



The Council of European Geodetic Surveyors

Comité de Liaison des Géomètres Européens

ON THE ROAD TO AN EUROPEAN GEOMETER ?

By Volkmar Teetzmann

Summary

The development into a Europe involving uniform legal framework forces the professionals exercising the surveying profession to participate actively in it. The associations CLGE, GE and TEGoVA, which are involved in professional policy and which are organised on a European level, their objectives, their activities and their history are outlined. European legal framework imposes the fact that the profession is for the time being not considered to be an entity anymore but that it is sounded out selectively among the different European provisions.

The juxtaposition of geometers, who are appointed to exercise official authority (article 45), “consulting engineers” as parts of a regulated profession (article 43 with national restrictions) and commercial service providers at a free market (article 49) has to be reunited in the future to create a uniform job profile again, which is nevertheless a European job profile.

1 Europe ante portas!

We still see Europe as the far Brussels and as the European administration. It is not by a long chalk a common political home under a connecting European umbrella, which develops professional identity. This kind of Europe, which is seen with a reserved basic attitude, has now taken note of the profession of geometer by threatening the Federal Republic of Germany with infringement proceedings concerning the professional law applied to publicly appointed surveyors – to come to the point, they have in the meantime been suspended.

The request made in Brussels was considered to be an unpleasant attack on the official surveying sector, which is in a national “state of hibernation”; privileges and protective mechanisms, which people had become fond of, seemed suddenly to be in danger, the geometers in the private sector but also those in the public sector in several states were a prey to intense anxiety. Should it be possible that European reality invaded the idyllic situation of our profession?

Well, in my opinion the proceedings have shown extremely positive effects by forcing us as professionals to analyse the position of our profession within the European context, to become aware of the European framework and to tend in the direction of a Europe which fosters common interests – also in the direction of a “European geometer”.

In the following passages I would like to try to describe the present situation involving the special point of view of a representative of a professional group in a strongly generalised way and without

claiming legal or scientific correctness and to outline the development from a European sphere of law and agreements, as far as it is possible for me.

2 CLGE – Comité des Géomètres Européens - www.clge.eu

At the beginning I spoke about a basic attitude which is sceptical about Europe within our profession, and I think that it is not unrealistic. At the same time, there have been and there are still pro-Europeans among us, who want to develop the profession of geometer in the direction of a common Europe, who see Europe as a chance for a profession which – despite all the significance acknowledged by insiders – has to be lead out of its existence in a niche and which has to be acknowledged by our society.

When the first representation of liberal professionals, the “*commission I^{bis}*” was founded in the area of the then EEC in 1971 or 1972 to represent the professional interests in Europe, Commission 1 of the FIG was its godfather. Its traces have been blown away; there were not any real common interests and visions of the future among liberal professionals at international level at that time apart from idealism. The idea was revived in 1986 on the initiative of a Frenchman by the name of Alain Bourcy, who called it “Comité de Liaison des Géomètres Experts Européens”/CLGEE; at first it was its aim to work towards a uniform directive for geometers. This aim turned out to have no chance in terms of European policy when the directive on university degrees was passed in 1989; the principle of the work carried out by the CLGE has not anymore been since that time to develop generally binding standards but to foster the *principle of mutual recognition*.

Mutual recognition of degrees requires exact knowledge of the conditions regarding the profession and training which are in force in the then still 12 member states of the European Union; in 1989 the Comité de Liaison presented a comprehensive survey on the profession of the geodetic surveyor in the European Community. The so-called “Allan” Report, which was named after its main author Prof. Allan, was with its illustrative diagrams a standard for all statements regarding the surveying profession in Europe during the nineties.

The aim of the work had to be the accreditation of the surveying profession towards the European Commission, Directorate-General III in Brussels; on 15th May 1990 the Comité was able to present the profession with the total claim of the definition of “surveyor” given by the FIG – it can be found in an article written by Richard Mehlhorn in FORUM 4/1990. This highlight regarding professional policy was followed by the sobering insight that the Comité being an organisation of liberal professionals was not allowed to be considered to be legitimised for the whole European surveying sector; the claim to be accepted as an umbrella organisation by the European Commission did not have any organisational basis.

