



Knowledge Exchange Network "Cadastral and Land
Registry"
Working Group "Impact of EU Legislation on
Cadastral Surveying"

Impact of EU Legislation on Cadastral Surveying



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List of Abbreviations

TEC	Treaty Establishing the European Community (also referred to as EU treaty)
EC	European Community
ECJ	European Court of Justice
CLGE	Comité de Liaison des Géomètres Européens (www.clge.eu)
GE	Geometer Europas (www.geometer-europas.org)
GMES	Global Monitoring for Environment and Security: is the European Initiative for the establishment of a European capacity for Earth Observation (www.gmes.info)
PSC	Point of Single contact
SME	Small and Medium Enterprises
SBA	Small Business Act

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1. Executive Summary

With the ratification of the Treaty of Lisbon in December 2009, the way for a more transparent and democratic Europe has been opened. Based on the European legislative framework, several initiatives such as INSPIRE, e-governance, Global Monitoring for Environment and Security (GMES) and the activities concerning Public Sector Information have been started in order to implement those intentions. At the basis of these initiatives, there are principles that refer to the **freedom of movement of workers, freedom of establishment and freedom of providing services** within the Member States.

Four relevant articles

Four articles of the EU treaty have an impact on the cadastral surveying profession and are the focus of this report:

- Art. 39: Freedom of movement, but not for employment in public sector, i.e. activity is in state monopoly
→ **activity mainly carried out by civil servants**
- Art. 45: Freedom of establishment, but not for activities connected to official authority,
→ **activity is carried out by publicly appointed professionals**
- Art. 43: Freedom of establishment, regulated by professional agreements incl. mutual recognitions
→ **activity can be exercised by private sector professionals acting on behalf of state authorities**
- Art. 49: Freedom to provide services
→ **activity is not regulated, employment regulated by free market**

Typical activities of cadastral surveyors

An earlier report by EuroGeographics, CLGE and GE (2008) identified eight main activities that cadastral surveyors typically are carrying out. These are:

1. Cadastral (technical) field measurements
2. Marking of parcel corners
3. Advice / consultancy for the landowner
4. Validation, getting approval on cadastral plans from relevant authorities
5. Land price valuation
6. Registration of updated cadastral data to cadastral database
7. Defining restrictions on land use
8. Preparation (correction) of territorial planning documents

Conclusions and recommendations

This report is mapping each of these eight activities against the four relevant EU treaty articles in the nine countries participating in the working group. It thus provides an overview of the relations between activities, articles and existing practical cases. The objective is to illustrate the issues that the particular countries are facing and to provide information and experiences for other countries. Additional issues that would have to be respected by the national professionals are also **National Points of Contact, Single Points of Contact, Codes of Conduct, Education and experience.**

This report recommends that each country examines for itself the relevant EU treaty articles from their own national perspective. Depending on the national context, the impact of the EU legislation may differ, which can only be evaluated with a detailed "internal" know-how of the local legislation and structures.

2. Introduction

Background

With the ratification of the Treaty of Lisbon in December 2009, the way for a more transparent and democratic Europe has been opened. Several initiatives were undertaken, based in the European legislative framework. Initiatives and legislation focusing on interoperable data and the exchange of information such as INSPIRE, e-governance, GMES and the activities concerning Public Sector Information are examples of achieving this. All these initiatives have an impact on Europe as a whole and on professions in particular.

At the basis of these initiatives, there are several principles that have been laid out in the **«Treaty establishing the European Community»** (TEC)¹. The principles refer to the **freedom of movement of workers, freedom of establishment and freedom of providing services** within the Member States.

Working group

In an earlier joint survey, EuroGeographics, CLGE and GE (2008) focused on the characteristics of the profession of the cadastral surveyor. There was a demand to extend this work with a joint survey on the impact of EU-legislation on this profession. More specifically, the freedom of movement and establishment in the European Union of the cadastral surveyor needed research. In order to map the situation, a new joint working group consisting of members from the same organisations was established by the end of 2008.

In order to look into the situation that the member agencies of EuroGeographics and member associations of CLGE/GE are faced with in regard of the EU legislation, a working group has been established consisting of representatives from 10 countries. The working group met for the first time in February 2009 and concluded its work in March 2010.

Objective

The main objective of the working group was to look at the relevant articles in the TEC and the underlying principles that have a potential impact on the professionals and their activities in the cadastral domain in the Member States. At the same time, the working group also had the objective to raise the awareness among the members of EuroGeographics and CLGE/GE regarding those impacts.

Four articles of the TEC (compare also Annex 1) have an impact on the surveying profession and the tasks performed by professional surveyors. They provide the basis and are the focus of this report. These articles are respectively articles 39, 45, 43 and 49 and are described in Chapter 3. Besides a brief description of other relevant developments in the context of this survey, the most important part (Chapter 4) delivers an inventory of the current situation regarding these four articles in the European countries participating in the working group.

¹ **Treaty establishing the European Community** (consolidated text), *Official Journal C 325 of 24 December 2002* see <http://eur-lex.europa.eu/en/treaties/> (last accessed: 16 Feb. 2010), extracts see also Annex 1 of this report.

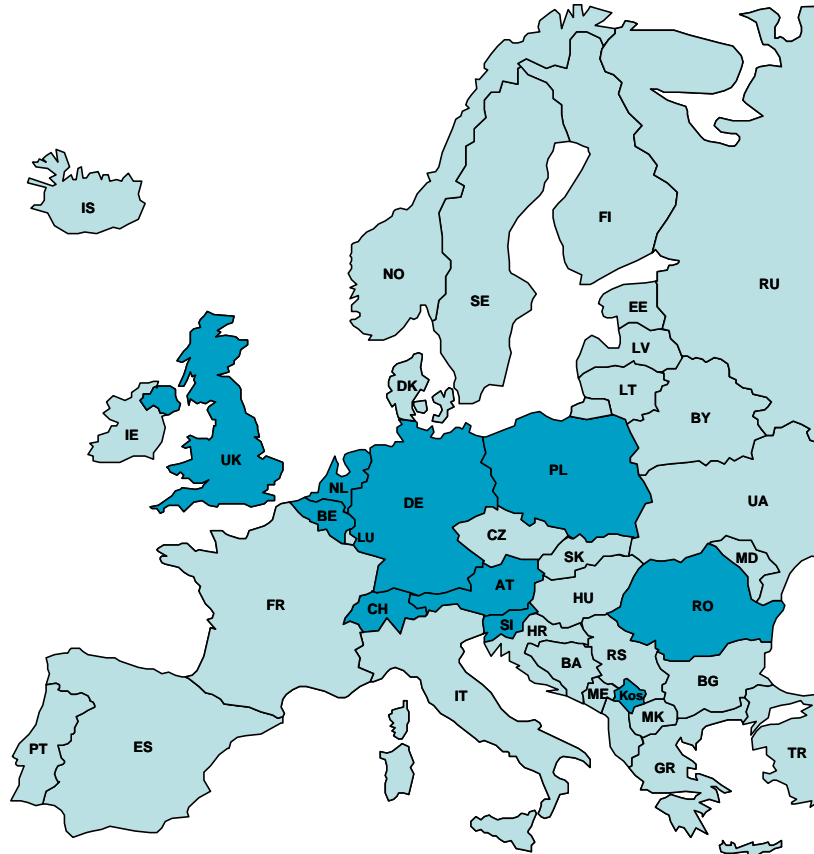


Figure 1: Countries and regions participating in the working group.²

Approach

In order to compare the situation between the countries, the typical activities of surveyors as identified in the former 2008 survey (EuroGeographics, CLGE and GE, 2008) were mapped with the four above mentioned articles and the specific situation in the country. The result of these cross-references is depicted in maps and used to visualise and compare the situation between countries. However, national legislation applies to each specific case and therefore an explanation is added.

The cross-references show that there are significant differences among the countries. Reasons for these differences can be found in, as mentioned above, specific (national) legislation regarding the profession and activities of the surveyor as such, but also the legal interpretation of the articles mentioned in the articles of the TEC.

As a source of reference, two reports from Professor Henssler (Henssler and Kilian, 2008, and Henssler and Kilian, 2009) need to be mentioned here. In this report, these studies are referred to as Henssler I and Henssler II, which were carried out on assignment by the CLGE, explaining the complexity of the matter, as well as to provide an extensive overview of the topics to be taken into account.

