



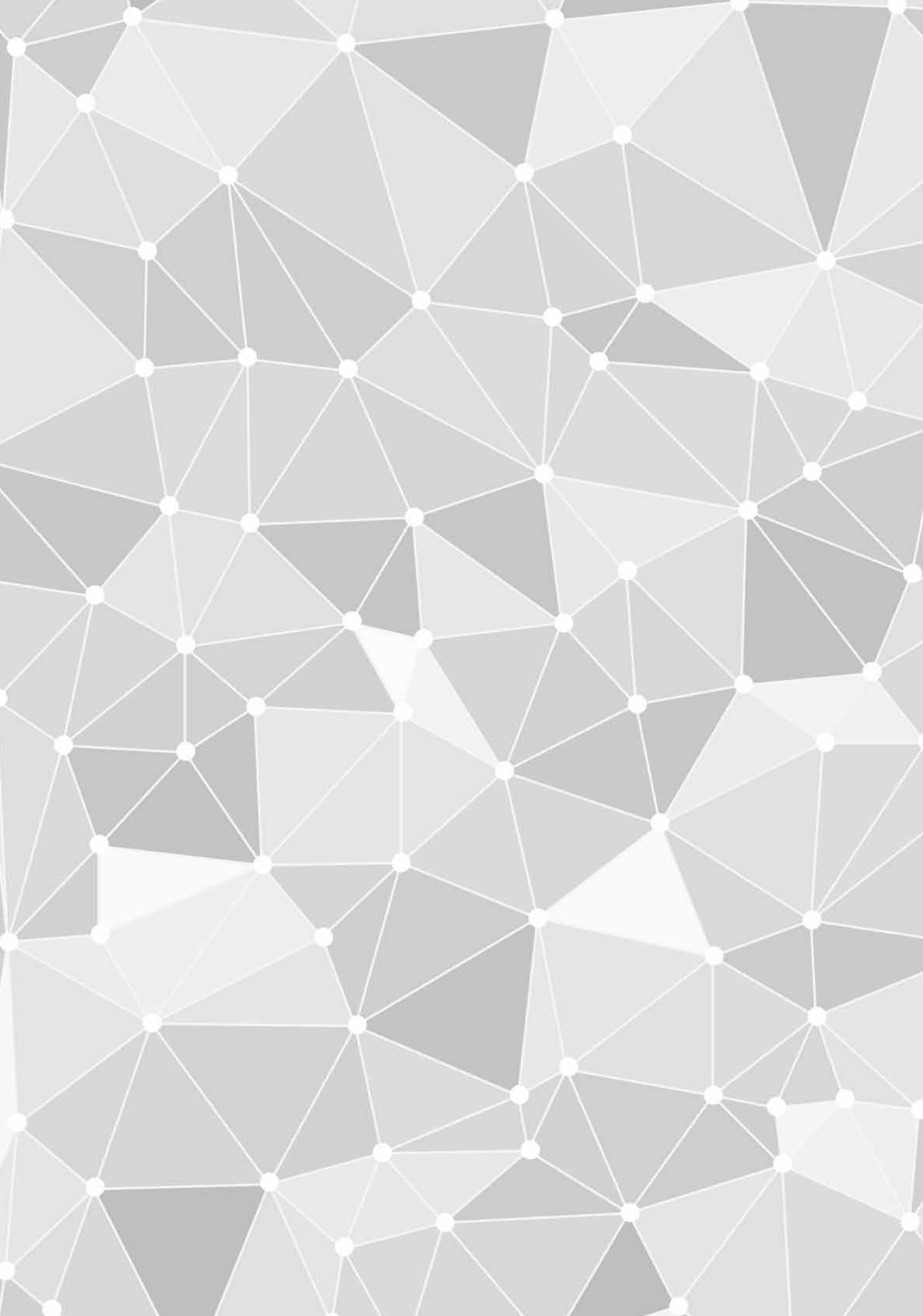
Hrvatska komora
ovlaštenih inženjera
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*Croatian Chamber
of Chartered Geodetic
Engineers*

