

**COMPREHENSIVE ECONOMIC
AND TRADE AGREEMENT (CETA)
BETWEEN CANADA AND THE EUROPEAN UNION**

**CONTENT OF CETA
AND
COMMENTS ON THE DRAFT MUTUAL
RECOGNITION AGREEMENT (MRA)
FOR THE ARCHITECTURAL PROFESSION, APRIL 2018**

**Consistency, Scope of application,
Conditions for recognition, and Mobility**

(TRANSLATION OF THE OFFICIAL FRENCH VERSION)

October 2018

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ABBREVIATIONS

AIT :	Agreement on Internal Trade (Canada)
CFTA:	Canadian Free Trade Agreement
CETA:	Comprehensive Economic and Trade Agreement between Canada and the European Union
MRA:	Mutual Recognition Agreement
ACE:	Architects' Council of Europe
CALA:	Canadian Architectural Licensing Authorities
EU:	European Union

PRELIMINARY REMARKS BY THE COMMISSIONER

The Architects' Council of Europe (ACE) and the Canadian Architectural Licensing Authorities (CALA) concluded a draft Mutual Recognition Agreement (MRA) on April 20, 2018, in the context of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU). The purpose of this MRA is to facilitate the professional mobility of architects between the jurisdictions of Canadian provinces and territories and the jurisdictions of the Member States of the EU by means of mutual recognition of qualifications. This text will be submitted to the CETA "MRA Committee"¹ for adoption. Its coming into effect will depend on the implementation of legislative, regulatory and administrative measures to follow.

The Commissioner for Admission to Professions has read the draft MRA. This document contains his comments.

The office of Commissioner for Admission to Professions

The *Professional Code* (CQLR, c. C-26) was amended in 2009 by the Québec National Assembly in order to provide for the office of an independent commissioner responsible for various oversight activities regarding admission to regulated professions, including the recognition of professional qualifications. The functions of the Commissioner consist in examining complaints, monitoring processes relating to admission, and conducting studies and research on the subject².

In carrying out his mandate, the Commissioner observes and analyzes the issues and socio-economic elements with respect to admission to professions. The Commissioner's mandate also includes the mechanisms provided for in the professional regulations dealing with labour mobility. For example, regulations made under the *Professional Code* implement or reflect the trade agreements and other agreements in that regard.

The Commissioner and his team, among other things, followed, analyzed and took a critical look at the Québec-France Agreement on the Mutual Recognition of Professional Qualifications, concluded in 2008 and at over 20 mutual recognition arrangements (agreements) dealing with as many professions and concluded under the regime of the agreement. The Commissioner and his team also monitor the trade agreements' provisions that have to do with mobility and the recognition of qualifications.

¹ The "Joint Committee on Mutual Recognition of Professional Qualifications". The Committee is "established under and reports to the Committee on Services and Investment". (See Article 26.2, paragraph 1, subparagraph b of the text of CETA).

² For additional information on the office of the Commissioner for Admission to Professions, his activities, reports and other publications, go to www.opq.gouv.qc.ca/commissaire.

Negotiation of the April 2018 draft MRA for architects

Discussions for concluding an MRA for architects between Canada and the European Union began a few years ago, even before the texts of CETA were published, particularly its Chapter 11, regarding the mutual recognition of professional qualifications.

We need to commend the vision and commitment of the representatives of the architectural profession in Canada and Europe to better recognition and the mobility of professionals. The challenge is enormous given the complexity and variety of the regulation, content and context of the practice in the various Canadian provinces and EU Member States.

However, the profession's representatives moved forward for a long time without precisely knowing the parameters and requirements on which Canada and the European Union were to agree regarding the approach and content of an MRA under the CETA regime. This has inevitably resulted in a discrepancy between certain elements of form and substance in the April 2018 draft MRA and what is provided for in Chapter 11 of CETA and its guidelines.

An analysis of the April 2018 text of the draft MRA has indeed raised several questions. The current document states what the Commissioner has understood from his reading of CETA. It then deals with the questions raised by the April 2018 draft MRA, i.e. those related to its consistency with CETA, the scope of the MRA, conditions for mutual recognition and mobility. We point them out in this document to provide representatives of the architectural profession in Canada and Europe with tools to consider adjusting and adding to the April 2018 text. This document also calls for clarifications or reflection on certain issues in CETA and the draft MRA.

The analysis in and the preparation of this document benefited from the important contribution of Myriam Hadiri, analyst at the office of the Commissioner for Admission to Professions.



André Gariépy, lawyer, F.C.Adm., ASC
Commissioner

1 CONTENT OF CETA

Before dealing with the questions raised by the April 2018 draft MRA for architects, it is useful to take a look at the content of CETA in order to point out the expectations and requirements for the recognition of professional qualifications.

1.1 CETA and the mobility of professionals

After a few years of negotiation, Canada and the European Union signed a Comprehensive Economic and Trade Agreement (CETA) in October 2016³. In September 2017, the agreement came into force provisionally, while awaiting full ratification in accordance with the rules specific to Canada and the European Union.

CETA contains provisions on the mobility of professionals from the standpoint of the liberalization of the services they offer. The relevant provisions are generally found in the following chapters of the agreement:

- Chapter 1: General definitions and initial provisions;
- Chapter 9: Cross border trade in services;
- Chapter 10: Temporary entry and stay;
- Chapter 11: Mutual recognition of professional qualifications;
- Chapter 12: Domestic regulation.

When the practice of a profession in Canada and Europe requires an authorization issued by a relevant authority on the basis of specific qualifications (evidence of formal qualification, professional experience), Chapter 11 of CETA establishes “a framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and sets out the general conditions for the negotiation of MRAs”⁴. Chapter 11 is a regime for the mutual recognition of professional qualifications that is largely patterned after the approach and experience of the Québec-France Agreement on the Mutual Recognition of Professional Qualifications⁵, signed in 2008 by the Prime Minister of Québec and the President of the French Republic.

1.2 Negotiation and adoption of mutual recognition agreements (MRAs)

The negotiation and adoption of mutual recognition agreements (MRAs) for regulated professions in the territories of Canada and the European Union are subject to a procedure provided for in

³ See the text of CETA: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>.

⁴ Article 11.2 of CETA.

⁵ [Québec-France Agreement on the Mutual Recognition of Professional Qualifications](#) (in French only) signed on October 17, 2008.

Article 11.3 of CETA. [Appendix 1](#) to this document sets out the prescribed procedure in a flowchart.

The first step of the procedure is the submission of a joint recommendation by the relevant authorities or professional bodies of the jurisdictions within Canada and the European Union.⁶ The joint recommendation is submitted to the Joint Committee on Mutual Recognition of Professional Qualifications (MRA Committee) instituted by CETA⁷. To be admissible, the joint recommendation must be consistent with the requirements of paragraph 2 of Article 11.3 of CETA, that is, it must deal with the following subjects:

1. Assessment of the **potential economic value** of an MRA, on the basis of criteria;
2. Assessment as to the **compatibility of the** professional regulation or qualification **regimes**;
3. Assessment as to the intended **approach** for the **negotiation** of an MRA.

The MRA Committee of CETA reviews the joint recommendation on the basis, in particular, of the objectives and economic potential and feasibility criteria of Chapter 11 of CETA.

If the joint recommendation is consistent with the requirements of Chapter 11, the MRA Committee of CETA establishes the necessary steps for the formal negotiation of the MRA by “negotiating entities”.

Subsequently, the negotiating entities negotiate and conclude a draft MRA according to the parameters determined by the MRA Committee.

The negotiating entities submit the draft MRA to the MRA Committee of CETA, which reviews it on the basis of its consistency with CETA, i.e. the principles of liberalization and of recognition of qualifications, as well as the form and content expected of an MRA.

