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European Commission
Internal Market Directorate General, Unit E-4
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BELGIUM

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

Dear Sir or Madam

European Commission's Green Paper on Modernising the Professional Qualifications Directive

ICAEW is pleased to respond to the *European Commission's Green Paper on Modernising 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 Jonathan Jones, Head of Policy & Strategy, (jonathan.jones@icaew.com; +44 (0)1908 248 292) should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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ICAEW REPRESENTATION

GREEN PAPER ON THE PROFESSIONAL QUALIFICATIONS DIRECTIVE

Memorandum of comment submitted in September 2011 by ICAEW, in response to the European Commission's Green Paper on Modernising the Professional Qualifications Directive published in June 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the Green Paper *Modernising 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 response to this Green Paper. 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

7. ICAEW has consistently supported the European Commission's policy regarding mobility, professional recognition and the broader Internal Market for Services agenda. This Green Paper is an important opportunity to assess the functioning of the recognition system to date and examine potential methods for improving the system. 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. There is clearly a need to balance any measures to reduce administrative burdens on applicants with protecting the public.
8. We believe that the debate launched through this Green Paper 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.
9. We would like to take this opportunity to raise a point which is also to be developed as an idea in relation to audit services and the provisions of Directive 2006/43: The PQ Directive is focused on individual qualifications held by individuals but a significant part of professional services provision is achieved through larger structures with various legal identities. We would encourage an approach

which is based more on this reality, with safeguards built in to ensure the competency of individuals working within these organisations.

10. ICAEW also believes there is a debate to be had on the temporary and occasional cross-border provision of services as this is not an area that is understood in a practical sense. Notably, there would be issues involving liability and the ability to obtain professional indemnity insurance when temporarily crossing borders. Without looking at these other practical matters, it is difficult to see how real progress can be made in relation to implementing the principles that the Commission is pursuing through the Directive.

Clarification regarding statutory audit services

11. 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

12. 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; and
 - the status of insolvency services in the UK.
13. 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.
14. 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.
15. 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 practise insolvency in his home country, he will be authorised to practise 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

Q1: Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

- 16.** ICAEW broadly supports the proposed principles of the respective roles but believes there may be difficulties in the practical workings as envisaged. Many of these difficulties stem from the differences across Member States in the structure and regulation of the profession.
- 17.** In the role as the competent authority in the Member State of departure, ICAEW would not foresee any major issues in undertaking the preliminary checks on a migrating applicant. We would hold sufficient information on our members to determine whether they would qualify for the proposed professional card and be in a position to answer any further questions that may arise from the receiving Member State. However, the cost, resources and time involved with the implementation of the card system would be of concern. We would appreciate the Commission's guidance on how the card will be implemented in Member States, notably the interaction with our Legislative Area IMI Co-ordinator, the Department for Business, Innovation and Skills (BIS).
- 18.** For the role of the receiving Member State to be reduced, it is important that the body responsible for issuing the card is the body responsible for awarding the relevant qualification, and for this body to be registered as a competent authority on the IMI. This is to ensure a direct line of contact is established as it may be necessary to clarify details of applicants' qualifications due to the differing structures in Member States. Furthermore, if the IMI is to be used as the mechanism to verify the card, then it is important that competent authorities are made aware of this and have sufficient knowledge of the workings of the system. It is also important to highlight that as a competent authority in the receiving Member State, ICAEW will still have to undertake a syllabus comparison (for applicants outside Common Content) in order to ascertain the appropriate aptitude test once the professional card has been verified.
- 19.** Although ICAEW supports the concept of a professional card, we maintain our preference for the title of 'professional passport'. Additionally, we would be interested in the Commission's measures to ensure weak links would not surface where it becomes easier to obtain a card in some Member States than others. It is also unclear what would happen if a national authority does not recognise the card, i.e, if the card is not universally adopted and some Member States issue the card but others do not.
- 20.** With reference to the Professional Card Steering Group, we also question whether each proposed scenario could work through the IMI without the need for a card. We reflect back to the point that it is actually more important that the relevant bodies are registered as competent authorities on the IMI and the system is used efficiently.