THE NEW ROLE OF THE CHARTERED GEODETIC ENGINEER



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Despite the fact that this is primarily a technical profession, the geodetic activity is of great importance for society as a whole. The importance of Geodesy and Geoinformatics has grown in the past two decades in accordance with the increase in importance of spatial information and phenomena related to space. Most economic and social activities in modern society are directly or indirectly correlated with space or somehow affect the area and the situation in the area. The exact and precise information about the area often becomes the key to a comprehensive, practical, and cost-effective implementation of such activities; otherwise, additional costs, damages, as well as occasional failures are frequently arising. The importance of spatial information has been recognized in many countries around the world, hence a lot of attention, work and financial resources are invested in collecting spatial information, processing, maintenance, storage, and distribution to its users.

The significance of high-quality, reliable, and accessible spatial information has been recognized and evaluated in many countries, as it is important for the development of the state and society as a whole. Most of the information about the space is characterized as official data, which is managed by the government through its relevant bodies. In order to produce spatial high-quality and systematic information, particularly official data, in accordance with the requirements of society, it is the essential task of the state to provide the experts who keep records on the size, shape, and function of the space. Therefore, it is of utmost importance for any modern state to regulate accurately and responsibly the profession or professions that implement appropriate actions in the processes of collecting, processing, maintenance, and organization of spatial data. Of course, the geodetic activity has the most important role in these processes. For this reason, the work of geodetic experts is regulated by the relevant regulations in many countries. In other words, the geodetic profession has grown into a state-regulated profession.¹ This way the states guarantee their citizens, as well as their entrepreneurs, correct and lawful performance of the tasks the state is responsible for, which include surveying and real estate cadastre, while errors and other forms of irregularities have been reduced to a minimum, with the tendency of being completely removed.

The surveying activities in the Republic of Croatia are regulated by two legal texts: the Law on State Survey and Real Estate Cadastre (*Official Gazette* no. 16/07, 152/08, 124/10, 56/13), as well as the Law on Geodetic Activities (*Official Gazette* no. 152/08, 61/11, 56/13), as the umbrella regulations governing this area. These laws are especially important for the proper functioning of the state bodies, the adoption of legal and correct individual administrative decisions and the protection of property and other rights, as well as legal interests of individuals.

¹ See: Government of the Republic of Croatia: List of regulated professions in the Republic of Croatia (on the basis of Article 72, paragraph 1 of the Act on regulated professions and the recognition of professional qualifications - *Official Gazette* no. 124/09, 45/11), 2013, T. 48, available at http://www.husi.hr/download/Popis_reguliranih_profesija_RH.pdf (access 5/10/2016)



At this point, a Draft Law on the performance of geodetic activities with the final draft proposal has been made (e-counselling from 3 June 2016 till 20 June 2016), which proposes significant changes to the previous operation method of geodetic activities at all. The proposal is accompanied by an explanation that this is being done in order to harmonize the legal system of the Republic of Croatia with EU regulations. The position of the Croatian Chamber of Chartered Geodetic Engineers (HKOIG) is that the solutions proposed in the text of the Draft Law proposal, regarding geodetic activities with the final draft proposal, are neither good for the profession, nor for the society as a whole. Therefore, in accordance with our professional nature and social task, we feel invited to submit and explain the conceptual attitude of the profession, which in the course of passing this law should be taken into account for the purpose of regulating the proper, professional, and socially responsible performance of geodetic activities in Croatia as a full member of the European Union. The following is a review of the controversial parts of the proposed new law.

Article 2 of the Law on State Survey and Real Estate Cadastre stipulates that the tasks of the state survey and the real estate cadastre are of interest for the Republic of Croatia, and are performed also by authorized individuals and legal entities in accordance with the provisions of the performance of geodetic activities. From the foregoing it is concluded that the geodetic activity in Croatia is performed in order to support the creation and maintenance of land records that are of interest to the Republic of Croatia, as well as a service provided to other segments, for example, as a support to the construction industry and the like.

Land records represent one of the pillars of a regulated state. Due to the specific features of the surveying works for the creation and maintenance of these records and the fact that they are part of the system of the protection of property, HKOIG considers that specific professional qualifications, as well as technical, legal, and business qualifications are necessary. This should be legally regulated and checked by a competent state body or by legal persons entrusted with the public authority of establishing the necessary professional qualifications.