If the draft MRA is consistent, the MRA Committee adopts it by means of a decision. The decision becomes binding after the Parties have set up the legislative, regulatory or administrative formalities necessary for the efficient implementation of the MRA. The implementation generally goes through processes of recognition of qualifications and admission to the practice that are adapted to the professional framework in each Canadian jurisdiction and each Member State of the European Union.

⁶ Note that, according to Article 11.1 of Chapter 11 of CETA, jurisdiction means “the territory of Canada, and each of its provinces and territories, or the territory of each of the Member States of the European Union”.

⁷ Regarding the MRA Committee, see articles 11.3 and 11.5, and paragraph 1b of Article 26.2 of CETA.

1.3 Guidelines for the negotiation and conclusion of MRAs

When, on the basis of the joint recommendation, the MRA Committee of CETA has approved the negotiation of a draft MRA and has identified the necessary steps, the negotiating entities can officially start to work based on those parameters.

1.3.1 CETA guidelines and logic for the recognition of professional qualifications

CETA contains guidelines for the negotiation and conclusion of MRAs⁸. The guidelines are based in particular on the common procedure appended to the Québec-France Agreement⁹ and the principles and approaches of the European directive on the recognition of professional qualifications¹⁰.

Article 11.6 of Chapter 11 of CETA states that the guidelines with respect to the negotiation and conclusion of MRAs found in Annex 11-A of CETA are not binding (in the legal sense). They do not modify or affect the Parties' rights and obligations set out in the text of CETA. However, given the presence of the guidelines in a CETA annex, the signing Parties express expectations toward negotiating entities. In addition, experts in the recognition of professional qualifications recognize, in those guidelines, a valid logical framework. Hence, they must be considered as good practices in the field. Also, the Commissioner considers that those guidelines cannot be disregarded when negotiating and concluding a complete, transparent and defensible MRA rooted in reality.

[Appendix 2](#) to this document shows the logical flowchart for the recognition of professional qualifications on the basis of Chapter 11 and the guidelines of Annex 11-A of CETA. The flowchart illustrates the analytical approach and the reasoning that should guide the negotiating entities for the purpose of recognizing professional qualifications, with or without compensatory measures.

1.3.2 Four-step process for comparative analysis and recognition

The guidelines of Annex 11-A of CETA set out a four-step process for comparative analysis and mutual recognition.

- Step 1: Verification of equivalency;
- Step 2: Evaluation of substantial differences;
- Step 3: Compensatory measures;
- Step 4: Identification of the conditions for recognition.

⁸ See Article 11.6 of Chapter 11 and Annex 11-A of CETA.

⁹ [Québec-France Agreement on the Mutual Recognition of Professional Qualifications](#), signed on October 17, 2008.

¹⁰ [Directive 2005/36/EC of the European Parliament and of the Council of September 7, 2005 on the recognition of professional qualifications \(consolidated version 2017\)](#).

[Appendix 3](#) to this document reproduces excerpts from the guidelines on the process of analysis and recognition, accompanied by comments on their meaning in the areas of regulation of professions and recognition of qualifications.

1.4 Expected content of an MRA under CETA

An MRA is not a technical document for initiates only. It is also a tool for transparency, an important principle in several areas, including the area of trade liberalization¹¹. An MRA serves to inform the relevant authorities in charge of implementation, as well as the persons wishing to obtain recognition of their qualifications for their mobility project or service offer in another territory. The guidelines of Annex 11-A of CETA provide in fact that “the Parties should [...] make publicly available the text of MRAs which have been concluded”.

Chapter 11 and the guidelines of Annex 11-A of CETA include expectations that are often very precise as to the content of an MRA concluded under those provisions. The guideline section entitled “Form and Content of the MRA” sets out issues that may be addressed in a negotiation and that, on the basis of what the negotiating entities agree to, should be reflected in the MRA text. Under the various subjects addressed in Annex 11-A, the terms used are unequivocal as to what an MRA should contain: “should be clearly stated”, “should set out clearly”, “should clearly specify”, “should include”, “should specify”, “should state”, “should include”, “should be explained”, “details”.

[Appendix 4](#) to this document summarizes the expected content of an MRA, according to Chapter 11 and the guidelines of Annex 11-A of CETA.

1.5 The MRA, beyond the issue of trade

In this case, the negotiation of MRAs is part of a trade agreement, CETA, and its commitment to greater mobility of professionals and liberalization of the services they offer. The negotiation of MRAs also involves notions, legal frameworks and systems that fall under specialized areas and realities other than trade. It involves the regulation of professions, as a state intervention of general interest in several jurisdictions for the protection of the public against the risks of certain professional practices. It also involves education and training systems specific to each jurisdiction.

Another area involved when negotiating MRAs is the very area of recognition of professional qualifications, part of the wider area of the measurement and evaluation of skills. That area has its corpus of principles, methodologies, tools and best practices, which ensure that a system of recognition is credible, defensible, objective, non-discriminatory and fair. Reflection and developments in that area often have an international perspective, through international instruments or others, for an understanding as universal as possible and greater portability between the systems.

¹¹ See, among others, paragraph 1 of Article 11.2 of CETA, which concerns a “fair, transparent and consistent regime for the mutual recognition of professional qualifications”.

Lastly, the practice of a number of professions is adapted to the local realities, from geographical, legal, institutional, social and cultural standpoints. Those are realities that, beyond apparent similarities between professional qualifications, may require persons who wish to provide their services in another territory to somewhat adapt their qualifications to the context of that territory, and even acquire additional knowledge.

2 ANALYSIS AND COMMENTS ON THE APRIL 2018 DRAFT MRA

2.1 Elements to submit to the MRA Committee

We understand that, in the case of the MRA for architects, the negotiations began long before the steps and requirements of CETA as to the form and content of the file and the MRA project to be submitted were known. The fact remains that the MRA Committee will need to have a complete file to decide whether the joint recommendation and the April 2018 draft MRA are consistent with CETA, which, in this case, will likely be in a single step.

2.1.1 Joint recommendation

It should be noted that the April 2018 draft MRA for architects does not include elements to assess the potential economic value of the MRA according to certain criteria stated in CETA or to assess the compatibility of the professional regulatory or qualification regimes. It is in fact not an obligation for the very text of an MRA to contain all of those elements. Under the particular circumstances of the draft MRA for architects, a background document added to the draft MRA could supplement it and complete the file.

2.1.2 Content of the draft MRA in light of CETA

The April 2018 draft MRA does not contain all the expected elements and information. Those criteria are mentioned in Chapter 11 and the guidelines of Annex 11-A of CETA, and are reproduced in [Appendix 4](#) to this document. Much additional information should be included in the draft MRA for the purposes of transparency, information and efficient implementation of such an agreement.

In the following sections, we examine various questions raised by the April 2018 draft MRA, which call for adjustments to, even an improvement of, its content.

2.2 Scope of the MRA — professional activities concerned and types of authorization

According to the April 2018 text of the MRA, if the scope of practice for the profession in the jurisdiction of origin is more restrictive than that of the host jurisdiction, architects could be authorized to exercise only the activities that are part of their scope of practice in their jurisdiction of origin¹². Contrary to the Québec-France MRA, the licence to practise in the host jurisdiction is therefore not solely the regular licence (full scope of practice). It could also be a restrictive licence.

An architectural licence could also be issued “case by case”, on the basis of the scope of practice for the profession in the applicants’ home (origin) and host jurisdictions, and the duration of the applicants’ establishment in the host jurisdiction. But all jurisdictions are not necessarily empowered, at this time, to issue legal authorizations to practise that vary (in terms of activities)

¹² See section 3.1 of the April 2018 draft MRA.

to meet the options contained in the MRA. The Commissioner wonders about the application of such an approach.