Q2: Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.

21. Agreements have previously been made to ensure all applications are dealt with by the Insolvency Service rather than the individual Recognised Professional Bodies such as ICAEW. However, we would have a preference towards option two in order to maintain sufficient safeguards.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

22. This question is not applicable to ICAEW as it refers to the automatic recognition system.

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

23. If implemented effectively then we believe the presentation of the card could accelerate the recognition procedure and in a welcome manner. The verification system would have to be robust and our concerns highlighted in paragraphs 16-20 above would have to be considered.

24. The proposed timescale of one month also requires clarification over when the 'clock would start' and what decision would be expected of a competent authority within this timeframe. The applicant would have to submit a full application including any information required to assess the appropriate compensation measures before the one month count down began. Importantly, a competent authority would only be able to make a decision on the nature and extent of the compensation measure within a month. The onus would have to remain on the applicant to satisfy any compensation measures imposed, which could take in excess of one month.

25. The questions of designing and resourcing the professional card and allied online completion procedures are very important and their answers will rightly affect the level of acceptance and support that such a system would receive. We judge that at present further details on the workings and costings of the professional card are required.

Q 3: Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle.)

26. We refer to our response in the Commission's January consultation paper on the Directive. 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 currently see how partial recognition would be relevant to accountancy and related professions given that there is no formal harmonisation in qualifications. We believe this is an area that needs careful further exploration in relation to accountancy, including the potential implications on the complexity and smooth working of the overall system.

Q 4: Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.)

27. ICAEW welcomes the concept of the common platform as we see this as sensible, fair in principle and it reflects our foundation of the Common Content project. The Common Content project is a prime example of how a common platform can be created by aligning learning outcomes across

different qualifications in different countries and thereby developing a powerful tool for promoting mobility and harmonisation across Member States. ICAEW maintains close relationships with Common Content bodies and remains at the forefront of the project in promoting this harmonisation.

- 28.** On 24 June, representatives from the Common Content project presented to the EC's Audit Regulatory Committee about the Common Content project. This invitation followed discussion with the Commission about whether there are opportunities for Common Content to link to themes in the Barnier Green Paper. The Common Content Steering Group is presently exploring the possibility of widening participation in the Common Content project by sending a letter describing Common Content to the accountancy bodies and regulators in each of the countries that were represented at the Audit Regulatory Committee meeting.
- 29.** We also welcome the proposal to reduce the threshold required to create a common platform. We believe this is a practical step which learns lessons from the workings of the Directive to date. We would welcome further explanation from the Commission on exactly how the framework for establishing a common platform would be laid out in the modernised Directive. It would be important to know, for example, how many professional bodies within a domestic market sector would have to back the common platform before it became eligible to be ratified into a common platform by the Member State. It is unclear to us at this stage whether the Commission envisages that the relevant national sector would have to be committed holistically or whether it is for the individual professional organisations to decide on participation rates. Similarly, it is presently unclear to us whether non-consenting professional bodies from a market sector would be governed by a common platform established by a majority of other bodies.

Q 5: Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.

30. No.

Q 6: Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

- 31.** Yes, ICAEW would support the creation of a central online access point as proposed because this is fundamental in allowing interested parties to understand the recognition process. We currently operate a transparent system where we have this information online and this could be incorporated into a central access point. Furthermore, we would propose that the central access point covered in detail the particular structure of the profession in each Member State, including all relevant bodies and registrations required at national and regional level. This would greatly help competent authorities assessing applicants as well as the applicants themselves.
- 32.** We believe that this access point should provide the Commission with the authority and ability to place the onus on Member States to carry out what they are obliged to do. Additionally, the website should be available in all official languages, integrate legislation and case law, and provide contact details to allow citizens and employers to submit queries.
- 33.** The online completion of recognition procedures will depend on how well the professional card can be implemented (see our response to question 1 above). However, we would support this in principle because if appropriately implemented and resourced it would increase the speed of the process, provide more transparency, promote fairness and alleviate any anxiety for the applicant.