Consequently, a structure bundling the national surveying organisations was developed; each nation sends two delegates; from Germany this mandate is taken over by DVW and BDVI. The “General Assembly” of the CLGE has since then consisted of national representatives from the sector of higher education, from the administrative and industrial sector or from the field of the liberal professions – it is a body which does not have an officially granted mandate, but it is nonetheless a representative representation of our profession towards European bodies. The statutes drawn up in 1995 now officially codify the structure and the aims of the “Comité de Liaison des Géomètres”/CLGE – and the first internal discussion about their content resulted from the statutes.

The umbrella organisation, which had now been founded and which was originally founded to represent special interests of the “private/freelance sector”, was not able to carry out exactly these tasks anymore without coming into conflict with the other interest groups represented in the Comité. This fact became apparent when the “*profile report*” (full title: The establishment of the

profile and definition of the geodetic surveying profession to meet the requirements of the general public and the Commission of the European Union), which was worked out under the considerable direction of John Stannard, a delegate from GB/RICS and which was published in May 1996, was drawn up.

Nowadays, the “profile report” still represents the fundamental description of our profession in Europe.

The CLGE’s membership of the umbrella organisation of the European liberal professionals **CEPLIS**, written out in full: Le Conseil Européen des Professions Libérales – www.ceplis.org – which was at first exclusively an association of liberal professionals has remained from the past.

3 “*Geometer Europas*” - www.geometer-europas.org

A “parallel organisation” called “*Geometer Europas*”, which represents the interests of “appointed professionals”, of surveyors working in the sovereign segment, as a special aim in terms of professional policy, was founded at the umbrella congress organised by the associations of liberal professionals from Austria, Germany and Switzerland in Bregenz in 1995 under the direction of the then president of the BDVI Dr. Otmar Schuster. Members of the organisation are nowadays associations from France, Denmark, Austria, Switzerland, Belgium, Luxembourg and Germany although the different degree of appointment in the member states does not allow a direct comparability of the professionals. The “appointed professionals” take nevertheless the common view that they represent a “special” profession within the surveying profession.

The authority/the requirement of a special representation of the professional group becomes particularly apparent in the struggle for the professional positioning in a Europe which is growing together, in the recognition of “sovereign activities”/article 45 EU.

4 **TEGoVA – The European Group of Valuers’ Associations** - www.tegova.org

The German – but not generally the Europe-wide – understanding of the job profile of the surveyor contains – it is also readable from the historical development – the valuation of property, of real estate and of real property. The valuation activity carried out by geodesists is indispensable regarding rural land reallocation and consolidation, land parcelling and in connection with the land tax, which will be reformed in the future.

DVW and BDVI had already become founding members of TEGoVA in 1977 in order to bring this professional aspect into the European context; at present this group comprises 43 associations from 27 countries. The aim in view of the force of the free single market of the European Union, which is becoming stronger and stronger, is to draw up “European Valuation Standards (EVS)”. When the “Blue Book” was presented in 2003 this was an important step in the direction of EVS – although it was violently discussed and disputed.

TEGoVA is not an organisation of geometers, but it generally represents associations of valuers. DVW and BDVI continue supporting the “approach” represented by TEGoVA, but they consider whether a representation of interests, which is more aimed at surveyors, for valuation experts in our profession is to be aimed at, if necessary within the structures of the FIG.

Footnote: The Royal Institute of Chartered Surveyors (RICS) and the European Group of Surveyors (EGOS) are also active as Europe-wide associations. Although these associations have different objectives the cooperation with them is easy.

5 *CLGE and GE*

Considerate and friendly cooperation has been kept between the CLGE and GE – which goes as far as to personal identity of the official representatives; the CLGE has admitted a permanent seat to the president of GE in its governing board, cooperation works very well apart from occasional “special accents”, which call the “private sector” as an important and individual factor to mind.

Henning Elmström/DK was elected president of the CLGE as successor of Klaus Rürup in autumn 2005; Alain Gaudet/F was elected as vice-president for Professional Practice, who was on his part elected president of GE as successor of Dr. Schuster in autumn 2005 and Václav Slaboch/CZ and Mark R. Wijngaarde/ NL were re-elected in autumn 2005 as vice presidents for Professional Education, resp. European Relations. In March 2006 J.Y Pirlot/ B was nominated by the executive Board as vice president for Special Brussels Affairs.