2.2.1 Similarity with partial access within the EU

The possibility of restricting the activities exercised in the host jurisdiction, as mentioned in the text of the MRA, is similar to the notion of partial access introduced in Directive 2005/36/EC¹³ by Directive 2013/55/EU. The consolidated version of Directive 2005/36/EC provides that partial access may be granted when certain conditions are fulfilled:

1. The competent authority of the host Member State shall grant partial access, on a case-by-case basis, to a professional activity in its territory only when all the following conditions are fulfilled:

(a) the professional is fully qualified to exercise in the home Member State the professional activity for which partial access is sought in the host Member State;

(b) differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that the application of compensation measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;

(c) the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State.

For the purpose of point (c), the competent authority of the host Member State shall take into account whether the professional activity can be pursued autonomously in the home Member State¹⁴.

However, in certain cases, partial access may be rejected:

2. Partial access may be rejected if such rejection is justified by overriding reasons of general interest, suitable for securing the attainment of the objective pursued, and does not go beyond what is necessary to attain that objective¹⁵.

The Directive specifies that partial access “shall not apply to professionals benefiting from automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III”¹⁶. The automatic recognition referred to is recognition based on professional experience (essentially for trades), on coordinated minimum conditions for training (for the professions of

¹³ [Directive 2005/36/EC of the European Parliament and of the Council of September 7, 2005 on the recognition of professional qualifications \(consolidated version 2017\)](#).

¹⁴ *Ibid*, Article 4f.

¹⁵ *Loc. cit.*

¹⁶ Paragraph 6 of Article 4f of Directive 2005/36/EC.

doctor, nurse, dental practitioner, veterinary, pharmacist and architect) or common training principles. For the architectural profession, automatic recognition is granted when:

- the applicant has evidence of formal qualifications appearing in one of the lists in Annex V of the Directive (Recognition on the basis of coordination of the minimum training conditions);
- the applicant has evidence of formal qualifications that are part of the list of qualifications allowing him to benefit from acquired rights (articles 23, 27, 33, 37, 39, 43 and 49 of the Directive).

However, if the architect holds evidence of formal qualifications that does not appear in any of the lists, his or her case will not be dealt with within the framework of automatic recognition, but as part of the general system for the recognition of evidence of formal qualifications¹⁷. This implies that the applicant could be granted partial access to the profession if he or she meets the conditions listed in Article 4f of the Directive.

2.2.2 Compatibility with CETA

Within the framework of the Canada-Europe MRA for architects, granting partial access would mean that the difference between the scope of practice for the architectural profession in the jurisdiction of origin and that in the host jurisdiction is very significant. But that difference is hardly in keeping with the compatibility principle¹⁸ of CETA, which is one of the determining factors for negotiating an MRA. The logic of the text of Chapter 11 of CETA and its Annex 11-A (compatibility, substantial differences and compensatory measures) points to legal authorization to practise throughout the entire scope of practice of the host jurisdiction. Unless statements to the contrary are made and supported by the signing authorities of CETA, the Commissioner questions the merits of such a clause in the MRA for architects.

2.3 Conditions for the mutual recognition of architects

2.3.1 Training requirements (studies and practical training/internship)

- *Within the EU*

Within the EU, training leading to the architectural profession varies and can combine two learning methods: studies (essentially theoretical education) and practical training/internship. With respect to the EU Member States, a comparative table published in a recent document¹⁹ shows that, to become an architect, the duration of studies is generally five years, to which is added practical

¹⁷ See Article 10 of Directive 2005/36/EC.

¹⁸ See paragraph 2 of Article 11.3 of Chapter 11 of CETA.

¹⁹ [Mutual evaluation of regulated professions, Overview of the regulatory framework in the business services sector by using the example of architects](#), European Commission – Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), October 27, 2015 at 5-7.

training/internship, the duration of which varies from a few months to three years. Sometimes, no practical training/internship is even required. Overall, if the number of years of study is added to the duration of the practical training/internship, for 22 out of 28 EU Member States, the total number of years in the field of architecture before practising varies between five and seven years.

The architectural profession is part of the “automatic recognition” professions within the EU. The principle of automatic recognition means that all EU Member States recognize evidence of formal qualifications listed in Annex V of Directive 2005/36/EC giving access, in each EU Member State, to one of the seven professions concerned that meet minimum training conditions²⁰. Concerning the number of years of training for the architectural profession, those conditions are as follows:

- a total of at least five years of full-time study at a university or a comparable teaching institution, leading to successful completion of a university-level examination;
- or
- not less than four years of full-time study at a university or a comparable teaching institution leading to successful completion of a university-level examination, accompanied by a certificate attesting to the completion of two years of professional traineeship²¹. [...]

This automatic recognition implies that each Member State authorizes access to and the practice of the profession on its territory, the same as for any professional having formal qualifications which it itself issues²². Automatic recognition also applies to architects holding evidence of formal qualifications granting them acquired rights, the list of which is found in Annex VI of Directive 2005/36/EC.

- ***Within Canada***

In Canada, in order to facilitate the mobility of architects within the country, the professional orders (regulatory bodies) have agreed on harmonized admission standards with respect to training, internships and examinations. Thus, throughout Canada, to become an architect, the duration of university study is five years in Québec and four years in other provinces or territories (due to a different school system), with a professional training period of 3720 hours, that is, approximately two years full time.

Hence, before being authorized to practise, architects trained in Canada must have accumulated six or seven years in the field of architecture (study + practical training/internship). In addition, all candidates for the profession who graduated in Canada must take the same examination (ExAC), which is aimed at ensuring that the candidates have the minimum skills required for practising the profession.

²⁰ See paragraphs 1 and 3 of Article 21 of [Directive 2005/36/EC \(consolidated version\)](#).

²¹ Excerpts from Article 46 of [Directive 2005/36/EC \(consolidated version\)](#).

²² See paragraphs 1 and 3 of Article 21 of [Directive 2005/36/EC \(consolidated version\)](#).

In addition, the Canadian Free Trade Agreement (CFTA)²³, which was concluded between Canadian provinces and succeeded the Agreement on Internal Trade (AIT), completes the structure by laying down the principle of recognition of the “licence over licence” type between the provinces and territories, except in cases with substantial differences. However, in the field of architecture, the relevant authorities did not note any substantial differences between the provinces and territories. Although the practice context presented some differences, they were not deemed substantial with regard to public protection.

In short, if some conditions may vary from one province or territory to another, the conditions for accessing the architectural profession have been harmonized within Canada.

- ***Between the EU and Canada***

The 2018 text of the MRA states requirements that are common to Canada and the EU with respect to applicants for mutual recognition: a minimum of 12 years (education, training and practice) in the field of architecture is required with at least four years of professional experience, once the legal authorization to practise has been obtained²⁴.

Thus, the requirements that are supposed to facilitate the mobility of architects between the EU and Canada would be higher than those in force within the EU (Article 46 of Directive 2005/36/EC) and within Canada. In fact, in order to meet them, the cumulated time of study and internship/professional experience before being authorized to practise would consequently be eight years. But, as indicated above, this does not correspond to the Canadian standard, the standard for automatic recognition within the EU (Article 46 of the Directive), or even the internal standard in force in 22 out of 28 EU Member States. The Commissioner questions the reasoning and elements that justify going beyond these standards in the Canada-Europe MRA.

Moreover, beyond the common Canada-EU standard for an applicant to be eligible for mutual recognition, the draft MRA requires the applicant to then fulfill the particular requirements of the host jurisdiction for registration (admission), licence or recognition.