34. Q 7: Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

35. Yes, we would agree that the two years' requirement should be lifted in order for consumer choice to prevail. We would also question whether even in cases of permanent establishment the two year requirement serves a meaningful purpose given that there are already compensation measures possible, and given that the experience cited may be up to eight years' old and achieved in a Member State where the profession may be structured very differently. Indeed, the two-year requirement may simply cause inconvenience to otherwise high-quality, eligible applicants. We have noted with interest the recent European Court of Justice ruling on the *Toki* case and believe that a further test case under the wording of the new 2005 Directive may be necessary to clarify the full implications of the two-year requirement. However, ICAEW believes that the host Member State should be entitled to require a prior declaration because this is necessary to protect against the risk of the professional expanding their activities in the host Member State without permanent establishment.

Q 8: Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)

36. Yes, we would welcome the further explanation and opening up of 'regulated education and training'. Given the difference in the structure and practice of the professions in many Member States, it would be more logical to recognise the unifying characteristics of professional education than focus on un-harmonised work experience requirements.

Q 9: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

37. ICAEW believes that such a deletion would be a high risk move. We would only support the removal of Article 11 if a suitable hierarchical framework was proposed as a replacement. We believe a set of benchmarking levels is essential to ensure greater transparency of qualifications and to ensure a situation does not arise as prescribed under question 5: with no level framework as a starting point, it is possible that an applicant would be required to undertake compensation measures equivalent to that of studying for the entire qualification in the host Member State. We would see a real risk of competent authorities having to deploy substantial time and resources to assess applications from migrants holding professional qualifications of a lower than expected level.

38. However, because ICAEW is not convinced that the duration of study approach currently enshrined in Article 11 is the only appropriate classification, we could potentially support the use of another model. The European Qualifications Framework (EQF) might, depending on how it is fully implemented, be that alternative model. A key part of that implementation would be that we would not support entry onto the national qualifications framework in the UK (the 'Qualifications and Credit Framework') being an absolute pre-requisite to utilising the EQF for Article 11 purposes. Professional bodies operate under charters and, in the case of ICAEW, the oversight of a statutory regulator in the form of the Professional Oversight Board.

Q 10: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

39. As explained in our answer to question 9, we do not support the deletion of Article 11 if it is not replaced by an equivalent framework. We would therefore not support the proposed steps here; however, we would like to comment on step four. Although we do not support the Code of Conduct becoming mandatory, we have highlighted concerns about the lack of prompt availability of the aptitude test across Member States and we welcome any developments aimed at improving this area. We would point out that ICAEW offers the aptitude test all year round in this respect.

Q 11: Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

40. As noted in our response to the Commission's January consultation paper on the PQ Directive, we do support the mobility of graduates. However, we would again welcome further details on how it is envisaged this process would work. We are currently unclear whether it is proposed that host Member States would be expected, via their competent authorities, to facilitate a supervised period of training that would conform to their own requirements or alternatively allow the home Member State competent authorities to run their own supervised training in their countries. We have also previously reiterated that compensation measures are likely to remain necessary and it is important that authorities maintain this flexibility and discretion.

41. Additionally, there may be some difficulty in determining the equivalent stage of a graduate from one Member State to another because of the significantly differing routes to the profession. However, ICAEW currently operates a credit for prior learning policy where graduates can apply for exemptions of exams towards the 'chartered accountant' (ACA) qualification depending on their previous academic achievement. The same opportunity is open to graduates from other Member States and we have had experience of this in the past.

42. The requirement to complete supervised practical experience will, however, depend in many cases on the applicant's ability to obtain a 'training agreement' by securing a job with an authorised employer. This could only be as the result of an open and competitive process outside the control of the competent authorities.

Q 12: Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?

Option 1: Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)

Option 2: Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)

43. This question is not applicable to ICAEW as it refers to the health professions.

Q 13: Which of the two options outlines above do you prefer?

Option 1: Clarifying the existing rules in the Code of Conduct;

Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.