The CLGE and GE represent and present the profession by appearing to a large extent together, e.g. towards Europe and in publications supported by both associations.

The “*Market Report*” (which is also available in the internet) is an extensive survey about the contribution of the cadastre/land register and the surveying profession to the European process of value added. It was jointly published by the CLGE and GE in 2003. The report proves that the contribution of the profession to the national product has to be seen in close connection with the qualification/number of graduates or rather that the number of surveying experts may be a criterion for criteria of a developed society. The authors come to the conclusion that 500.000 surveyors, who may be classed with the profession in the widest sense, contribute to the GEP involving 24.383.960.517 €. It is possible to argue about the details – all in all the report compiles valuable arguments regarding the profession, which have to be made accessible to politicians.

I would like to take this opportunity to remember Ernst Höflinger/A, who was a great European for the CLGE and a great thinker for the FIG. He was one of the persons who considerably contributed to working out the Market Report, but unfortunately he was not able to see it being published. I would also like to remember his critical article, which he wrote for the INTERGEO in 1998: “Is Germany ready for Europe?”, which is still a highly topical list of our German problems on the road to Europe. The article was published in the series of texts published by the DVW volume 33, title “Geodesy connects Europe”; a discussion about the text would go well with this contribution with regard to its content, but it would go beyond its scope.

The “*Accord multilateral*” was worked out under the overall control of GE and signed by the member states of GE at the end of 2004. It describes the job profile of “appointed professionals”, who are involved in the property guarantee given by the state and who are authorised to act in place of the state, to authenticate legal acts and facts established by surveying land establishments, and its categorisation among article 45 EU. They contribute considerably to relieving the burden on state by transferring tasks to individual responsibility und authority.

The complexity of the legal situation in the different countries does at present not allow in terms of practice that the profession is exercised all over Europe. The member associations, which are involved, have defined high-level entrance qualifications, which are to be the basis of a European

profession – which is to be developed in the future - in the field of appointment. The reason for it is the following: before opening the field for migration the qualifications, which are absolutely imperative for carrying out tasks in the citizen's interest, have to be set. The fact that the members have agreed on the level “Bac + 5” (Master's degree) plus proven/tested knowledge in the field of administrative law, ownership law, land law, building and planning law in force in the respective country, in which results as an appointed professional are to be produced, shows that they are willing to create conditions – presenting a serious approach - on the basis of which it is possible to develop the profession of the appointed professional on a European level. The European Commission did not find any divergence from European directives after examining the “Accord Multilatéral”.

The “Accord multilateral” is a commitment to the common intention to implement the European fundamental freedoms, to cling to the high quality of the profession but also to demonstrate the balancing act, which European professionals are forced to do if they are a national, regional authority on the one hand and a factual and political object of national and European trends/desires on the other hand.

6 *European framework*

The CLGE and GE have finished the phase – described above - of the “theoretical” approach to Europe by working out the “Accord Multilatéral”, and they have been pressed to deal with the “European reality”, which is developing now.

In 1990 Richard Mehlhorn, who was president of the CLGE at that time, wrote that the formulation of directives on professional recognition, on freedom of establishment and on free provision of services would be extraordinarily important for the surveying profession; many years - filled with writing diverse reports - passed before the effect of the European framework, which was taking shape, has appeared since the beginning of 2002:

The EU treaty stipulates the fundamental freedoms in
Article 39 freedom of movement for employees,
Article 43 freedom of establishment and
Article 49 free provision of services.

The “*Directive on the mutual recognition of professional qualifications*” came into effect in December 2005, the highly controversial “*Directive on services in the internal market*” passed the first reading in February 2006, and it will be passed some time this year or next year. Then they have to be implemented into national law within 24 or rather 36 months.

Article 39 is not to be applied to the civil service in the member states. *Restrictions of article 43 and article 49* by national law are only justified if they are necessary for reasons - which have to be examined by the European Court of Justice if necessary – of consumer protection, public interest or of protection of the administration of justice; the aforementioned restrictions always have to furnish proof of their suitability apart from their factual reasonable justification.
Article 45 excludes the application of European law as far as activities (mind you: activities, not professions) in a member state are connected – also occasionally – with the exercise of official authority.