2.3.2 Requirements for professional experience following authorization to practise

- ***Professional experience of variable duration (April 2018 draft MRA)***

April 2018 Canada-Europe draft MRA for architects requires a professional experience following authorization to practise at least four years before being eligible for mutual recognition. In fact, since the total number of years required in the field of architecture is 12 years, the number of years of professional experience varies, depending on the duration of training in various jurisdictions.

²³ The text of CFTA is available at: <https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>.

²⁴ See point 4.1 in the April 2018 draft text of the MRA.

A comparison of EU Member States²⁵ shows, for example, that an architect trained in Italy must obtain seven years of professional experience following authorization to practise, whereas an architect trained in Germany needs six years of professional experience, and an architect trained in Belgium needs to work for five years. There are very few EU Member States that can comply with the 12-year standard in the field of architecture without it requiring professional experience of over four years.

In Canada, this means that an architect must have practised his or her profession for five or six years after obtaining a licence to be able to benefit from the MRA.

Hence, the current text of the MRA would allow the mobility between Canada and the EU of only experienced architects. But mobility by means of automatic recognition between European jurisdictions is allowed as soon as the architect has been authorized to practise in his or her home jurisdiction. Mobility between Canadian jurisdictions, according to the “licence over licence” formula, is possible when the architect holds an authorization to practise from one of the jurisdictions.

The Commissioner questions the justification for the requirement for professional experience following authorization to practise, which, in addition, is of variable duration from one jurisdiction to another. What is being sought through that professional experience as concerns recognition of qualifications? What analysis led to the establishment of the requirement for a minimum of four years of professional experience?

- ***The taking into account of work experience in legal texts (Directive 2005/36/EC and CETA)***

Within the EU, Directive 2005/36/EC provides for the requirement of professional experience only in the following scenarios:

- for Member State nationals who hold professional qualifications obtained outside the EU and have had their evidence of formal qualifications recognized by a Member State: that evidence of formal qualifications is regarded as that of the EU if the person has obtained three years’ professional experience in the Member State that recognized the equivalent evidence (Article 3, paragraph 3);
- for professionals who wish to provide services in a Member State of the EU other than the Member State of establishment: if the professional practices in a Member State where the profession is not regulated, then professional experience of one year during the 10 years preceding the provision of services in a host Member State is required (Article 5, paragraph 1b and Article 13, paragraph 2);

²⁵ [Mutual evaluation of regulated professions, Overview of the regulatory framework in the business services sector by using the example of architects](#), European Commission – Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), October 27, 2015 at 5-7.

- for exercising activities listed in Annex IV of the Directive (which essentially concerns regulated trades): professional experience varying from two to six years is recognized, depending on the applicant's situation, as sufficient evidence of his or her knowledge and skills (articles 17, 18 and 19).

It should be noted that no professional experience following authorization to practise is required under Directive 2005/36/EC for the professionals who are eligible for automatic recognition, such as architects²⁶. When the training leading to the profession is on one of the lists in annexes V and VI of the Directive, that is sufficient.

Regarding CETA, the guidelines of Annex 11-A on the mutual recognition of qualifications makes no reference to professional experience following authorization to practise that would be required of an applicant in order to benefit from an MRA. When professional experience is mentioned in the Annex, it is to remedy documented, substantial differences. The following is stated in the Annex:

[...] The negotiating entities should also evaluate any practical professional experience obtained in the jurisdiction of origin to see whether this experience is sufficient to remedy, in whole or in part, the substantial difference in the scope of practice rights or qualifications between the jurisdictions, prior to determining a compensatory measure²⁷.

This means that, if the applicant has work experience following authorization to practise, the experience would be given priority consideration to bridge the gaps if substantial differences were identified. The lack of professional experience would only prevent the applicant from being able to benefit from a reduction in compensatory measures. However, that would in no way prevent the applicant from benefiting from an MRA.

- ***New skills to acquire?***

It is clear that, on the basis of the philosophy of Annex 11-A of CETA, having work experience may be an added value, but the lack of work experience cannot be prejudicial to the applicant. However, once work experience becomes *mandatory* and not *optional*, as indicated in the April 2018 text of the MRA for architects, experience is no longer used to remedy substantial differences, it becomes an additional requirement, and the applicant has no other choice but to acquire this professional experience.

According to the logic of CETA and the MRAs, any requirement in addition to what is normally required in the jurisdiction of origin to practise the profession in the host jurisdiction must be

²⁶ Furthermore, another directive, [Directive 2006/123/EC](#), which deals with the provision of services in the EU, mentions, among the requirements that are prohibited to Member States as regards access to, or the exercise of, a service activity, is "to have previously exercised the activity for a given period in their territory" (excerpt from paragraph 8 of Article 14 of the Directive). This means that no Member State can require an applicant to have acquired previous professional experience in its territory before authorizing the applicant access to or the practice of a profession.

²⁷ Annex 11-A of CETA, heading entitled "Step Three: Compensatory Measures".

justified on the basis of skills that are targeted and essential to the practice of the profession and that the nationals of the jurisdiction of origin do not possess. If an architect is required to acquire several years of professional experience in his or her jurisdiction of origin after being authorized to practise, this means that the applicant's training path is deemed insufficient for the host jurisdiction and that certain skills can be obtained only through additional work experience.

An objective link must be established between the skills deemed missing, which the candidate must acquire, and the content of the work experience required to acquire those skills. The April 2018 text of the MRA does not indicate that link between professional experience and the skills that must be acquired. Given the absence of precision regarding the expected content of that work experience with regard to the missing skills, such a requirement becomes an unjustified barrier to the recognition of professional qualifications.

2.4 Improving the MRA

The above considerations regarding consistency with CETA, the scope of application and mutual recognition raise a fundamental question: Is the April 2018 Canada-Europe draft MRA for architects useful? The way it is written, the agreement does not provide any particular information and does not lay a new path, specific to the MRA, to facilitate access to the practice. In fact, the Canadian or European applicant must meet the usual terms and conditions of the host jurisdiction, as is currently the case without an MRA. In addition, as a condition for eligibility to the MRA, additional professional experience following authorization to practise would be required of the applicant. What would be the added value of such an MRA with regard to the objectives of CETA?

Under the circumstances and for the purpose of the transparency intended with this kind of exercise²⁸, an MRA should begin by acknowledging the complexity of the situation for the architectural profession in Europe given the architects' varied training, regulations, roles and responsibilities in the various EU Member States. The MRA must meet the challenge of that complexity and avoid shortcuts or additional requirements.

In order to better ascertain the nature of those differences and their impact on professional practice, as mentioned in the guidelines of Annex 11-A of CETA, a comparative analysis of professional qualifications and scopes of practice²⁹ should be carried out between each Canadian province and each Member State of the EU in order to determine whether there are substantial differences and, if so, the compensatory measures necessary to bridge the gaps identified. Thus, the results of such an analysis would make it possible to establish the specific conditions that an applicant must fulfill in the host jurisdiction, on the basis of the applicant's jurisdiction of origin.

²⁸ See paragraph 1 of Article 11.2 of Chapter 11 of CETA.

²⁹ See [Appendix 2](#) and [Appendix 3](#) of this document.

2.4.1 Comparing scopes of practice

- *For a broad and meaningful vision of the scope of practice*

In Annex 11-A of CETA, the scope of practice is defined as “an activity or group of activities covered by a regulated profession”. It is the description generally found in official texts concerning the regulation of a profession. Through the description of activities that give substance to a profession, the legislators have sought to define the nature and purpose of the profession. But such a description does not always reflect the reality of the context in which those activities are carried out or the content of the practice. Beyond “what” the professional does, it is as important to know “how” the professional does it. The “how” refers to the ways of doing things, the standards and the culture, and could reveal the existence of substantial differences, as with the activities carried out. Hence, the description of the scope of practice should be considered more broadly, and also take the context of practice into account. As for the purpose of comparison between jurisdictions, that approach will lead to a richer and more realistic understanding of the scope of practice.

