. We note that, due to the different structures in EU states, it is not always the case that the body with which an applicant is citing membership from, is a competent authority listed on the IMI.
19. We would recommend making the following adaptations to the IMI:
 - **Inclusion of the following questions:**
 1. Is the applicant a current member of [home body]?
 2. Can you confirm that the applicant is of good standing and:
 - 2.1. has no disciplinary record with [home body/authority]
 - 2.2. no outstanding complaints with [home body/authority]; and
 - 2.3. that [home body/authority] are aware of no ethical or other reason why the applicant could not be admitted to [requesting body/authority]?
 3. Can you confirm that the applicant qualified with [home body] via the normal training and education route, and not via a reciprocal or advanced credit route?

4. Can you confirm that the [home body qualification] is listed between (c) and (d) on the EU Commission's website?
 5. Can you confirm that the applicant sat the attached syllabus to complete the [home body qualification]?
- **The ability to use questions across the three sets provided**
Currently the questions are grouped into 3 separate sets with the ability to only choose from one set of questions per request. The questions contained in the set are not only insufficient but this lack of ability to choose across each set is also a detriment to the system.
 - **Answers to questions to be translated**
Although the prewritten questions are translated, the answers provided to these questions are not translated which can make the system redundant if a common language is not shared.
 - **Customised questions to be translated**
If an authority also wants to ask specific customised questions these are not translated to the responding body and limits are again restricted to the sharing of a common language.
 - **The professional body which the applicant is citing membership from to be listed on the IMI**
As noted, due to the different structures in EU states, it is not always the case that the body with which an applicant is citing membership from, is a competent authority listed on the IMI. For example, in Italy, the competent authority listed on the IMI is the Ministry of Justice, which administers the professional body Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC). It is then difficult to extract specific information relating to applicants as the responding body is one step removed from the actual professional body.

Q3: Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

20. No. We are not convinced that the Code of Conduct should be mandatory. Flexibility and case-by-case assessments are necessary for competent authorities and receiving professional bodies to respond in the most convenient and efficient manner. We do however believe that the Code provides useful guidance for authorities to refer to and that it should be updated when the needs arises. If the Commission sees a need to promote the implementation of the Code across the EU, we would support the application of the 'comply or explain' principle. As noted in the consultation document, the Commission should ensure that Member States and competent authorities are familiarised with the Code.

Q4: Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?

21. As a competent authority, we are pleased to draw to the Commission's attention our experience regarding the implementation of the aptitude test for professional accountants. The implementation of the test can be very costly in time and economic resources. Given the absence of a harmonised framework for accountancy training across Europe and the broad time-criteria of the bands in the PQ through which individuals can pursue applications, it is necessary to expend considerable resource to understand the background of training and experience of the applicants. ICAEW usually requires external independent academic assessment of the applicant's syllabus or syllabuses at a cost of £500 per day. This cost rises

significantly if the applicant has a suite of qualifications and professional experience that would need to be taken into account. There is no disincentive for the applicant not to cite many different additional qualifications which are not listed on the EC database of qualifications.

- 22.** Proportionate compensation measures are essential to the functioning of the EU recognition regime as they ensure an open and fair access to a profession in a member state. If well implemented, they provide an effective system for citizens to pursue a profession in another member state. The existence of aptitude tests or adaptation periods corresponds to the reality that some professions, such as accountancy, tax advice and insolvency services, remain strongly linked to the national environment. Without a full harmonisation of company law and tax law at EU level the removal of these requirements is unjustified. It is difficult to see, for example, how accountants or insolvency practitioners could practice their profession without a grounding in the tax and company law framework of the relevant member state. From a public interest perspective, we do see a case for retaining proportionate jurisdiction-specific aptitude tests to act as safeguards. It is important that competent authorities and professional bodies retain discretion to assess and justify the significant differences in training for which the test is required.

Q5: Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

- 23.** No. As noted under question 3, we believe that authorities should have flexibility on the administration of the recognition procedures, including the aptitude test. Codes of conduct can however provide useful non-mandatory guidance. If the Commission identifies a strong need for consistency and harmonisation in procedures, we would support the development of voluntary codes to be applied on a 'comply or explain' basis.

Q6: Do you see a need to include the case-law on "partial access" into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

- 24.** We have supported exploring the concept of partial recognition in relation to statutory auditors, given that training and registration procedures are harmonised and equivalent in the EU as per Directive 2006/43. However, we do not see how partial recognition would be relevant to accountancy and related professions given that there is no formal harmonisation in qualifications. Partial recognition would in any event not be applicable in the UK in relation to accountancy services and tax advice as there are no formal market access rules in these areas: professional bodies administer access to their respective professional titles in compliance with the PQ Directive. In relation to insolvency practice, we do not believe that there is much scope for developing a partial recognition regime for the reasons noted under question 9.