The working group had to recognise the difficulties in the matter, but tried nevertheless to provide an appropriate framework for the issue. Performing activities in another country can be allowed based on the legislation in place there, but lead also to more practical issues that affect the performance of the duties. The working group has described these issues as well.

² Please note that maps in this report are not to scale. Their only objective is to visualise the outcomes of this survey.

3. General Description of European Legislative Framework

The European legislative framework – the way it impacts the surveying profession – appears to be a complex subject, with articles and directives appearing to give conflicting information. In reality, for many professional surveyors in Europe, national borders represent few restrictions. However, in specific situations, there can be issues where detailed knowledge of the legal framework is essential, especially when carrying out work related to the cadastral system. This Section provides an overview of the key legislation as it applies to cadastral surveyors.

The basis of the legislative framework starts with the European Treaty (TEC) of which four articles (39, 45, 43 and 49) have a direct impact on the delivery of services and any control the Member State imposes over these. Other issues also impact on the activities of the surveyor and are discussed in Chapter 4. The interrelationship of the articles and other legislative issues are shown in Figure 2.

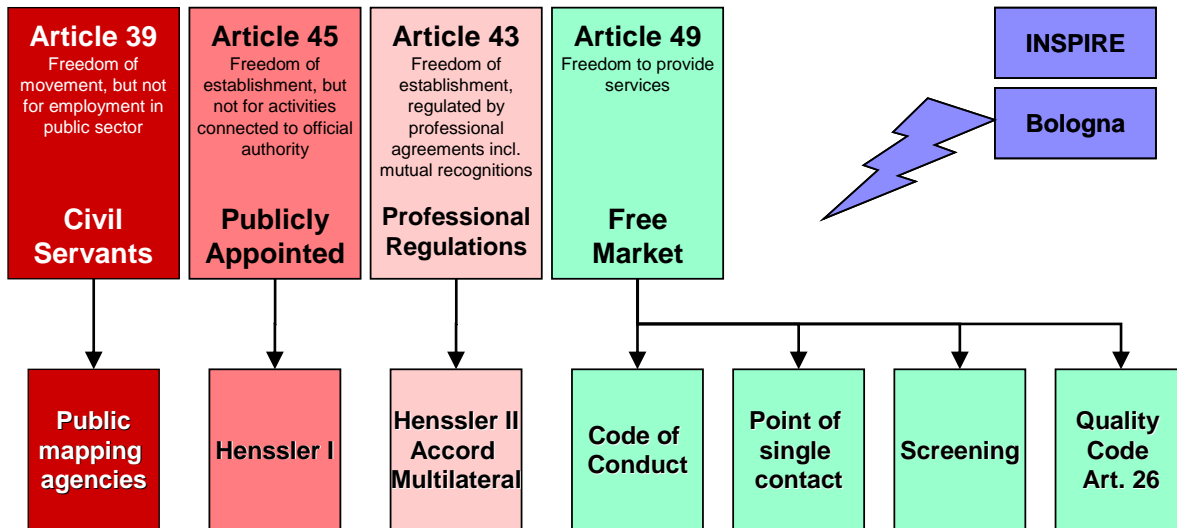


Figure 2: Context and impact of relevant TEC articles.

The freedoms provided in the articles are subject to some exceptions. These are defined in article 45 and primarily impact those surveyors who exercise official authority, essentially, publicly appointed surveyors. Restrictions to these freedoms are defined in article 53 where national law can apply. However, any restriction must be appropriate, suitable, necessary and reasonable and not be contrary to the spirit of the European Treaty.

The impact of articles 39, 45, 43 and 49 are briefly discussed in the following section. Please note that in this report articles 45 and 43 are dealt with in reverse order, mainly because of the gradual involvement of public and private sectors.

3.1 Article 39 TEC – Free movement of workers with exception of Public Services

The impact of article 39 TEC is that it provides freedom for the unrestricted movement of workers between Member States. This article is not applicable to persons who work in the public services. The Article allows a person from one Member State to travel and work in any other and to be treated the same as its own nationals.

Surveyors seeking employment (except in public services) can move freely to other Member States and seek employment, providing that there are no limitations on grounds of security and policy. For cadastral surveyors the exception of public service employment is important, as in many countries the cadastral surveying activities are controlled by State administration.

3.2 Article 45 TEC – Exercise of official authority as exception of right of establishment

Article 45 TEC provides for the exception of the right of establishment, namely for activities that are connected, even occasionally, with the 'exercise of official authority' as stipulated in Art. 43 and 49. A definition of the 'exercise of official authority' is not given in the TEC and a number of cases have been taken to the European Court of Justice (ECJ) addressing exemptions as mentioned in article 45. In practice, the ECJ interprets this exemption very strictly and in almost all cases the claim for exemption has failed. The ECJ decided that the 'exercise of official authority' needs to be judged on a case by case³ basis: 'activities which, in one Member State, do not fall within the sphere of official authority cannot be relied upon for the purpose of exception, even if the same activities fall within the sphere of official authority in other Member States'.

The ECJ also decided that for the interpretation of article 45 TEC, the concept and scope of official authority must be determined from the point of view of Community law and its meaning must be interpreted by the Court in an independent and uniform manner.

Article 45 refers to 'activities' and not a 'profession'. Therefore, even if an activity within a certain profession is related to official authority, it is – according to the ECJ – not enough to create an exemption for the profession in itself. Cadastral surveyors acting in the capacity of 'Publicly Appointed Surveyors' under national law on behalf of the State to fulfil special activities must be interpreted as 'exercise of official authority'.

As an example, the European Commission started an infringement process in 2003 against Germany charging the German Law of Publicly Appointed Surveyors to be in contradiction with the European Treaty TEC – articles 43 and 49. Following the presentation of a basic professional case by Prof. Henssler, University of Cologne, on behalf of Germany, the case was withdrawn. Prof. Henssler's paper – referred to as 'Henssler I' (Henssler and Kilian, 2008) – thoroughly explains the ECJ's jurisdiction on the 'exercise of official authority'.

3.3 Article 43 TEC – Right of establishment

Article 43 TEC creates the possibility of surveyors establishing themselves in other Member States, under the same or similar conditions as applied to nationals who live there. These conditions include complying with professional rules, conditions and competences within the host country. The Directive on mutual 'Recognition of Professional Qualifications' 2005/35/EC provides directions on the implementation of regulations on this subject.

Article 43 is a framework to prohibit restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. Such prohibition also applies to restrictions on setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any other Member State.

Freedom of establishment includes the right to take up and pursue activities such as self-employment and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of article 48, under the conditions laid down for its own nationals by the law of the country, where such establishment is effected, subject to the provisions of the TEC chapter relating to capital.

³ See the case Commission of the European Communities v Federal Republic of Germany, 12 February 2008, (Case C-54/08).

For a surveyor practicing under one Member State's regulations/restrictions, for example special qualifications, chamber membership, or supervision; article 43 provides for them as part of a 'Regulated Profession'. Restrictions under national laws are admissible. However, these must not discriminate other EU-nationals and must be appropriate, suitable, not over prescriptive, necessary and reasonable. This aspect is important to surveyors who are covered under the provisions of article 45 – exception due to official authority.

The Directive on mutual 'Recognition of Professional Qualifications' 2005/36/EC covers the implementation of regulations on this subject. It applies to all Member State nationals wishing to practise in a regulated profession, on either a self-employed or employed basis, in a Member State other than that in which they obtained their professional qualifications.

Any nationals of a Member State legally established in a given Member State may provide services on a temporary and occasional basis in another Member State under their original professional qualification without having to apply for recognition of their qualifications. However, service providers must also provide evidence of two years of professional experience if the profession in question is not regulated in that Member State.

The host Member State may require the service provider to make a declaration prior to providing any services on its territory and renew it annually, including the details of insurance cover or other documents such as proof of nationality, proof of their legal establishment, and proof of their professional qualifications. National 'points of contact' must be established to provide any professional with access to information about the host state's qualifications.

As this is a rather complex topic, CLGE has commissioned a second study in order to make a thorough analysis of the correlations between the Directives 2005/36/EC and 2006/123/EC. This second study is referred to as Henssler II (Henssler and Kilian, 2009). An oral presentation has been given by Prof. Henssler at the Autumn CLGE General Assembly 2009 in Rome (Henssler, 2009).