However, everything pertaining to the context cannot constitute a substantial difference. We must be able to distinguish between elements of the context having to do with professional competency and other elements that do not fall within professional regulation or public protection. The former have a direct effect on the practice and could reveal a substantial difference, whereas the latter generally have no impact on the professional act as such.

- *The architects' scope of practice in the EU and Canada*

The text of Directive 2005/36/EC contains no description of the scope of practice for the architectural profession in the EU. The Directive merely indicates that “the professional activities of an architect are the activities regularly carried out under the professional title of ‘architect’” (paragraph 1 of Article 48 of the Directive). Clearly, that is because it is difficult to determine a precise scope of practice, given that regulations regarding the practice of the profession vary so much from one Member State to another:

National regulations in the field of architecture and on access to and the pursuit of the professional activities of an architect vary widely in scope. In most Member States, activities in the field of architecture are pursued, de jure or de facto, by persons bearing the title of architect alone or accompanied by another title, without those persons having a monopoly on the pursuit of such activities, unless there are legislative provisions to the contrary. These activities, or some of them, may also be pursued by other professionals, in particular by engineers who have undergone special training in the field of construction or the art of building³⁰ [...]

Given the varied scopes of practice within the EU, no common definition regarding the practice of architecture has been established, contrary to the training leading to the profession, regarding

³⁰ Paragraph 28 of the “Whereas” section of [Directive 2005/36/EC](#), when it was adopted on September 7, 2005.

which minimum conditions have been set for automatic recognition by other Member States. National regulations for architecture differ. Hence, through automatic recognition, it is presumed that there are no substantial differences between the Member States of the EU.

A document prepared by the European Commission³¹ specifies that, depending on the Member States, the profession has reserved activities, a protected title, reserved activities and a protected title, or some other kind of regulatory framework.

In certain Member States, the profession is not regulated. Moreover, the role and responsibilities of an architect also vary from one Member State to another, and, sometimes, within the same State, the levels of responsibility between two architects may differ, depending on training or professional experience acquired. The differences noted may not be substantial. However, to find out, a comparative analysis of the scopes of practice between the Member States should be conducted, as indicated in CETA.

In fact, automatic recognition within the EU concerns only evidence of formal qualifications. The scopes of practice and the possibly substantial differences that could exist between Member States are not dealt with in the Directive. It appears that the premise of the EU stakeholders and competent authorities was that, when the training met the minimum conditions established, the activities that could be carried out by architects on the basis of that training were on the whole equivalent from one Member State to another.

In Canada, the scopes of practice for the architectural profession were compared between the provinces and territories within the framework of intra-Canadian trade agreements³². Some differences were noted, but they were not deemed substantial and therefore did not lead to the implementation of compensatory measures between jurisdictions.

- ***Global comparative analysis of the scopes of practice of Canadian and European jurisdictions***

Given the varied scopes of practice for the architectural profession in the EU and the absence of a common European definition regarding it, the logic of Chapter 11 of CETA calls for a comparative analysis of the scopes of practice of all Canadian and European jurisdictions³³. In order to be complete, the analysis should take into consideration not only the activities carried out in those jurisdictions, but also the context in which they are carried out.

Depending on the results of that analysis, should substantial differences be identified, those differences should be clearly stated in the MRA, as well as the logical link between the gaps to be

³¹ [Mutual evaluation of regulated professions, Overview of the regulatory framework in the business services sector by using the example of architects](#), European Commission – Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), October 27, 2015.

³² See [section 2.6](#) of this document.

³³ See [Appendix 2](#) and [Appendix 3](#) of this document.

bridged and the required compensatory measures. That information could take the form of a fact sheet for each jurisdiction.

2.4.2 Comparing professional qualifications (study and professional training/internship prior to the issuance of authorization to practise)

The study programs of Canadian jurisdictions should be analyzed and compared with those of EU jurisdictions in order to determine whether the duration and content are equivalent overall.

Within Canada, for the architectural profession, the professional orders (regulatory bodies) have agreed on the implementation of harmonized training standards³⁴. Studies last four or five years with an equivalent content and, to be issued a licence to practise, students in architecture must have completed a professional training (internship) period of 3720 hours (that is approximately two years).

Within the EU, for automatic recognition, study programs in architecture must be on the lists established and incorporated in the Directive³⁵ on the basis of minimum training conditions dealing with both the duration (five years, or four years plus two years of professional internship) and the content (listed subjects)³⁶.

Hence, it is noted that the comparison of professional qualifications has already been made with respect to the jurisdictions of each Party of CETA. The Canadian training standards remain to be compared with the European training standards in order to determine whether there are differences and, if so, whether they are substantial.

Regarding the duration of training for architects, Canadian and European standards are similar. The standards concerning the training content remain to be compared. At the end of the comparison, two scenarios are possible: the training content is considered as equivalent overall, or substantial differences are identified.

- Scenario 1: the content of the training is equivalent overall between Canada and the EU

Directive 2005/36/EC authorizes the EU Member States to recognize, in accordance with their regulations, the professional qualifications obtained in a third country (whether regarding Member State or third country nationals), but the text points out that the recognition should “respect minimum training conditions”, in particular for professions with automatic recognition³⁷. In other words, for architects, the Directive expects the Member States to use the standard

³⁴ See [section 2.3.1](#) of this document under the heading entitled “*Within Canada*”, for additional information.

³⁵ See the lists in annexes V and VI of [Directive 2005/36/EC \(consolidated version\)](#).

³⁶ See Article 46 of [Directive 2005/36/EC \(consolidated version\)](#).

³⁷ See, in that regard, paragraph 10 of the “Whereas” section of [Directive 2005/36/EC](#), when it was adopted on September 7, 2005, and paragraph 2 of Article 2 of the Directive concerning its scope of application.

indicated in its Article 46 for the recognition of evidence of formal qualifications obtained abroad (outside the EU).

In that context, for convenience and to harmonize with what is already being done within the EU, why would the MRA not be based on the text of Directive 2005/36/EC for mutual recognition? This would imply that the Directive must take into account the existence of an MRA within the framework of CETA. The text of the Directive would need to be adjusted accordingly, to provide for the automatic recognition and authorization of Canadian architects. For recognition in Canada of EU architects, the MRA could refer to annexes V and VI of the Directive, which lists European diplomas that meet the standard of Article 46 of the Directive. According to the regulatory approach in Canada, holding a licence from the provincial regulatory body is proof of the adequacy of training and professional skills with respect to the requirements of the practice. Reference to that licence could be used to recognize the professional qualifications of Canadian architects in the EU.

- ***Scenario 2: there are substantial differences in the training content between Canada and the EU***

If substantial differences are identified in relation to the subjects covered by the recognized study programs (Article 46 of the European Directive, and harmonized provincial standards in Canada), then a comparison of professional qualifications between the jurisdictions must be done. In fact, it will be necessary to determine whether evidence of professional qualifications issued in certain jurisdictions cover the missing subjects, and establish compensatory measures for each jurisdiction, if necessary, to address the substantial differences.

A fact sheet should be established for each European/Canadian jurisdiction to adequately inform applicants from other jurisdictions about the requirements for accessing the architectural profession. If compensatory measures apply, this should be mentioned in the fact sheet. The information should be clear and transparent and a connection should be established between the imposed compensation measures (duration and content) and the substantial differences noted.

