



Brussels, 19.7.2022  
COM(2022) 343 final

2022/0217 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Joint Committee on Mutual Recognition of Professional Qualifications established under the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part as regards the adoption of a decision on an agreement on the mutual recognition of professional qualifications for architects**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee on Mutual Recognition of Professional Qualifications (MRA Committee) established under the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, in connection with the envisaged adoption of a decision on an agreement on the mutual recognition of professional qualifications for architects in accordance with Article 11.3.6 of CETA.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. CETA**

CETA aims to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the European Union and Canada (the Parties). CETA was signed on 30 October 2016 and has been provisionally applied since 21 September 2017.

#### **2.2. The MRA Committee**

The MRA Committee is established as a specialised committee under Article 26.2.1.b of CETA and is responsible for the implementation of Article 11.3 of CETA governing mutual recognition agreements (MRAs). It has as its tasks, inter alia, to make publicly available information regarding the negotiation and implementation of MRAs, report to the CETA Joint Committee on the progress of the negotiation and implementation of MRAs, and adopt them.

#### **2.3. The envisaged act of the MRA Committee**

The MRA Committee is to adopt a decision (the envisaged act) on an MRA on the professional qualifications for architects in accordance with Article 11.3.6 of CETA.

The purpose of the envisaged act is to establish the conditions and procedures according to which jurisdictions of the Parties that regulate access to or the pursuit of architectural activities by requiring specific professional qualifications shall recognise the professional qualifications giving access to the professional architectural activities in a jurisdiction of the other Party.

Under Article 11.3.6 of CETA, the envisaged act will become binding on the Parties upon notification to the MRA Committee by each Party that their respective internal requirements are fulfilled.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The envisaged act includes specific rules according to which the professional qualifications of architects have to be recognised and access be given to professional architectural activities in both Parties. This facilitates the supply of architectural services pursuant to the CETA provisions governing market access and national treatment for the supply of services through the cross-border provision of services, investment, and temporary entry and stay of natural persons for business purposes.

The substantial and procedural requirements of Article 11.3 of CETA are met. On 22 May 2018, the Canadian Architectural Licensing Authorities (CALA, now ROAC) and the Architects Council of Europe (ACE) submitted a Joint Recommendation to the MRA Committee. At its meeting of 16 April 2019, the MRA Committee agreed that the documents

provided by CALA and ACE meet the requirements of Chapter 11 of CETA and constitute an acceptable MRA recommendation. At its meeting of 24 November 2020, the MRA Committee established the negotiating entities and established the steps to negotiate an MRA.

The suggested position does not impact Union legislation on professional qualifications. Directive 2005/36/EC<sup>1</sup> does not apply to third country nationals.

However, it contains rules for the recognition of third country qualifications held by EU citizens. Recital 10 states that the ‘Directive does not create an obstacle to the possibility of Member States recognising, in accordance with their rules, the professional qualifications acquired outside the territory of the European Union by third country nationals. All recognition should respect in any case minimum training conditions for certain professions.’ Article 3(3) of the Directive stipulates that ‘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 recognised that evidence of formal qualifications [...]’. The conditions for recognition as set out in the MRA are higher than the minimum training conditions for architects in the Directive.

It is therefore appropriate to establish the position to be taken on the Union's behalf in the CETA Joint Committee on the envisaged act in order to ensure the effective implementation of the Agreement.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question.

#### *4.1.2. Application to the present case*

The MRA Committee is a body set up by an agreement, namely CETA. The act which it is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on the Parties under international law in accordance with Article 11.3.6 of CETA.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

### **4.2. Substantive legal basis**

#### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of

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<sup>1</sup> Directive 2005/36/EC of The European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

#### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to the common commercial policy. The provisions of CETA s relating to the mutual recognition of professional qualifications have direct and immediate effects on trade in services between the Union and Canada<sup>2</sup>.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

#### **4.3. Conclusion**

The legal bases of the proposed decision should be the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

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<sup>2</sup> Opinion 2/15 of the European Court of Justice of 16 May 2017, paragraph 53. The relevant text in the Free Trade Agreement with Singapore, on which the Opinion is based, is on substance identical with Article 11.3 of CETA.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article the first subparagraph of Article 207(4) TFEU, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision (EU) 2017/37<sup>3</sup> provides for the signing on behalf of the European Union of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part ('the Agreement'). The Agreement was signed on 30 October 2016.
- (2) Council Decision (EU) 2017/38<sup>4</sup> provides for the provisional application of parts of the Agreement, including the establishment of the Joint Committee on Mutual Recognition of Professional Qualifications (MRA Committee). The Agreement has been provisionally applied since 21 September 2017.
- (3) On 22 May 2018, the Canadian Architectural Licensing Authorities (CALA, now ROAC) and the Architects Council of Europe (ACE) submitted a Joint Recommendation to the MRA Committee. At its meeting of 16 April 2019, the MRA Committee agreed that the requirements of Chapter 11 of CETA, are met and the documents provided by CALA and ACE constitute an acceptable Joint Recommendation for a Mutual Recognition Agreement (MRA), in particular as far as its potential value and the compatibility of the licensing or qualification regimes of the Parties are concerned.
- (4) At its meeting of 24 November 2020, the MRA Committee established the negotiating entities and established the steps to negotiate an MRA. A series of nine negotiations rounds were held between 24 March 2021 and 10 March 2022.

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<sup>3</sup> Council Decision (EU) 2017/37 of 28 October 2016 on the signing on behalf of the European Union of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (OJ L 11, 14.1.2017, p. 1).

<sup>4</sup> Council Decision (EU) 2017/38 of 28 October 2016 on the provisional application of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (OJ L 11, 14.1.2017, p. 1080).

- (5) The draft MRA negotiated between the Union and Canada provides for the mutual recognition of professional qualifications under specific and strict conditions. With regard to the recognition of Canadian professional qualifications, the draft MRA requires (i) a minimum of 12 years of education, training and professional experience as an architect, (ii) a valid professional licence or registration as an architect from a competent authority in Canada and (iii) being of good standing. The requirement to obtain a valid professional licence or registration as an architect implies completion of studies in conformity with the Canadian Education Standard and the Canadian Architects Certification Board (CACB) accreditation system. Assessment of the conditions on which a registration or licence is obtained formed the basis for the conclusion in the Joint Recommendation to recognise that standards of education and practical training of architects in Canada were acceptable.
- (6) The MRA Committee is to adopt a decision on an MRA.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the MRA Committee, as the MRA will be binding on the Union.
- (8) The MRA sets out rules according to which the professional qualifications of architects can be recognised and access be given to professional architectural activities in both Parties and therefore facilitates trade in architectural services,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the MRA Committee as regards the adoption of decision on a mutual recognition agreement on the professional qualifications of architects shall be based on the draft act of the MRA Committee attached to this Decision.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*