Q7: Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

- 25.** It is desirable to facilitate mobility for graduates who are not fully qualified professionals and who seek a remunerated traineeship or supervised practice in another member state. It would be helpful for the Commission to clarify the implications of the Morgenbesser and Pesla judgements. This could perhaps be done through the inclusion of appropriate provisions in the legislation or the preparation of guidance on the interpretation of these cases.
- 26.** However, compensation measures are likely to remain necessary in most cases relating to graduates and this possibility must not be prohibited. It is important that any significant knowledge gaps in an applicants' background are appropriately assessed. Compensation measures should be proportionate, justifiable and relevant to the case. We would not rule out

the possibility of waiving these measures where justified – for this reason it is important that authorities have flexibility and discretion to exercise judgement on the appropriate implementation of the regime.

Q8: How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons.

27. We agree that home member states should recognise a supervised and quality-assured period of experience of the same length and subject-matter undertaken in other member states. This should be clearly stipulated in the legislation and guidance.

Q9: To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

28. ICAEW does not have direct experience on the specific situation addressed in this question in relation to accountancy and tax services as official professional qualifications and/or membership of a body are not required by law in the UK to provide such services. However, as noted under question 4, professional experience is cited alongside other professional qualifications by some applicants to ICAEW and resources are required to evaluate this experience. In relation to insolvency professionals, we would not consider that this is a 'frequent movement' profession, as noted in the consultation document, given the very specialised nature of the profession and the very close link between with specific national insolvency laws.

Q10: How could the concept of "regulated education" be better used in the interest of consumers? If such education is not specifically geared to a given profession could a minimum list of relevant competences attested by a home Member State be a way forward?

29. We are not sufficiently clear about the concept of 'regulated education' to comment on this question. We would be pleased to provide feedback to the Commission subject to clarification on how this concept would be understood in relation to ICAEW's areas of interest.

Q11: What are your views about the objectives of a European professional card? Should such a card speed up the recognition process? Should it increase transparency for consumers and employers? Should it enhance confidence and forge closer cooperation between a home and a host Member State?

30. We support the idea and objectives of a European professional passport (as explained under question 14, we prefer the term 'passport' to 'card'). Subject to implementation and administration costs, we would welcome the passport as a secure and sensible way of identifying a migrant professional. It would speed things up to a degree, especially if it contained details of any electives or special circumstances taken or held by the individual. Clearly identity security would be a key issue but in principle it could dispense with unnecessary paperwork.

Q12: Do you agree with the proposed features of the card?

31. We agree with the features proposed by the Commission.

Q13: What information would be essential on the card? How could a timely update of such information be organised?

- 32.** Essential information on the passport should include the professional's full name, age, photograph, qualification and date of qualification, professional membership and any electives taken within the qualification. A central registry would be sensible to manage updates to the card although we believe that such updates are unlikely to be frequent.

Q14: Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?

- 33.** We have a preference for the title of professional passport. There are likely to be sensitivities in some member states regarding the connotations associated to the concept of identity cards.

Q15: What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to national requirements? What conditions could be foreseen for its development?

- 34.** As a matter of principle we are highly supportive of efforts to bring professional qualifications in the EU closer together. ICAEW is one of nine leading EU professional institutes participating in the Common Content Project, which, while not necessarily being conceived as a common platform as per the PQ Directive framework, is nevertheless an example of successful cooperation in this area. The Project seeks to unify, as far as possible, the professional entry-level qualifications of the participating institutes, while ensuring that those qualifications remain high-level and meet changing public expectations. The Project maximises the common elements of the professional qualifications while retaining national elements unique to each country.
- 35.** The main difficulty in implementing a concept of harmonised European curriculum in the broad field of accountancy services, beyond what is envisaged in initiatives such as the Common Content Project, is the existence of different national company law and tax regimes. As discussed throughout this consultation response, these significant differences demand the retention of jurisdiction-specific education and training and compensation measures. European curricula would seem feasible in relation to professions where the significance of the specific national framework is less acute. We would also question the benefits of having a 28th regime, even if this were feasible. The interaction of this regime with well-established accountancy qualifications could create more fragmentation and confusion for citizens and employers in the internal market with little added value to the economy.