2.4.3 The added value of an MRA

The interest of an MRA for the architectural profession lies in the fact that, on the basis of their home jurisdiction, applicants would be given clear and transparent information on the conditions to be met to practise as architects in the host jurisdiction³⁸. Currently, applicants must contact the host jurisdiction for an individual evaluation of their admission file. An MRA in due form would make it possible, with a comparative analysis of the scopes of practice and professional qualifications conducted beforehand, to establish a “group evaluation” and determine standardized requirements applicable to that group. As a result, any applicant from a given jurisdiction would be aware ahead of time of the requirements that he or she must satisfy to be

³⁸ In fact, Article 4 of Annex 11-A of CETA mentions the following: “The MRA should clearly specify the conditions to be met for the recognition of qualifications in each jurisdiction and the level of equivalence agreed”.

allowed to practise in another jurisdiction, and would be able to make a decision with full knowledge of the facts. The path would then truly be facilitated, which is the desired objective of an MRA.

2.5 The case of applicants who obtained recognition of their professional qualifications through equivalence

The April 2018 text of the MRA does not explicitly mention that an architect must have undergone training in Canada or the EU to be eligible for mutual recognition. In fact, other than the required 12 years in the field of architecture, including a minimum of four years of professional experience, the specific requirements indicated are:

- Comply with the requirements of the host jurisdiction;
- Be a member in good standing of his or her regulatory body or provide an attestation confirming that he or she meets the requirements of Article 46 of Directive 2005/36/EC;
- Not have a disciplinary record;
- Pay the prescribed fees.

The Commissioner wonders about the eligibility of architects trained abroad who were authorized to practise in Canada or the EU further to a recognition of their professional qualifications through equivalence. It should be recalled that there are equivalence paths giving access to regulated professions in jurisdictions of the two Parties to CETA.

2.5.1 Recognition of foreign qualifications within the EU

Within the EU, although not all the Member States have implemented such processes, it is possible to have professional qualifications obtained outside the EU recognized. The “Whereas” section of Directive 2005/36/EC mentions that the Directive does not prevent Member States from recognizing professional qualifications obtained in third countries by Member State non-nationals. However, it points out that the recognition “should respect minimum training conditions for certain professions³⁹.” The same idea is reiterated in paragraph 2 of Article 2 of the Directive:

Each Member State may permit Member State nationals in possession of evidence of professional qualifications not obtained in a Member State to pursue a regulated profession within the meaning of Article 3(1)(a) on its territory in accordance with its rules. In the case of professions covered by Title III, Chapter III, this initial recognition shall respect the minimum training conditions laid down in that Chapter.

³⁹ Excerpt from paragraph 10 of the “Whereas” section of [Directive 2005/36/EC](#), when it was adopted on September 7, 2005.

For the architectural profession, those training conditions are those found in Article 46 of the Directive.

Moreover, Directive 2005/36/EC mentions that, for Member State nationals who have had their professional qualifications obtained in a third country recognized by a Member State, it is possible for their evidence of formal qualifications to be “regarded” as European training. To do so, they must have acquired three years’ professional experience in the Member State which recognized their professional qualifications; for architects, the recognition is based on the training conditions in Article 46 of the Directive:

Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years' professional experience in the profession concerned on the territory of the Member State which recognized that evidence of formal qualifications in accordance with Article 2(2), certified by that Member State (Article 3, paragraph 3).

It is clear that, once evidence of formal qualifications obtained abroad is “regarded” as European training, the architect may benefit from automatic recognition and work in other EU jurisdictions, on the basis of European directives.

2.5.2 Recognition of foreign qualifications within Canada

Within Canada, the provincial and territorial regulatory bodies have implemented processes for recognition of the equivalence of diplomas or training obtained abroad. Once the equivalence has been recognized, professionals trained abroad are issued a licence to practise. In addition, according to the “licence over licence” logic of intra-Canadian trade agreements⁴⁰, any architect who obtained a licence to practise will have his or her licence recognized by the other provinces and territories.

2.5.3 Reflection on the MRA for architects

Whether in Canada or the EU, jurisdictions evaluate the professional qualifications of architects trained abroad before issuing them legal authorization to practise, when all of the jurisdiction’s requirements have been satisfied.

For an architect trained abroad, being recognized through an equivalence process means that his or her professional qualifications meet the jurisdiction’s standards, which are the same as those imposed on graduates of that jurisdiction. Logically, that architect should therefore be able to benefit from the MRA, the same as an architect trained in a host jurisdiction that is a party to the MRA.

⁴⁰ See [section 2.6](#) of this document.

The April 2018 text of the MRA says nothing about that point; but it is a subject on which negotiating entities should reflect, given that jurisdictions could receive applications for accessing the profession from architects with that profile.

2.6 Intra-European and intra-Canadian professional mobility

EU treaties and directives generally accord more favourable treatment to EU nationals than to third country nationals, particularly with respect to professional mobility. Consequently, such mobility could not be guaranteed for Canadian nationals who hold legal authorization to practise the architectural profession in an EU Member State and who may want to move to another EU Member State to offer their services there. Particularly so, given that CETA maintains more favourable treatment to EU nationals⁴¹, although this may contravene the non-discrimination principle contained in CETA.

Within Canada, there are texts with objectives similar to European treaties and directives regarding the free movement of persons and recognition of professional qualifications. Thus, the Canadian Free Trade Agreement (CFTA)⁴², which has replaced the Agreement on Internal Trade (AIT), lays down the principle of recognition of the “licence over licence” type from one province or territory to another. Although some conditions may vary from one province or territory to another, the conditions for accessing the architectural profession based on qualifications are harmonized and mutually recognized within Canada. In addition, the Supreme Court of Canada invalidated the Canadian citizenship requirement for the issuance of licences to practise a profession regulated in Canada. It was declared discriminatory under the *Canadian Charter of Rights and Freedoms*,⁴³ one of Canadian constitutional texts. Thus, an EU national is not required to have Canadian citizenship to obtain an initial architectural licence or, subsequently, any other licence to practise in another province where he or she should wish to provide services.