Apart from these concrete trends/main points – which could only be outlined – within the *European legal framework political European decision-making* is just as important for the future of our

profession. The *Bologna Process* (standardisation of degrees) and the *Lisbon Strategy* (creation of the largest market free of impediments) initiate changes in the profession of the geodetic surveyor – which is mainly governed by the nation-states in Central Europe.

7 *Infringement proceedings against the Federal Republic of Germany*

The European Commission prepared the institution of proceedings in 2002. They were instituted due to possible incompatibility of the national professional law applied to “publicly appointed surveyors” with the norms of the EU treaty.

Central question: are the activities carried out by publicly appointed surveyors, as the case may be only occasionally, connected with the exercise of “official authority”, and does the corresponding regulation fall within the scope of derogation of article 45? Or are these activities only exclusively preparing activities, which do not involve any official authority, and is the regulating competence therefore subject to EU law or is it rather subject to a combination of article 43 and the possibilities of restriction mentioned there or subject to a residual regulating competence assumed by each member state?

In several statements the Federal Republic of Germany has taken the view that fundamental originally public tasks, which are connected with the exercise of official authority, are transferred to publicly appointed surveyors within the German property security system, which justify the application of the exemption of article 45 EU.

The German opinion is supported by an expert opinion, which was commissioned by the BDVI and drawn up by Prof. Henssler and Dr. Kilian, University of Cologne. The expert’s report - for full text see www.bdvi.de – analyses the administration of justice, which has been ruled by the European Court of Justice up to now, regarding the exercise of official authority within the scope of article 45 EU. It follows conclusively that the activity carried out by publicly appointed surveyors is an exception to article 45 EU, which falls within the scope of national legislative authority.

The chain of evidence in Henssler’s expert opinion is based on the administration of justice ruled by the European Court of Justice, and it is – because it is detached from the legal argumentation on a national level – also applicable to other member states as far as they have a comparable public property guarantee, which is embodied in the constitution, and a similar instrument of appointment. There are not yet any comparative surveys regarding article 45 EU in other member states of the European Union; the way I see it is that the factual legal relations in the other member states of the European Union regarding their appointed geometers do hardly or not at all comply with the criteria mentioned in article 45 EU. Publicly appointed surveyors in Germany do not find any unrestricted counterpart within the European Union regarding their legal status and qualifications.

The common aim of appointed professionals is however, see also *Accord Multilatéral*, to develop a European profession, which is strongly embodied in national ownership law and which has high-level qualifications which are required for it. In this sector activities are to be transferred to them, which authorise them to act in place of the state and therefore comprise the “exercise of official authority” as a criterion under article 45 EU.

The European Commission officially finished the proceedings in December 2005 pointing out that a reopening is possible. The fundamental position represented by the official surveying sector in Germany and therefore the fundamental position represented by publicly appointed surveyors have been confirmed: the professional law applied to publicly appointed surveyors falls – as far as activities are connected with the exercise of official authority – within the scope of the German

legislative authority; “certification survey” is a complex activity in which the use of surveying technology is inseparably bound up with the exercise of legal rights.

8 *Geometer – a European profession?*

Does the stay of proceedings proceeded by the European Commission represent a decision for a profession “on the road to Europe”, which points to the future? What scopes are there regarding the embodiment of professional law in order to be able to take advantage of the freedom for Europe? The publicly appointed surveyors are in a conflict situation: apart from the fact that there is an anti-European “variety” regarding professional law in the German federal system the effect of article 45 EU subjects them exclusively to the national legislation set by the federal states, which is restrictive. Consequently, there is not any “creative” liberal freedom on a European level; the special legal situation caused by article 45 becomes a tie; it is especially the case if there does not exist any comparable situation in other states or if it cannot be proven. The privilege granted by article 45 pushes the publicly appointed surveyors, who have special authority bound to the state, into a niche in a time in which we should seize the opportunity to provide services as special service providers with our qualifications within the European Economic Area.

The “selective“point of view of Brussels.

Let us now return from the special situation concerning the official surveying sector/publicly appointed surveyors caused by article 45 EU to the European legal framework and to the possibilities which surveyors have.