3.4 Article 49 TEC – Free movement of services

Article 49 TEC is important for the surveyor as it provides for activity in a free, unregulated market. Any service provided by the Member States or private enterprises are bound to this directive. This article provides free movement of services between member states and confirms that any restrictions against providing cross border services are prohibited – some qualifications apply and can be found in article 43 and Directive 2005/36/EC. Services can be provided by individuals as well as corporate entities. The Services Directive 2006/123/EC is the implementing regulation for this subject.

There are some parts of the surveying profession in some countries where complex issues of interpretation arise between Directives 2005/35/EC and 2006/123/EC, and the provisions of articles 43, 45, 49.

3.5 Overview of the implementation of articles 43, 45, 49 TEC

The implications of articles 43, 45 and 49 TEC are that each Member State has to ensure the awareness, understanding and implementation of the provisions of those articles and the related Service Directive (SD). In addition, the surveying profession should ensure that the following activities are undertaken:

- Screening process – Art. 15 and 39 SD require Member States to screen their national regulations for conformity with the European Law. Results should have been reported by December 2009.
- Point of Single Contact (PSC) – Art. 6 ff. SD requires the designation of a PSC, which has to provide information to any cross-border service provider about the state and any permissions required to be active there.

- Code of Conduct – Art. 37 SD should be defined by professional organisations with the objective of consumer protection and to facilitate cross-border services. CLGE has prepared a 'Code of Conduct for European Surveyors' and made it available on their website (CLGE-GE, 2009).
- Quality Codes – Art. 26 SD Member States, in cooperation with the Commission, shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States.

CLGE and GE commissioned Prof. Henssler, University of Cologne, to provide a detailed report from a judicial perspective (Henssler and Kilian, 2009).

4. Other Influences and Developments

4.1 Bologna process

The objective of the Bologna process is to create a European higher education area by 2010. It is intended that the academic institutions within the area ensure that academic degree standards and quality standards are comparable and compatible across Europe. Based on the declaration signed in 1999 in Bologna, Italy, three priorities were agreed: the introduction of three degrees, namely bachelor, master and doctorate degrees; quality assurance and recognition of qualifications; and study time. This ensures professional quality assurance and the recognition for engineers performing surveying activities.

4.2 Lisbon strategy for growth and jobs 2008-2010

The Bologna process initiated a series of reforms in the Member States. The process fits into the overall Lisbon strategy for growth and jobs, which forms a co-operation between Member States and the European Community. This open market approach is relevant to the surveying profession and between 2008 and 2010 the Lisbon programme has focused on further cooperation and stimulation of growth and jobs. By adopting the Small Business Act in order to unlock the growth potential of small businesses and improve the conditions for innovation, the European Community will support the creation of the free movement of knowledge on a pan-European basis.

4.3 INSPIRE

The INSPIRE directive lays down a general framework for a Spatial Data Infrastructure (SDI) for the purposes of European Community environmental policies. It entered into force on 15 May 2007 and has a focus beyond national borders. INSPIRE is based on the spatial information infrastructures established and operated by the 27 Member States of the European Union and addresses 34 spatial data themes needed for environmental applications.

To ensure that the spatial data infrastructures of the Member States are compatible and usable in a Community and trans-boundary context, the INSPIRE Directive requires additional legislation or common Implementing Rules (IR) to be adopted for a number of specific areas, such as:

- Metadata;
- Interoperability of spatial data sets and services;
- Network services, e.g. data discovery and viewing services;
- Data specifications and data and service sharing; and
- Monitoring and reporting services.

The EU Member States are required to transpose the directive into national law by the end of May 2010. The impact of the INSPIRE directive on cadastral surveying will be marginal, as the Member States are only required to deliver data they already possess – there is no requirement for the collection of new data.

4.4 Small Business Act

The "Small Business Act" (SBA) reflects the Commission's political will to recognise the central role of Small and Medium Enterprises (SMEs) in the EU economy by creating a policy framework. It aims to improve the overall approach to entrepreneurship, and to support the maxim "Think Small First" principle in policy making from regulation to public service. It aims to promote SMEs by



helping them tackle issues that hamper their development. The SBA for Europe applies to all companies, which are independent and have fewer than 250 employees, i.e. 99% of all European businesses. The Member States are expected to report on their implementation measures in their Lisbon National Reform programmes starting in 2009.

The SBA may well impact on the activities of many surveying practices and licensed surveyors / companies in some countries. Where official surveying and mapping is a governmental task with state employees the SBA is expected to have limited impact.

5. Surveyors' Activities and Its Categorisation

5.1 Introduction

This section sets out the current position of 9 countries in respect of the eight main activities of cadastral surveyors as outlined in Figure 14 of the EuroGeographics report "European requirements for cadastral surveyor activities", published in June 2008 (EuroGeographics, CLGE and GE, 2008). These main activities were identified as:

1. Cadastral (technical) field measurements
2. Marking of parcel corners
3. Advice / consultancy for the landowner
4. Validation, getting approval on cadastral plans from relevant authorities
5. Land price valuation
6. Registration of updated cadastral data to cadastral database
7. Defining restrictions on land use
8. Preparation (correction) of territorial planning documents

Those main activities have been evaluated by the members of this EuroGeographics working group in their own countries in order to provide an indication of how the four relevant TEC articles impact on the professional activities of the cadastral surveyor. These articles are:

- Art. 39: Freedom of movement, but not for employment in public sector, i.e. activity is in state monopoly
 → **activity mainly carried out by civil servants**
- Art. 45: Freedom of establishment, but not for activities connected to official authority,
 → **activity is carried out by publicly appointed professionals**
- Art. 43: Freedom of establishment, regulated by professional agreements incl. mutual recognitions
 → **activity can be exercised by private sector professionals acting on behalf of state authorities**
- Art. 49: Freedom to provide services
 → **activity is not regulated, employment regulated by free market**

The tables in the following section provide a picture of the diversity of how the 8 evaluated activities of cadastral surveyors are affected by those four TEC articles. The differences between the countries occur for a number of reasons, the most significant being the different legal systems and organizational set-ups along with the underlying practices and procedures of the activities.

5.2 Country profiles

The following tables provide a picture at the time of compilation and these are liable to change over time. The reader is therefore advised to check the current situation before using the information shown here.

The 8 activities identified in the EuroGeographics report "European requirements for cadastral surveyor activities" initially appear to be straightforward. However, they have been found to require a degree of interpretation in order to provide a normalised result. Explanations and issues have been provided to assist the reader.

5.2.1 Austria

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√		√	
2. Marking of parcel corners	√		√	
3. Advice / consultancy for the landowner	√		√	√
4. Validation, getting approval on cadastral plans from relevant authorities			√	
5. Land price valuation	√			
6. Registration of updated cadastral data to cadastral database	√			
7. Defining restrictions on land use	√*		√	√
8. Preparation (correction) of territorial planning documents	√		√	

* Restrictions of land use at local, provincial and national authorities, depends upon the kind of restriction. [For example restrictions on property by provincial or national authorities, restrictions for use of agricultural land by provincial authorities, or for building matters by local authorities]. Legal restrictions of land use, such as passage rights, may be defined by the owners themselves or by any other person drafting the contract. A rough delineation of the site of the local restriction based on a copy of the digital cadastral map is sufficient. Even written description is accepted.

Explanations and Issues:

In Austria, cadastral and legal issues associated with land use and spatial planning are interrelated due to the legal framework that impacts on all levels of government. A major advantage of the Austrian legal framework is to be seen in the federal law of Surveying, which basically regulates all cadastral issues. Subsequent laws build upon this federal law, therefore there is a degree of consistency in legal and technical topics associated with cadastre.

The table indicates that most of the activities linked to the definition of rights or duties connected to land property are executed either by public authorities or by members of a regulated profession. There are no activities as defined in art. 45 carried out by surveyors in private practice.

5.2.2 Belgium

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√		√	
2. Marking of parcel corners	√		√	
3. Advice / consultancy for the landowner			√	√
4. Validation, getting approval on cadastral plans from relevant authorities	√		√	
5. Land price valuation	√		√	√
6. Registration of updated cadastral data to cadastral database	√		future	
7. Defining restrictions on land use	√		√	√
8. Preparation (correction) of territorial planning documents	√		√	√

Explanations and Issues:

As far the activities of a land surveyor are concerned, Belgium consists of three separate regions Flanders, Walloon Region and the Capital City Region of Brussels. The marking of parcel corners

falls under a national legislation whilst other legislations such as the town planning fall under distinct and very different legislations.