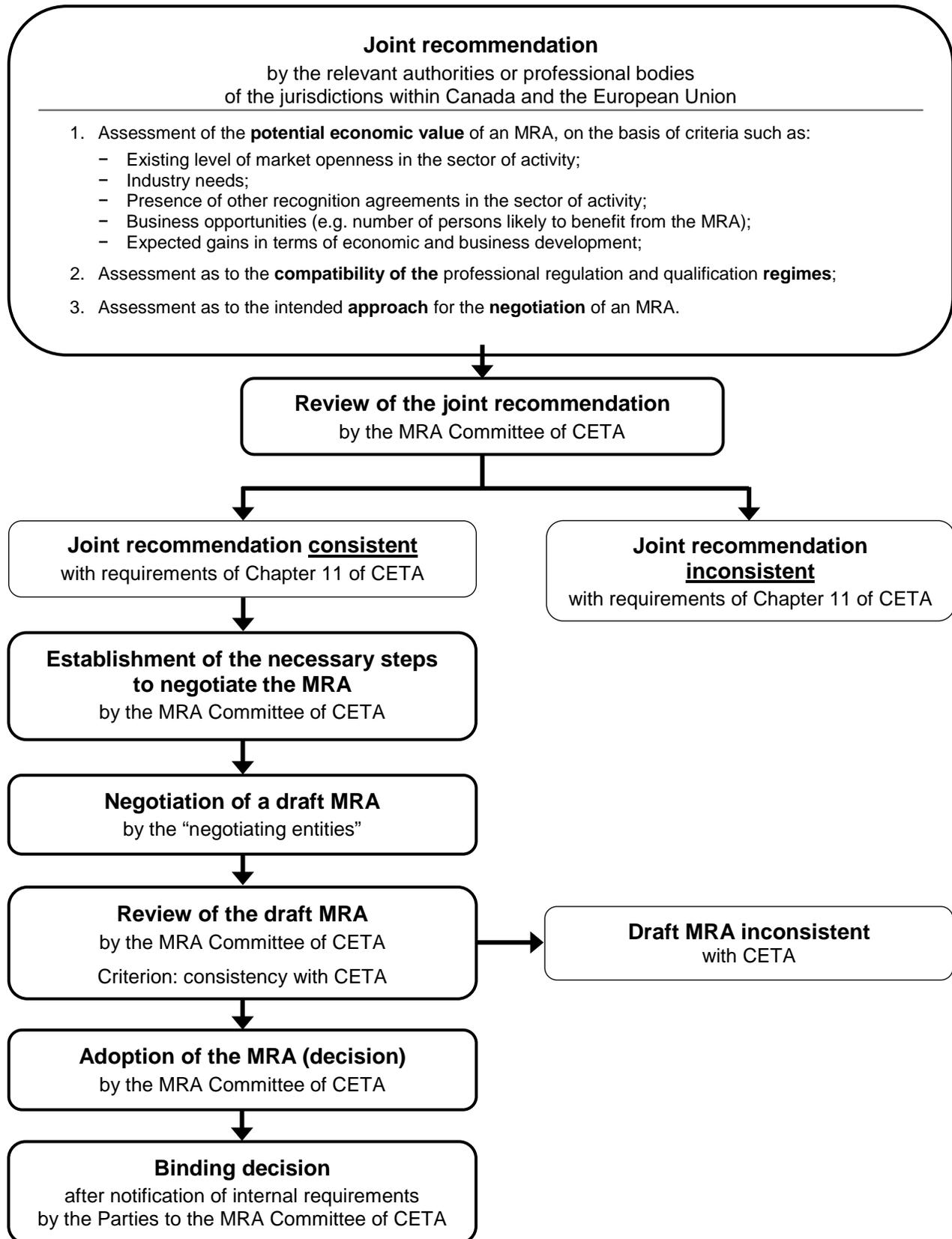
The matter of citizenship and its impact on the professional mobility of architects was not addressed in the April 2018 text of the MRA. However, it needs to be clarified by the signing authorities of CETA. There is a risk of asymmetry in the effectiveness of the advantages granted under CETA, depending on whether a person comes from Canada or the EU. According to the responses obtained, internal procedures for the Parties could be added (legislative, regulatory or administrative measures) and it could be necessary to adjust the MRA so that its implementation is effective for all.

⁴¹ See paragraphs 2 and 3 of Annex 9-A of CETA.

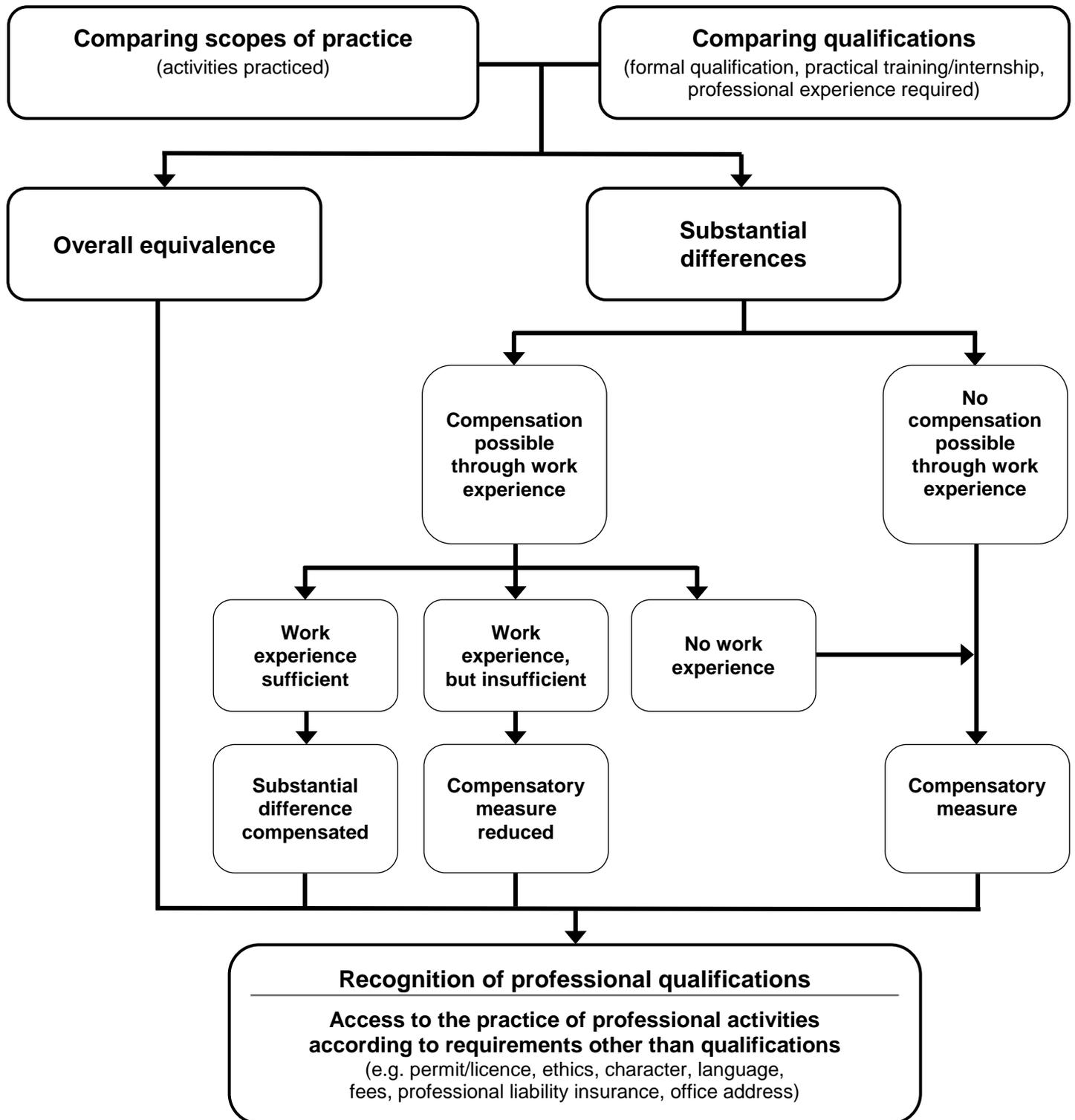
⁴² The text of the CFTA is available at: <https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>.

⁴³ See *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

**APPENDIX 1: PROCEDURE LEADING TO THE ADOPTION OF AN MRA,
ACCORDING TO CHAPTER 11 OF CETA**



APPENDIX 2: LOGICAL FLOWCHART FOR THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS, ACCORDING TO CHAPTER 11 AND THE GUIDELINES OF ANNEX 11-A OF CETA



APPENDIX 3: PROCESS FOR COMPARATIVE ANALYSIS AND RECOGNITION OF QUALIFICATIONS, ACCORDING TO CHAPTER 11 AND THE GUIDELINES OF ANNEX 11-A OF CETA

The process described in the guidelines of Annex 11-A of CETA includes four steps.

Step 1: Verification of equivalency

The negotiating entities must compare (a) the scopes of practice and (b) the qualifications between the various jurisdictions likely to be parties to the MRA. This step involves the collection of information and verification “in the respective jurisdictions”⁴⁴.

Consequently, the negotiating entities should:

- a. identify activities or groups of activities covered by the scope of practice rights of the regulated profession; and
- b. identify the qualifications required in each jurisdiction. These may include the following elements:

[...]

There is an overall equivalence between the scope of practice rights or the qualifications of the regulated profession if there are no substantial differences in this regard between jurisdictions⁴⁵.