When the dispute with the European Commission started us as representatives from Germany we assumed that the “job profile” in its entirety would be called into question; during the proceedings we had to learn that the Commission proceeds holding a different view. Brussels does not consider the profession and its complexity, but it only asks the question whether the “partial components” are compatible with European law. If that was not the case, the harmonisation of legislation to the European Union would be implemented regardless of the fact that the profession would then fall by the wayside.

This “inversion” of the legal view results in a notable and split understanding of the surveying profession, which is classified with the legal categorisation of the fields of activity.

I would like to try to explain this fact on the basis of the European legal framework described above:

Article 39 classifies employees of the civil service beyond the application of EU law; consequently, surveyors working in the civil service sector are not European legal persons, the content of their profession and the legal framework are subject to the provisions set by the respective member state of the European Union.

Article 45 represents an exemption which “produces” an additional type, namely geometers who are authorised to exercise official authority when they carry out their activities in the private sector, which are bound by national law to professional laws, technical regulations and fee scales. Publicly appointed surveyors in Germany may be stated as an example of this sector of the profession.

Article 43 results in still another type of European legal persons: these “colleagues” are – in the wider sense – comparable with “consulting engineers”. The fundamental freedoms set by the European Union, which they are entitled to - may be – like I have explained above – restricted for

reasons of consumer protection, public interest or of protection of the administration of justice (the list is incomplete) by national law, and Europe is allowed to examine if these restrictions are appropriate. Consequently, the legal relations regarding this “article 43 –geometer” are a netting of legal provisions of European and national law; the profession of geometer is a “*regulated profession*”.

The profession is among other things subject to the “Directive on the recognition of professional qualifications” (the adoption of this directive to national law has to be carried out before the end of 2007). At the same time it is “protected” by national restrictions like the confusing chamber law and the fee regulations. We expect among other things from the “federal engineering law”, which is in preparation in Germany, that the interdependences between national and European law are clarified. The process of adjusting to the new directive will hopefully end the bad habit of bulk heading the market off by granting surveying licences – a habit which several member states have; the vast majority of these licences are in terms of European law inadmissible and inappropriate according to the aforementioned criteria.

Article 49 and the *Directive on services in the internal market*, which is bound to this article, have a totally different effect on the surveying profession. According to our professional self-conception we include services, which are partly exclusively commercial, like for example commerce in geographic information, in the total claim of our “engineering services” and with it in the regulated field of article 43 or if possible even in article 45. Surveyors, who are active in this field, find partly in connection with great pain that these commercial services are exposed to market forces, that the bulk business they hope for subjects them to unprotected competition. In this context the delimitation of engineering services and commercial services is regularly ruled in favour of the freedoms of market.

9 *Concluding comment*

Will there anyway be a “European geometer” involving a general understanding of the profession? At the beginning I gave a short introduction to the European professional associations. Their common aim is to search for the European *liberal engineering profession* of the geometer in the widest sense; their history is a gradual approach to this aim in terms of content. During a phase of clarification involving several reports a common understanding of the profession of geometer was at first developed in terms of content. The Accord Multilatéral, an agreement on a very high level of qualification represented an important step against levelling efforts.

In the course of the implementation of the European legal framework, which has taken shape, it has become clear that the profession consists of three sectors in terms of European law, which are closely connected:

- The “appointed surveyor”, who is authorised to exercise official authority according to national law, an independent profession within the surveying sector, it underlines the significance of the profession in a developed society.
- The regulated/liberal profession of a highly qualified “consulting engineer” whose professional framework is marked by a combination of European and national law/restrictions.
- The “service provider”, who is only subject to the conditions which are applied at the free market.

There are very close connections between these three “components”, which form the profession of geometer altogether. After having analysed the profession and its reflection in terms of European

law the CLGE and GE have to manage the task to find the further concrete way of our profession to Europe.

The way I see it is that a common professional main area regarding the possibilities of article 43 with justifiable appropriate restrictions in terms of national law will be developed for the field of surveying services provided by engineers that means a European “consulting engineer” involving national facets. The publicly appointed surveyor will remain a special solution applied in Germany; in my opinion this legal structure does not have any comparable legal basis in the other member states of the European Union; consequently publicly appointed surveyors in Germany run the risk of becoming a niche profession – beyond the European development – in the context of the limited application of article 45. I am confident that it will in the long term be possible and successful to find a solution considering the special legal situation in Germany, which is compatible with Europe.

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