The Belgian National CLGE Liaison Group is heavily involved in the promotion of the publicly appointed surveyor. Some legislative initiatives aiming towards the same goal are currently being undertaken by the Belgian Cadastre part of the Ministry of Finances. However, for the time being only notaries are permitted to undertake "art. 45 activities" – not surveyors.

Under Belgian law, a landowner always has the right to require the marking of the limit of his property with the neighbouring one. If the involved owners agree to do it by themselves, they are free to do so. If not, the only professional allowed to intervene is a land surveyor. Civil servants may act for public parcels or administrative boundaries while liberal surveyors are in charge of the other cases. Both have to conduct cadastral measurements when they prepare the marking of cornerstones. "Art 49. surveyors", called 'topographers' are allowed to perform some preparatory surveys but in respect of marking limits, this must be conducted by the official mentioned above or a regulated land surveyor from the public or private sector.

The advisory function is completely free and thus we can call it an "art. 49 activity". However, the "art. 43 surveyor" is also allowed to carry out such tasks. The valuation of property is considered a special advisory function and is also rather free unless very specific valuations are concerned. Civil servants may have to conduct official valuation when for example the state has to expropriate an owner.

For the time being, the civil servants have the monopoly of the registration of cadastral data into the cadastral database. There are some plans to give the same right to the regulated art.43 surveyors, if possible under art. 45.

Although surveyors commonly prepare the definitions of restrictions on land use, they do not have the monopoly of this activity and art. 49 applies. The restrictions apply to notaries or specially appointed civil servants, operating as notaries for the state.

Different regional laws regulate the preparation of territorial planning documents. It does not require an education in surveying. The correction of such documents requires the intervention of a public servant.

5.2.3 Germany

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√	√		
2. Marking of parcel corners	√	√		
3. Advice / consultancy for the landowner			√	√
4. Validation, getting approval on cadastral plans from relevant authorities	√	√		
5. Land price valuation	√		√	√
6. Registration of updated cadastral data to cadastral database	√			
7. Defining restrictions on land use	√	√		
8. Preparation (correction) of territorial planning documents			√	√

Explanations and Issues:

In Germany 15 federal states, with the exception of Bavaria, appoint licensed surveyors. The licensed surveyor is seen as exercising "official authority" as defined in article 45. A surveying licence can only be given to citizens of the European Union. A licensed surveyor requires the equivalent of a Masters Degree (on state level in German: Referendariat) and state examinations.

A licence is only given to individuals; cooperation as a joint practice is allowed. However, no joint company profession of a licensed surveyor or Public Private Partnership (PPP) is permitted.

The German constitution guarantees the property and land ownership, and the states provide a system that documents the legal title and the geometric shape of the property. The German system consists of the 'Grundbuch', the title register, and the 'Kataster', which documents the geometric, surveyed description. Both these elements provide the public with guarantees. Change or modification to the property rights is possible only under direct or indirect state authority. The cadastral land surveyor can only make changes to property rights as a State official or requires a special appointment giving the authority to act with the State's authority.

Cadastral surveys are provided by the State's 'Cadastral offices' and 'Publicly appointed land surveyors', who work in private practice but may, by a special legal construction (the appointment), act with official authority. The officially binding results of their surveys have to be delivered to the Cadastral office for registration becoming part of the property guarantee system.

Private/official land surveyors require a special qualification and supervision; their work must be strictly regulated by national legal prescriptions. This could lead to potential conflict with the European requirements derived from the articles and directives referred to in this document.

The German position is clear: Cadastral land surveys are connected with the exercise of official authority. This is the fundamental criteria for an exception from the European freedoms (article 45) respecting the legal power of the Member State.

The results of the 'Screening process' were due to be reported to the EC by the end 2009, confirming that the surveying legislation is in accordance with the European legal frame. With the exception of surveys undertaken with official authority the surveying market is accessible for professionals of all member states who fulfil the qualification and business rules.

5.2.4 Kosovo

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√		√	
2. Marking of parcel corners	√		√	
3. Advice / consultancy for the landowner	√			
4. Validation, getting approval on cadastral plans from relevant authorities	√			
5. Land price valuation	√			√
6. Registration of updated cadastral data to cadastral database	√			
7. Defining restrictions on land use	√			
8. Preparation (correction) of territorial planning documents	√		√*	

* By engagement of Municipalities

Explanations and Issues:

The Kosovo Cadastral Agency was established by UN-Habitat in 2000 as a Government Agency under the Ministry of Public Services of the Provisional Institutions of Self Government and UNMIK. It is the authority for Cadastre, Geodesy, and Mapping in Kosovo. The Kosovo Cadastral Agency is currently establishing the Cadastral Land Information System including the Register of Immovable Property Rights in Kosovo.

A functional cadastral system is a pre-requisite for implementing reconstruction activities, upholding the rule of law, promoting economic development and resolving longstanding conflicts and uncertainties. The Kosovo Cadastral Agency was established during the three year Kosovo

Cadastral Support Programme (KCSP, 2000-2003), financed by the Governments of Sweden, Norway and Switzerland. The main objective of the KCSP was the development and management of a centralised cadastral and land registration in Kosovo.

Law Nr. 2002/5 for establishment of the registry of immovable property rights, regulates the rights on immovable property, registration of rights on immovable property, time frames on registration, obliges Municipal Cadastral Offices to make the registration of immovable properties and to follow updating them, to make register corrections to register if this is decided by the competent Court or Department of Housing Property issues or any other competent body.

The Law on Cadastre No. 2003/25 makes land management the responsibility of the Kosovo Cadastral Agency, and defines regulations for immovable property registration and registration timeframes, defines cadastral surveys, property formation, provides protection of border signs and punitive measures.

In the future complete cadastral surveying works will be the exclusive work of licensed geodetic companies and surveyors who will be regulated by a law or an administrative instruction. The digital cadastral data including text and graphics are updated by the Municipal Cadastre Offices and is directly related to the database system of the centralised Kosovo Cadastral Agency.

Each service measurement of land by the private sector or public sector is assigned with an appropriate fee. This is regulated by administrative instruction 2006/09 for the establishment of taxes on products and covers cadastral services from the Kosovo Cadastral Agency, Municipal Coordination Offices, geodetic companies and surveyors licensed.

5.2.5 Netherlands

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√		√	√
2. Marking of parcel corners		√		
3. Advice / consultancy for the landowner				
4. Validation, getting approval on cadastral plans from relevant authorities	√			
5. Land price valuation				
6. Registration of updated cadastral data to cadastral database		√		
7. Defining restrictions on land use				
8. Preparation (correction) of territorial planning documents				

Explanations and Issues:

In the Netherlands there is a negative system of cadastre, meaning that the cadastral boundary is presumed to be the legal boundary and in principal not equal to the legal boundary. If an owner wants to know the position a boundary, they can instruct a cadastral surveyor (in Dutch: "landmeter van het Kadaster") to reconstruct the cadastral boundary: this is the exercise of official authority. If the owner disagrees with the results set out by the cadastral surveyor the decision can be challenged in court.

There are three principle procedures undertaken by the cadastral surveyor:

- A potential vendor can request a subdivision of their parcel. The cadastral surveyor will ask the vendor to point out the new boundaries in the field: this is the exercise of official authority. The registration of updated cadastral data to the cadastral database must be undertaken by the same surveyor, to check if the result of the registration is the same as the one pointed out in the field (again the exercise of official authority).

- When a vendor and purchaser make a notarial deed, with the intention to sell/buy a subdivided parcel, they confirm that they know the position of the new boundaries. Both are responsible for marking the new parcel corner points (Activity 2 Marking of parcel corners). The remainder of the procedure is the same as procedure above, except that the cadastral surveyor has to ask both parties to point out to him the new boundaries.
 The time between the signing the deed and the designation, survey and the registration of the new boundary, can vary. At the time of signing the deed, they will agree, but may disagree for any reason later when the boundary needs to be determined. This means that the cadastral boundaries cannot be confirmed at that time. The cadastral surveyor will have to wait until parties eventually agree.
 Another problem in time may be that professional parties such as municipalities and railway companies do not know the exact position of the boundary at the moment it needs to be pointed out. In the cadastral database the parcel is flagged during the period of signing and final registration.
- If an owner wishes to determine the position of the boundary, there are two possibilities:
 - the owner buys the results of the survey and interprets the results himself.
 - the cadastral surveyor interprets the field survey results and points out to him the cadastral boundaries (not the legal boundaries).