Step 2: Evaluation of substantial differences

Overall equivalence, i.e. the absence of substantial differences, does not require that the terms and conditions of the professional practice, the curriculum of the evidence of formal qualifications, and the form of learning and modes of evaluation be exactly the same from one jurisdiction to another. The primary goal is to compare essential elements of competency to practise the profession in each jurisdiction.

This step involves the evaluation of the differences that may be found between jurisdictions, on the basis of certain parameters.

There exists a substantial difference in the scope of qualifications required to practise a regulated profession, in cases of:

- a. important differences in the essential knowledge; or
- b. significant differences in the duration or content of the training between the jurisdictions.

There exists a substantial difference in the scope of practice if:

⁴⁴ According to Article 11.1 of Chapter 11 of CETA, jurisdiction means “the territory of Canada, and each of its provinces and territories, or the territory of each of the Member States of the European Union”.

⁴⁵ See the guidelines of Annex 11-A of CETA, under the heading “Step One: Verification of Equivalency”.

- a. one or more professional activities do not form part of the corresponding profession in the jurisdiction of origin;
- b. these activities are subject to specific training in the host jurisdiction; and,
- c. the training for these activities in the host jurisdiction covers substantially different matters from those covered by the applicant's qualification⁴⁶.

Step 3: Compensatory measures

When there are substantial differences, the negotiating entities must “determine compensatory measures to bridge the gap”. There has to be a direct and apparent, logical link between a substantial difference and the compensatory measure. For the purpose of transparency, the text of an MRA should state the documented substantial differences and the related compensatory measures, between the jurisdictions. The guidelines add certain parameters to determine the form of the compensatory measures. Moreover, the negotiating entities must establish and mention in the text of the MRA whether it is possible to take into account the professional experience in the jurisdiction of origin to remedy, in whole or in part, a substantial difference with the host jurisdiction.

A compensatory measure may take the form of, among other things, an adaptation period or, if required, an aptitude test.

Compensatory measures should be proportionate to the substantial difference which they seek to address. The negotiating entities should also evaluate any practical professional experience obtained in the jurisdiction of origin to see whether this experience is sufficient to remedy, in whole or in part, the substantial difference in the scope of practice rights or qualifications between the jurisdictions, prior to determining a compensatory measure⁴⁷.

Step 4: Identification of the conditions for recognition

This step represents the culmination of the procedure and concerns the identification of the precise and concrete conditions for recognition from one jurisdiction to another. The subject is dealt with in particular through the expected content of an MRA⁴⁸.

⁴⁶ See the guidelines of Annex 11-A of CETA, under the heading “Step Two: Evaluation of Substantial Differences”.

⁴⁷ See the guidelines of Annex 11-A of CETA, under the heading “Step Three: Compensatory Measures”.

⁴⁸ See [section 1.4](#) and [Appendix 4](#) to this document.

APPENDIX 4: CONTENT OF AN MRA, ACCORDING TO CHAPTER 11 AND THE GUIDELINES OF ANNEX 11-A OF CETA

1. Participants

List of the parties to the MRA.

2. Purpose of the MRA

Purpose of the MRA.

3. Scope of the MRA

- Activities and titles covered by the MRA;
- Who is entitled to use the professional titles concerned;
- The bases for the recognition of mechanism: as the case may be, formal qualifications, a licence (permit) obtained in the jurisdiction of origin, or some other experience;
- As the case may be, the MRA allows temporary or permanent access to the profession.

4. Mutual recognition provisions

- “[The] conditions to be met for the recognition of qualifications in each jurisdiction”⁴⁹. Those conditions are established as a result of a joint process of verification of overall equivalency, according to the logical flowchart for recognition of professional qualifications⁵⁰ and in accordance with the four steps stated in the guidelines of Annex 11-A of CETA⁵¹.
- Depending on the result of the verification of the overall equivalency and for each jurisdiction, the negotiating entities should specify in the MRA:
 - a. the legal competency required to practise the regulated profession;
 - b. the qualifications for the regulated profession;
 - c. whether compensatory measures are necessary;
 - d. the extent to which professional experience may compensate for substantial differences;
 - e. a description of any compensatory measure, including the use of any adaptation period or aptitude test.⁵²

⁴⁹ According to Article 11.1 of Chapter 11 of CETA, jurisdiction means “the territory of Canada, and each of its provinces and territories, or the territory of each of the Member States of the European Union”.

⁵⁰ See the logical flowchart in [Appendix 2](#) to this document.

⁵¹ See the description of the steps in [Appendix 3](#) to this document.

⁵² See the guidelines of Annex 11-A of CETA, under the heading “Step Four: Identification of the Conditions for Recognition”.

5. Mechanism for implementation

- As regards the mechanism for implementation, an MRA should state:
 - a. the rules and procedures to be used to monitor and enforce the provisions of the agreement;
 - b. the mechanisms for dialogue and administrative co-operation between the parties to the MRA; and
 - c. the means for individual applicants to address any matters arising from the interpretation or implementation of the MRA.
- As a guide to candidates and to better inform them on the processing of individual applications,
 - the MRA should include details on:
 - a. the point of contact for information on all issues relevant to the application, for example, the name and address of the relevant authorities, licensing formalities, information on additional requirements which need to be met in the host jurisdiction;
 - b. the duration of the procedures for the processing of applications by the relevant authorities of the host jurisdiction;
 - c. the documentation required of applicants and the form in which it should be presented;
 - d. acceptance of documents and certificates issued in the host jurisdiction in relation to qualifications and licensing;
 - e. the procedures of appeal to or review by the relevant authorities.
- An MRA should also include the following commitments by the relevant authorities:
 - a. requests about the licensing and qualification requirements and procedures will be promptly dealt with;
 - b. adequate time will be provided for applicants to complete the requirements of the application process and of any appeal to or review by the relevant authorities;
 - c. exams or tests will be arranged with reasonable frequency;
 - d. fees for applicants seeking to take advantage of the terms of the MRA will be commensurate with the costs incurred by the host jurisdiction; and
 - e. information will be supplied on any assistance programmes in the host jurisdiction for practical training, and any commitments of the host jurisdiction in that context.

6. Licensing and other provisions in the host jurisdiction

The guidelines of Annex 11-A of CETA also require that the text of an MRA makes the candidates' steps easier by informing them of the terms and conditions for accessing the practice, even those that do not strictly concern professional qualifications. The text of an MRA

should provide that information for each host jurisdiction that is part of the system for mutual recognition⁵³.

If applicable, the MRA should also set out the means by which, and the conditions under which, a licence is obtained following the determination of eligibility, and what a licence entails, for example, a licence and its contents, membership of a professional body, use of professional or academic titles. Any licensing requirements other than qualifications should be explained, including requirements relating to:

- a. having an office address, maintaining an establishment or being a resident;
- b. language skills;
- c. proof of good character;
- d. professional indemnity insurance;
- e. compliance with host jurisdiction's requirements for use of trade or firm names; and
- f. compliance with host jurisdiction ethics, for example, independence and good conduct.

To ensure transparency, the MRA should include the following details for each host jurisdiction:

- a. the relevant law to be applied, for example, regarding disciplinary action, financial responsibility or liability;
- b. the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on practising professional activities;
- c. the means for the ongoing verification of competence; and
- d. the criteria for, and procedures relating to, revocation of the registration.

7. Revision of an ARM

If the MRA includes terms under which the MRA can be reviewed or revoked, the details should be clearly stated.

⁵³ According to Article 11.1 of Chapter 11 of CETA, jurisdiction means “the territory of Canada, and each of its provinces and territories, or the territory of each of the Member States of the European Union”.

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