Q16: To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

- 36.** ICAEW supports open and fair access to the accountancy and related professions. The structure of the profession can indeed vary considerably across the EU and we do not wish to comment on the merits of the model in one member state over another. It is important to take into account the significant cultural differences in member states when considering the question of fragmentation. In relation to the accountancy profession, for instance, there are different traditions across the EU when it comes to qualifications and market access. In the UK there are no market access rules in the law and professional bodies such as ICAEW do not require the completion of a university degree to pursue a professional qualification and membership in a professional body. Meanwhile, a number of other member states do require membership of a body to pursue the accountancy profession and the completion of university education is part of the training process. The fragmentation regarding the structure of the profession in member states is explained by such differences. These significant differences may evolve in the long-term through further integration in the internal market and EU harmonisation of the legal framework in different areas.
- 37.** It is also important to recall that professions such as tax advice, insolvency practice and most elements of accountancy are very strongly linked to the specific national legal framework.

Company law, tax and insolvency are not harmonised in EU law and this justifies the existence of appropriate compensation measures and a different structure for these professions in member states.

Q17: Should lighter regimes for professionals be developed who accompany consumers to another Member State?

38. We believe that the provisions in the current regime are fair and sufficiently simple in relation to such scenarios. In particular, we believe that an appropriate implementation of the concept of free provision of services across the EU would make a lighter regime unnecessary for the cases noted by the Commission in the consultation document.

Q18: How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms “temporary or occasional” or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?

39. A pro-forma declaration is not required in the UK in relation to accountancy and tax services. Without wishing to comment on the situation in other member states, we would highlight the importance of ensuring that the declaration does not become a barrier to professional mobility.
40. In relation to insolvency services, the UK regime is described in the paragraph below. We believe that this regime is proportionate and in the public interest. Given the highly specialised nature of insolvency practice and the potential for only a small number of professionals to pursue EU mobility regarding this specialisation, we are not convinced that there would be much scope for simplification that would benefit the internal market.
41. The UK Insolvency Service requires a migrant authorised insolvency professional to make a declaration in advance of the intention to provide temporary and occasional services and that the declaration should be accompanied by the relevant documents referred to in Article 8 of the PQ Directive. Furthermore, the service provider should be required to furnish the recipient of the service (eg, creditors, debtors and directors) with relevant information as allowed by Article 9 of the PQ Directive. The Service also considers that it is in the public interest for a central and accessible record of service providers to be maintained.

Q19: Is there a need for retaining a pro-forma registration system?

42. Without wishing to comment on the situation in particular member states, we are of the view that for accountancy and related services the pro-forma declaration would be unnecessary if the European professional passport is developed. We believe that the passport system would be more effective in helping to provide protection to consumers and compliance with host member state rules.

Q20: Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?

43. This question is not applicable to ICAEW as we understand it refers to professions with health and safety implications.

Q21: Does the current minimum training harmonisation offer a real access to the profession, in particular for nurses, midwives and pharmacists?

44. Questions 21 to 26 are not applicable to ICAEW as our activities do not fall under the list of professions benefiting from automatic recognition.

Q22: Do you see a need to modernise the minimum training requirements? Should these requirements also include a limited set of competences? If so what kind of competences should be considered?

45. This question is not applicable to ICAEW.

Q23: Should a Member State be obliged to be more transparent and to provide more information to the other Member States about future qualifications which benefit from automatic recognition?

46. This question is not applicable to ICAEW.

Q24: Should the current scheme for notifying new diplomas be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.

47. This question is not applicable to ICAEW.

Q25: Do you see a need for modernising this regime on automatic recognition, notably the list of activities listed in Annex IV?

48. This question is not applicable to ICAEW.

Q26: Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?

49. This question is not applicable to ICAEW.

Q27: Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

50. We believe that the PQ Directive should take more account of CPD compliance. The host member body should have the right to ensure that the applicant is in good standing with their home member body. This should include that they have fully complied with their home body's CPD requirements and that the body's CPD requirements are themselves compliant with IFAC's IAESB International Education Standard 7, bodies who offer (for accounting and auditing qualifications), so as to ensure a level playing field and an appropriate standard.

Q28: Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use of IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions?

51. Although the alert mechanism is not always effective, we believe it should be a minimum requirement applied to all professions.

Q29: In which cases should an alert obligation be triggered?

52. The cases when an alert obligation is triggered are appropriate but the alert itself is not always effective. ICAEW has experienced cases where a reply from a responding body has never been provided due to unknown factors. This may be addressed by further promotion and awareness of the IMI and checks from national coordinators to ensure registered competent authorities have assigned an appropriate individual to maintain IMI correspondence. The situation would also be improved if the professional body which the applicant is citing membership from is listed as a competent authority on the IMI, not the overreaching body as referenced in the answer to question 2.

Q30: Have you encountered any major problems with the current language regime as foreseen in the Directive?

53. Language is an inherent barrier to mobility in the EU as the majority of member states offer aptitude tests only in their national languages.

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