In corresponding to the other activities and the role of the cadastral surveyor:

- Activity 3: By the request to point out the new boundary: the cadastral surveyor is impartial.
- Activity 4: Cadastre is the sole agency responsible for creating cadastral plans; validation and approval are therefore internal processes in the Cadastre.
- Activity 7: The restrictions are either written in the deed or are registered as public restrictions delivered by other public entities.

5.2.6 Poland

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements		√		√
2. Marking of parcel corners			√	
3. Advice / consultancy for the landowner				√
4. Validation, getting approval on cadastral plans from relevant authorities		√		
5. Land price valuation			√	
6. Registration of updated cadastral data to cadastral database	√	√		
7. Defining restrictions on land use		√		
8. Preparation (correction) of territorial planning documents		√		

Explanations and Issues:

Geodesy in Poland is divided into five areas:

- 1 Geodetic public services;
- 2 Geodetic contracting (enterprises, firms);
- 3 Education (secondary and academic);
- 4 Scientific institutions, research and development institutions;
- 5 Social organizations.

The major activities of the geodetic and cartographic public services include:

- execution of the state policy in geodesy and cartography;
- organization and financing geodetic and cartographic works;
- administration and maintenance of the state geodetic and cartographic resources;
- supervision of regulation and laws pertaining to geodesy and cartography;
- preparation of guidelines for valuation of real property and its supervision;
- maintaining the state register of borders and unit areas of the territorial division of the State;
- creation of base map data, topography and thematic maps;
- granting professional rights and licenses and maintaining a register of authorised personnel;
- liaison with national and international organisations;
- initiation of scientific and research and development work;
- protection of confidential information in geodetic and cartographic activities;
- implementation of cadastre.

Professional qualifications are required for performing independent geodetic and cartographic activity that includes:

1. managing (including direct supervision) of geodetic and cartographic activities;
2. performing the activities classified as expert;
3. performing the function of a building inspector in the area of geodesy and cartography;
4. executing technical and administrative actions related to delimitation of real properties;
5. execution of geodetic and cartographic works required for entries in the land and mortgage register.

Professional qualifications in the field of geodesy and cartography are granted by the Surveyor General of Poland; these include qualifications in:

1. Geodetic and height measurements, surveying for execution works and for inventory purposes – 11,059[#]
2. Delimitations and partitions of real properties (land) and preparation of documentation for legal purposes – 6,567[#]
3. Basic geodetic measurements – 77[#]
4. Geodetic services for investment projects – 1,296[#]
5. Geodetic management of agricultural land and forests – 663[#]
6. Editing of maps – 299[#]
7. Photogrammetry and remote sensing – 145[#]

[#] indicates the number of registered qualified professionals employed in the respective domain – totalling 20,106

5.2.7 Slovenia

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements			√	
2. Marking of parcel corners			√	
3. Advice / consultancy for the landowner	√	√	√	√
4. Validation, getting approval on cadastral plans from relevant authorities	√	√		
5. Land price valuation	√		√ *	
6. Registration of updated cadastral data to cadastral database	√			

7. Defining restrictions on land use	√			
8. Preparation (correction) of territorial planning documents			√	

* individual valuation

Explanations and Issues:

They are linked with the Land Register. The Surveying and Mapping Authority of the Republic of Slovenia administers the data on real properties in the Cadastres and in the Real Property Register. The basic records pertaining to land and buildings are the Land Cadastre and the Building Cadastre. A real property is land with appurtenant buildings.

In Slovenia the Supreme Court is responsible for Land Register where there is data about 950,000 land owners in Slovenia. The Land Registry contains information about legal rights to real property objects, such as information about ownership, servitudes and mortgages. The Land Cadastre, the Building Cadastre and the Land Registry are currently not electronically linked; therefore data exchange takes place through issued documents and direct access to data (through online applications). A project is due to commence in 2010 to electronically link the Registers.

The Surveying and Mapping Authority of the Republic of Slovenia (SMA) is a body within the Ministry of Environment and Spatial Planning. The SMA is responsible for the basic data on physical space and real estate and provides services pertaining to the registration of changes in physical space and on real estate properties, performs the role of a coordinator in the field of the real estate system and the spatial data infrastructure. In cooperation with the Ministry of Finance, it provides mass real estate valuation. The Surveying and Mapping Authority is authorised to undertake the duties of the national land survey service, which include the creation, administration and updating of databases pertaining to the basic geodetic system, registration of real estate, state border, spatial units and house numbers, and to the topographic and cartographic system.

Private entrepreneurs and enterprises that fulfil the requirements for implementing land survey services provide Land survey services. In Slovenia there is a system of with licensed surveyors. For each land survey service the surveying company must appoint a responsible land surveyor fulfilling the conditions under the law governing the land survey activities and the project designer must appoint a responsible project designer who fulfils the conditions under the law governing construction.

The digital Land Cadastre data are administered and updated at the local databases; the changes are entered into the central system on a daily basis, where they can be accessed and from where certificates are issued about the data.

The digital data of the Building Cadastre are administered in the central system. The central server with all the data is in Ljubljana. Paper documents (studies and a collection of documents) are stored at the Regional Surveying and Mapping Authorities.

Specific remarks:

1. The activity of cadastral field measurements is undertaken by private surveying offices, which, during the fixed-term contracts and within the defined districts, act on behalf of the authorities.
2. The marking of parcel corners is part of the maintenance (the same as 1).
3. The consultation with landowners is also part of the tasks authorised to cadastral surveyors and is also an obligation of private and public sector.
5. Land valuation for tax purposes is undertaken by SMA. This task is not mandated to the private sector and handled separately from cadastral surveying, although based on cadastral surveying data. Note the Private sector can only undertake individual real estate valuation.
6. To update and maintenance of cadastral surveying data is only undertaken by public sector offices.

7. Land-use planning is the responsibility of the local communities and undertaken by other agencies: not cadastral surveying. Creating planning documents is often outsourced to private planning offices.

5.2.8 Switzerland

	Art. 39	Art. 43	Art. 45	Art. 49
1. Cadastral (technical) field measurements			√	
2. Marking of parcel corners			√	
3. Advice / consultancy for the landowner		√	√	
4. Validation, getting approval on cadastral plans from relevant authorities			√	
5. Land price valuation	√			
6. Registration of updated cadastral data to cadastral database			√	
7. Defining restrictions on land use	√		√	
8. Preparation (correction) of territorial planning documents		√		

Explanations and Issues:

There are three political and administrative levels – federal, cantonal, municipal – whereby the cantonal level has the responsibility for the operational control of the cadastral system. For cadastral surveying, most cantons decided on a public-private partnership and approx. 85% of the actual work is carried out by the private sector, naturally under the responsibility of the public sector. Private sector land surveyors thus act on behalf of the state and maintain and update cadastral data themselves. In order to be active in cadastral surveying – in public as well as private sector – all heads of office have to hold the licence for cadastral land surveyor.

The operations of land registration, land valuation and land-use planning are handled by other agencies apart from, but in close cooperation with, cadastral surveying.

Cadastral field measurements are undertaken by private surveying offices, which – during the fixed-term contracts and within the defined district – act on behalf of the authorities. The marking of parcel corners is part of the maintenance. Consultation with landowners is also part of the activities undertaken by cadastral surveyors. Cantonal authorities undertake Land valuation for tax purposes and although based on cadastral surveying data they are managed as part of the cadastral activities.

Land-use planning is the responsibility of the cantons and carried out by agencies separate from cadastral surveying. The creation of planning documents is often outsourced to private planning offices. Through the introduction of a new legislation in 2009, the cadastral system will in the future also accommodate public-law restrictions of landownership. This will be an extension of the traditional private-law cadastre and can potentially – although not exclusively – be carried out by cadastral surveyors.

Although independent from cadastral surveying, the land registration system is similarly organized with federal, cantonal and several regional offices. The connections between cadastral surveying and the land register are established according to the administrative levels, i.e. the operational data exchange takes place on the municipal-regional level.

The number of professionals active in maintenance and updating of cadastral system that fall under the four main articles are shown in Figure 3.