44. This question is not applicable to ICAEW as it refers to the health professions.

Question 14: Would you support a three-phase approach to modernisation of the minimum training requirements under the Directive consisting of the following phases:

- the first phase to review the foundations, notably the minimum training periods, and preparing the institutional framework for further adaptations, as part of the modernisation of the Directive in 2011-2012;
- the second phase (2013-2014) to build on the reviewed foundations, including, where necessary, the revision of training subjects and initial work on adding competences using the new institutional framework; and
- the third phase (post-2014) to address the issue of ECTS credits using the new institutional framework?

45. This question is not applicable to ICAEW as our activities do not fall under the list of professions benefiting from automatic recognition.

Q 15: Once professionals seek establishment in a Member State other than that in which they acquired their qualifications, they should demonstrate to the host Member State that they have the right to exercise their profession in the home Member State. This principle applies in the case of temporary mobility. Should it be extended to cases where a professional wishes to establish himself? (Please give specific arguments for or against this approach.) Is there a need for the Directive to address the question of continuing professional development more extensively?

46. We believe this principle should not only be extended to cases where a professional wishes to achieve permanent establishment, but also to cases under the general system. This is to ensure the receiving Member State is aware of the status of the applicant and can therefore minimise the risk to the public.

Q 16: Would you support clarifying the minimum training requirements for doctors, nurses and midwives to state that the conditions relating to the minimum years of training and the minimum hours of training apply cumulatively? (Please give specific arguments for or against this approach.)

47. Questions 16 to 23 are not applicable to ICAEW as our activities do not fall under the list of professions benefiting from automatic recognition.

Q 17: Do you agree that Member States should make notifications as soon as a new program of education and training is approved? Would you support an obligation for Member States to submit a report to the Commission on the compliance of each programme of education and training leading to the acquisition of a title notified to the Commission with the Directive? Should Member States designate a national compliance function for this purpose? (Please give specific arguments for or against this approach.)

48. This question is not applicable to ICAEW.

Q 18: Do you agree that the threshold of the minimum number of Member States where the medical speciality exists should be lowered from two-fifths to one-third? (Please give specific arguments for or against this approach.)

49. This question is not applicable to ICAEW.

Q 19: Do you agree that the modernisation of the Directive could be an opportunity for Member States for granting partial exemptions if part of the training has been already completed in the context of another specialist training programme? If yes, are there any conditions that should be fulfilled in order to benefit from a partial exemption? (Please give specific arguments for or against this approach.)

50. This question is not applicable to ICAEW.

Q 20: Which of the options outlined above do you prefer?

Option 1: Maintaining the requirement of ten years of general school education

Option 2: Increasing the requirement of ten years to twelve years of general school education

51. This question is not applicable to ICAEW.

Q 21: Do you agree that the list of pharmacists' activities should be expanded? Do you support the suggestion to add the requirement of six months training, as outlined above? Do you support the deletion of Article 21(4) of the Directive? (Please give specific arguments for or against this approach.)

52. This question is not applicable to ICAEW.

Q 22: Which of the two options outlined above do you prefer?

Option 1: Maintaining the current requirement of at least four years academic training?

Option 2: Complementing the current requirement of a minimum four-year academic training by a requirement of two years of professional practice. As an alternative option, architects would also qualify for automatic recognition after completing a five-year academic programme, complemented by at least one year of professional practice.

53. This question is not applicable to ICAEW.

Q 23: Which of the following options do you prefer?

Option 1: Immediate modernisation through replacing the ISIC classification of 1958 by the ISIC classification of 2008?

Option 2: Immediate modernisation through replacing Annex IV by the common vocabulary used in the area of public procurement?

Option 3: Immediate modernisation through replacing Annex IV by the ISCO nomenclature as last revised by 2008?

Option 4: Modernisation in two phases: confirming in a modernised Directive that automatic recognition continues to apply for activities related to crafts, trade and industry activities. The related activities continue to be as set out in Annex IV until 2014, date by which a new list of activities should be established by a delegated act. The list of activities should be based on one of the classifications presented under options 1, 2 or 3.

54. This question is not applicable to ICAEW.

Q 24: Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)

55. No, we would not welcome reducing the three year rule in Article 3 (3) because the rule provides an important safeguard concerning the standard of the migrant professional from the third country.

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