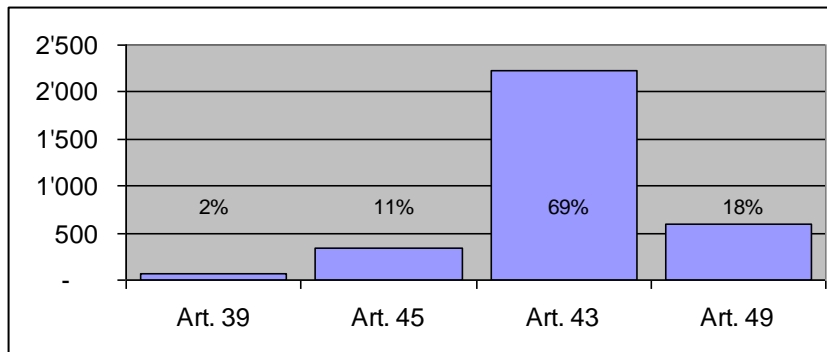


Figure 3: Number of professionals active in maintenance and updating of cadastral system that fall under articles 39, 45, 43, 49 TEC.

Impact of the 4 TEC articles

Although Switzerland is not member in the EU, it is bound to EU legislation through the bilateral agreements that have been signed in 1999 and 2004. The bilateral agreements concern areas such as free movement of persons, technical trade barriers, public procurement, transportation, internal security, environment, participation in Schengen/Dublin Agreement, fighting fraud, and education. Partly in response to these issues, the regulations regarding the licensing of cadastral surveyors have been adapted in 2008. Two important changes have to be mentioned:

- the licence for cadastral surveyors is no longer restricted to Swiss citizenship; foreigners, however, still have to pass the national examinations, which for them also include culture and language;
- when professionally active, the licence holders now have to be registered in the new cadastral surveyor's register.

5.2.9 United Kingdom

	Art. 39	Art. 45	Art. 43	Art. 49
1. Cadastral (technical) field measurements	√		√	
2. Marking of parcel corners			√	
3. Advice / consultancy for the landowner			√	
4. Validation, getting approval on cadastral plans from relevant authorities	√		√	
5. Land price valuation	√		√	
6. Registration of updated cadastral data to cadastral database	√		√	
7. Defining restrictions on land use	√			
8. Preparation (correction) of territorial planning documents	√			

Explanations and Issues:

Although the UK is often seen as a single national entity it can be very different from a jurisdictional and political point of view. This document is concerned only with land law and its survey implications. Scotland and North Ireland have quite different land law structures but England and Wales are usually seen as a single legal entity. The various islands off the coast of the UK may also have slightly differing jurisdictional issues, the Isle of Man being a case in point.

The table above reflects the current situation across the majority of the UK land mass. It is important to note the symbiotic relationship in the UK between the (article 39) public sector and (article 43 regulated profession) private sector. Central government agencies such as Ordnance Survey GB (mapping), Land Registry/ Registrars of Scotland (land registration), Valuation Office VOA (valuation and ratings) and Rural Payments Agency (rural land register) operate within different government departments under different ministers and with differing priorities. In Northern Ireland all of these have been combined into the Land and Property Agency, the first true regional cadastral organisation in the UK.

The vast majority of activities in the table are directly related to a combination of article 39 and 43. For example item 4 validation of land parcels - Land Registry will set out the necessary process and output expected for a member of the UK regulated profession, in this case an RICS chartered land surveyor, that will result in an accepted registration of a 'determined/measured boundary'. In the context of item 5 land price valuation, a valuation to raise a mortgage must be carried out by a chartered member of RICS but in the context of ratings (for taxation purposes) these can be carried out by the VOA staff members. A general rule of thumb in the UK as a whole is that the criteria for approval/acceptance and therefore legal status is laid down by the public sector agency responsible and then carried out in practice by a member of the regulated profession; in the case of the UK this is RICS.

5.3 Summary of country profiles

The intention of the EU is harmonisation. However, as can be seen from the description of the situation in the nine countries, professional organisations and individuals should ensure that they understand the implications of the EU Directives on Cadastral Surveyors, as they apply to individual countries, before taking any pre-emptive action. Currently the situation is complex and it is difficult to make any generalisation.

The impact of the European Directives on the cadastral system and surveyors varies from country to country, depending on the existing national legal basis and the professional structures in a particular country.

The answers of the nine participating countries given in the tables of the above section are mapped here below on maps of Europe (Figures 5-12). The intention is to illustrate the results and the graduations of the involvement of the public and private sectors in each country. The countries are coloured according to the categorization of the particular activity, depending on the impact of one or several TEC articles. The colour codes are given in Figure 4.

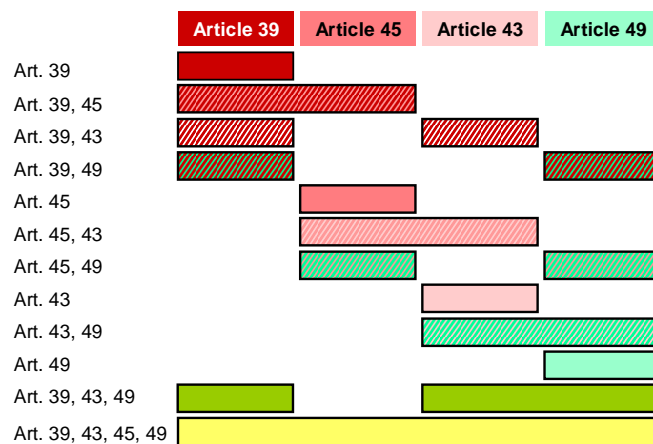


Figure 4: Colour codes of the impact coming from articles 39, 45, 43, 49 TEC, or combinations.

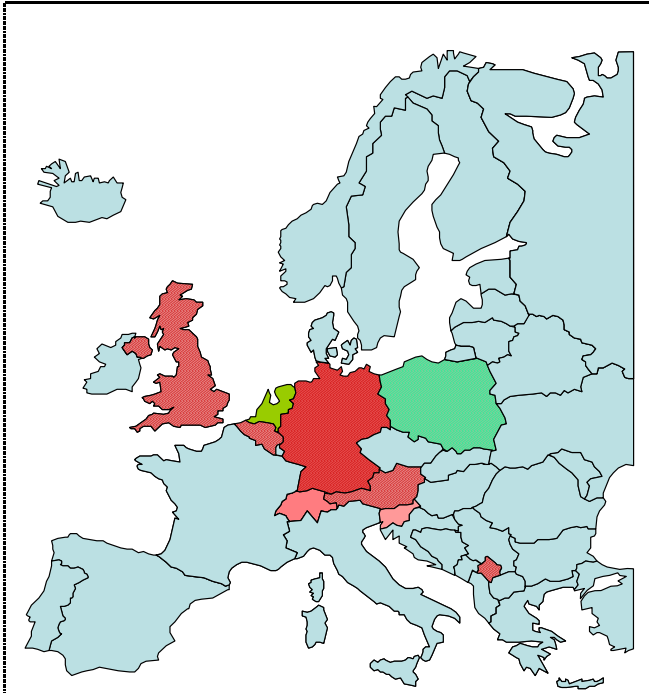


Figure 5: Activity 1 – Cadastral (technical) field measurements.

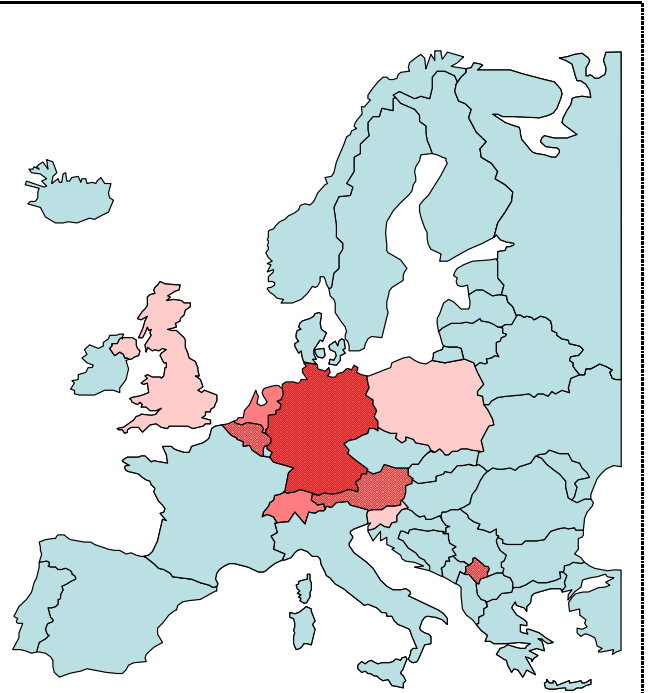


Figure 6: Activity 2 – Marking of parcel corners

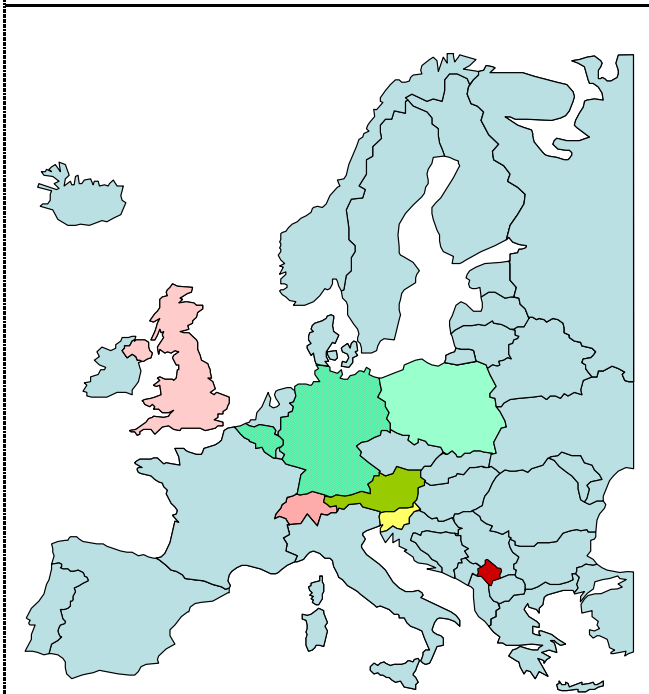


Figure 7: Activity 3 – Advises / consultancy for the landowner.

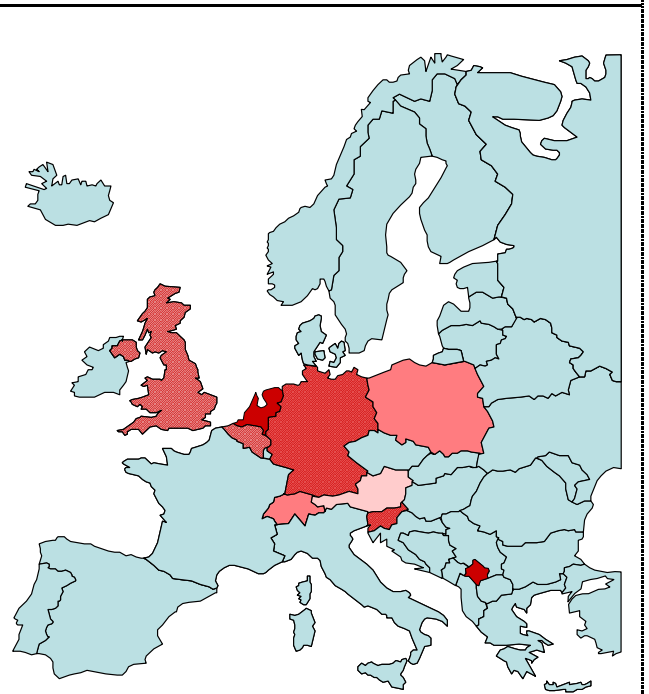


Figure 8: Activity 4 – Validation, getting approval on cadastral plans from relevant authorities.

Article 39	Article 45	Article 43	Article 49	Art. 39, 45	Art. 39, 43	Art. 39, 49	Art. 45, 43	Art. 45, 49	Art. 43, 49	39, 43, 49	39, 45, 43, 49
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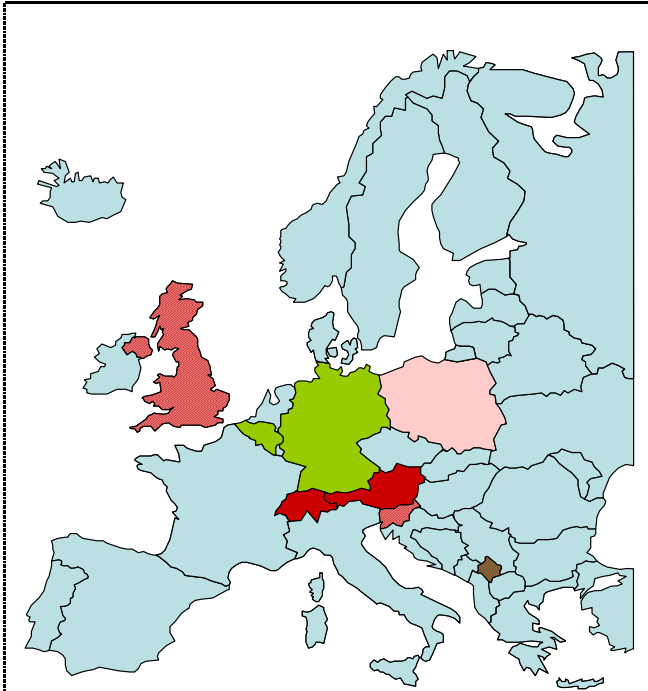


Figure 9: Activity 5 – Land price valuation.

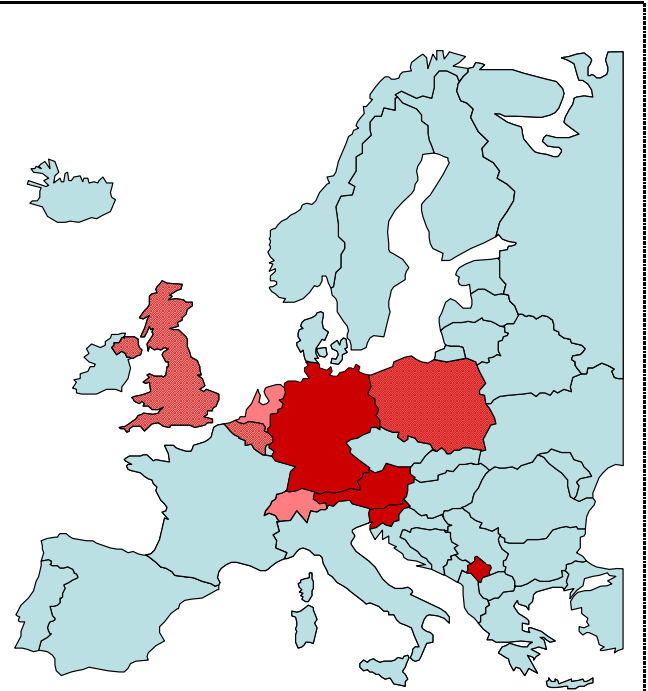


Figure 10: Activity 6 – Registration of updated cadastral data to cadastral database.

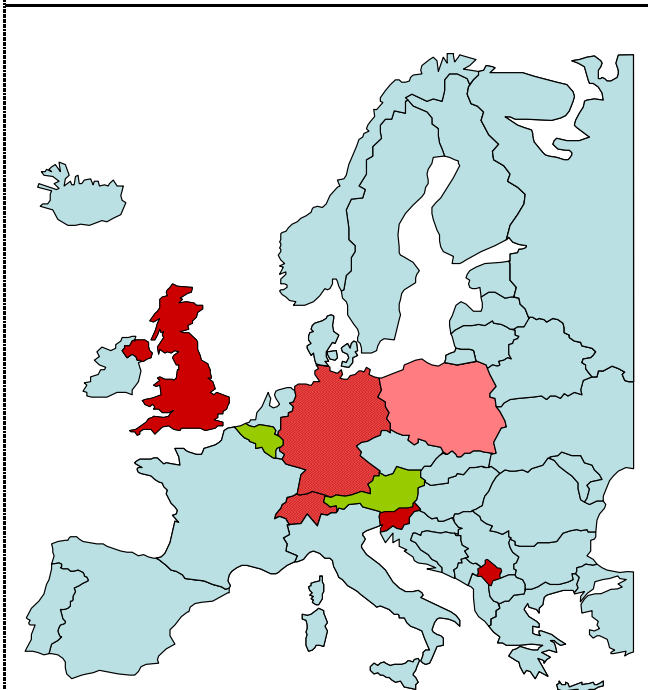


Figure 11: Activity 7 – Defining restrictions on land use.

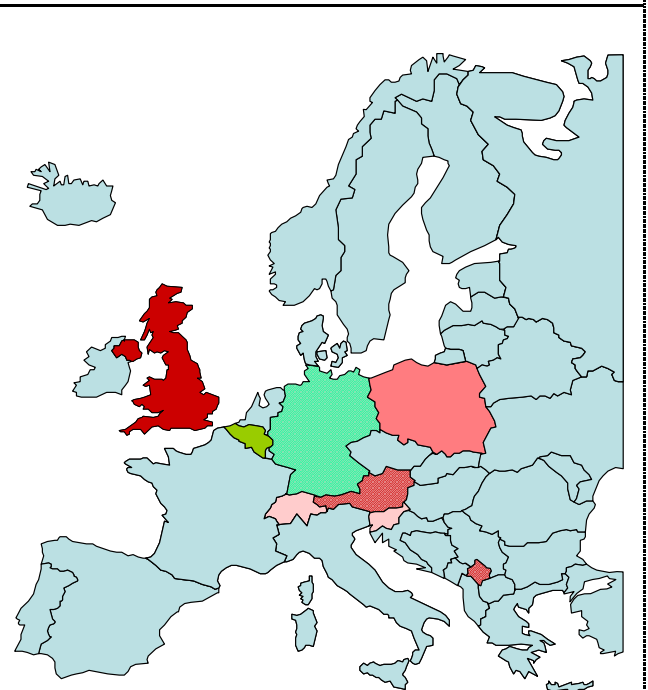


Figure 12: Activity 8 – Preparation (correction) of territorial planning documents.

Article 39	Article 45	Article 43	Article 49	Art. 39, 45	Art. 39, 43	Art. 39, 49	Art. 45, 43	Art. 45, 49	Art. 43, 49	39, 43, 49	39, 45, 43, 49
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5.4 Practical issues in 'cross-border' working

The previous sections of Chapter 5 provide the potential impact of the legislative framework given by the EU. In terms of practicality, there are further issues which a person or company is facing when actually doing cross-border working. Those issues can influence the decision to move to another country and can make it difficult to get started there. The issues are:

National Point of Contact (NPC): This is a government office that is responsible for producing guidelines in a national context and for ensuring that guidelines are well known and understood by the national business community and by other interested parties. Every OECD member state is required to set up a NPC, and many EU member states have an NPC in operation. In the cadastral domain, however, the required guidelines very often have not been established yet.

Single Point of Contact: The system of the 'Single Point of Contact' (SPC) will assist to find answers in individual cases, where a professional plans to provide cross-border services. Very often, such an SPC has not yet been established in the cadastral domain.

Code of Conduct: A code of conduct is a set of rules outlining the responsibilities of, or proper practices for, an individual or organization. In practice, such a code of conduct has not yet been established in all EU member states.

Education and experience: Education and the requirements for practical experience are different for every country. A good example is the difference in education required for a surveyor in Germany and in the Netherlands. A cadastral surveyor in Germany needs to have a higher education – taking many years to accomplish – while a cadastral surveyor in the Netherlands only needs to go through a one-year education on a lower level. A German surveyor who aims to become active in the Netherlands has higher a level of education than is required and is therefore too expensive, which ultimately has the practical issue that he or she is suffering a disadvantage in the selection process.

Language: For cadastral surveyors to provide services, the spoken and written home language is a crucial criteria and must be mastered at an appropriate level. If a foreign competitor does not master the home language sufficiently, he or she has a disadvantage in the selection process.

Conclusion: In practical terms, there are more "borders" than the EU legislation would suggest.

This list is not comprehensive and other issues may need to be taken into account as well. A helpful guide «Stepping into the EU» has been published by the Royal Institution of Chartered Surveyors (RICS), which can serve as a guide to the successful recognition of your professional qualifications (RICS, 2009).

6. Conclusions and Recommendations

The aim of this report was to lay a foundation for the cadastral surveying professionals to gain an understanding of the impact that existing and new EU legislations have on the national legislation and structures, and on the professionals active in the cadastral surveying domain.

The working group, consisting of EuroGeographics and CLGE representatives, found the issues to be of a rather complex nature and of a rather broad scope. The working group therefore tried to limit its work to what is feasible and not to provide detailed recommendations for each country. The report mainly provides a basic structure of the four relevant articles of the EU treaty (TEC) and reflects those in the reports of the countries represented in the working group. The objective of the country reports is to illustrate the national context of the cadastral surveying systems and the active professionals, the impact of the EU legislation, and if and how the professional structures have reacted.

It is recommended that each country examines for itself the relevant EU treaty articles from their own national perspective. Depending on the national context, the impact of the EU legislation may differ, which can only be evaluated with a detailed "internal" know-how of the local legislation and structures. The country reports give a first insight into how some countries have already, or intend to deal with those issues.

The working group was challenged by some issues, namely:

- the topic of EU legislation is of a broad scope; the working group had to limit its work to what is feasible, which stirred quite a few fundamental discussions, hampering the progress;
- the topic is very much geared towards legislative issues, which is hard to grasp for surveyors;
- in order to get a more comprehensive overview, the topic might have to be approached with a commissioned mandate, as CLGE has done with the Henssler I and II studies;
- both Henssler studies provide a very valuable basis for the understanding of the issues; however, it has to be recognized that they have a German background and that studies for other countries might have to be initiated accordingly. An example might be a study that has been undertaken to compare the access of liberal professions to Germany, England, France and Austria (Swiss Institute of Comparative Law, 2008).

The working group, however, is convinced that there is a lot of value in the country reports. It therefore proposes to extend the collection of country reports with the aim of providing a broader knowledge base. Such a collection could be published and maybe managed in a web-based context.

In the discussions, the working group discovered that there are quite a few professional colleagues who have already made the step across borders and are working in a different country within the EU. Their experiences and challenges could be a valuable information source for others, but it would need to be made accessible.

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Appreciations

In realizing the rather challenging topic, I got the support of many, who I would like to thank very much. First of all, I would like to thank my employer, the Swiss Federal Office of Topography swisstopo and the EuroGeographics Head Office for their financial, organizational and moral support. I also would like to thank both the outgoing as well as the incoming chair of the "KEN Cadastre and Land Registry" Božena Lipej and Bengt Kjellson for entrusting me to chair this working group.

Our joint working group consisted of a total of 12 delegates from EuroGeographics member organizations and the CLGE. Those delegates were Hamit Basholli (Kosovo), Aart Jan Klijnjan, Rob Neleman (Netherlands), Edward Mecha (Poland), Victor Grigorescu (Romania), Tomaž Petek (Slovenia), Gerda Schennach (Austria), Wilhelm Zeddies and Volkmaar Teetzmann (Germany), Berny Kersten (Head Office-EuroGeographics), Jean-Yves Pirlot (Belgium) and Rob Mahoney (Great Britain). I would like to thank them all for their efforts and help in achieving our goals. Our working group had meetings in Brussels (11/12 Feb. 2009), Mainz (9/10 June 2009), Innsbruck (3/4 Nov. 2009) and an editing team meeting in London (10 Feb. 2010).

The establishment of the final report has been delegated to an editing team consisting of Rob Mahoney, Berny Kersten and myself. I would like to thank both Rob and Berny very much for their special effort in this final phase, not to forget Jean Mahoney for proof reading the final version.

Daniel Steudler, Chair of working group
Berne, Switzerland, 7 April 2010

Annex 1: Relevant Articles of the «Treaty Establishing the European Community» (consolidated text), *Official Journal C 325 of 24 December 2002* see <http://eur-lex.europa.eu/en/treaties/> → Consolidated versions (last accessed on 16 Feb. 2010)

TITLE III: FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1: WORKERS

- Article 39
1. Freedom of movement for workers shall be secured within the Community.
 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
 4. The provisions of this article shall not apply to employment in the public service.

CHAPTER 2: RIGHT OF ESTABLISHMENT

- Article 43
- Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.
- Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the chapter relating to capital.
- Article 45
- The provisions of this chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.
- The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this chapter shall not apply to certain activities.

CHAPTER 3: SERVICES

- Article 49
- Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.
- The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.
- Article 53
- The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit.
- To this end, the Commission shall make recommendations to the Member States concerned.