Only with the introduction of such a profile of surveyors can the trust of the public in the property registers be guaranteed, and it can significantly speed up and simplify the current processes of implementation of changes in the registers, which will free up a considerable potential to activated unused space.

Accordingly, expert land surveying works performed by chartered surveyors should be classified into two basic groups of tasks, which, as such, should be defined by law. These are:

- Professional surveying services for official purposes and
- Professional surveying services for technical purposes.

Professional surveying services for official purposes include expert land surveying works whose results become part of the public or official records, as well as those conducted in the framework of official procedures, which are in the jurisdiction of the state authorities, in particular:

- Professional surveying services within the state survey and real estate cadastre
- Professional surveying tasks within the development and maintenance of official geospatial records
- Professional surveying services in the context of proceedings to obtain or produce a document or act of physical planning and construction



- Professional surveying services in the context of land consolidation
- Professional surveying services in the context of administrative and judicial proceedings
- Professional surveying services within the hydrographic activities
- Professional surveying services for the needs of civil aviation.

Professional technical surveying services include professional surveying tasks performed as services to natural and legal persons, and in particular:

- Professional surveying services within the construction activities
- Professional surveying services whose result is the georeferenced image of a particular area or specific information or data about an area
- Geodetic and geoinformation services.

Because of the different nature and meaning of these two groups of operations, and in particular due to the jurisdiction of the state to perform expert surveying works for official purposes, the differentiation of these operations should necessarily be accompanied by specific knowledge, skills, and competences. These competences should be provided by persons authorized to perform expert surveying works for official purposes.

It seems to be necessary to entrust expert surveying works for official use to specially chartered geodetic engineers, in order to perform the work included in this group of tasks more efficiently. However, the knowledge, skills, and competences the persons specifically authorized to carry out these tasks need to have, require specific professional qualifications. The state as the body should check the professional ability through its own agencies or other legal persons which are entrusted with public authority. On the basis of prescribed requirements that guarantee special skills of chartered geodetic engineers, these bodies should check their lawful and proper accomplishment of these tasks.

The registration of a chartered geodetic engineer to perform surveying tasks should certainly be the fundamental precondition. The registration should not be limited to a specific organizational form, but a chartered geodetic engineer can perform these jobs independently in the office of a chartered geodetic engineer, in a joint geodetic office, or as an employee of a legal person registered for professional surveying activities. Hereby it is important to ensure that there is a proper organizational form that will allow an easier settlement of damage due to possible illegal and irregular performing of activities to citizens, entrepreneurs or legal persons of public law.

An important assumption is certainly work experience of the person to whom surveying works would be given for official purposes. In doing so, we start from the presumption that a chartered geodetic engineer is competent to perform professional land surveying works for official purposes, if she or he has at least five years of professional experience in land surveying works as a licensed surveyor. A five-year work experience of a licensed surveyor seems sufficient to overcome the rules of administrative procedures, rules of judicial conduct related to the registration of land and the associated rights, rules of procedures related to physical planning and construction, and other procedures involving the surveying profession.

Because the geodetic profession needs to participate in the procedures herein, it is necessary that the person who is entrusted with the expert surveying works for official purposes knows even the basics of state regulation and the legal system of the Republic of Croatia, in particular the



constitutional order of the Republic of Croatia, as well as the system of state administration, the system of local and regional governments, the administrative procedure and administrative dispute, as well as the management and basics of the EU system. These contents, with the exception of being familiar with the civil servants relations, represent the content of the general part of the civil service examination, as it is stipulated by the Regulation on the procedure, the way of passing the expert exam, and the Programme of the Civil Service Examination (*Official Gazette* no. 61/06, 145/12, 1/14, 11/15 and 124/15). Therefore, expertise on the matter could be checked by laying down the obligation for chartered geodetic engineers, who would be authorized to perform expert land surveying works for official purposes in order to pass an exam for the general part of the civil service. A special, that is, the expert part of the examination is a condition for acquiring the status of a chartered geodetic engineer. This exam is to be taken according to the provisions of the Act on the Performance of Surveying Activities, the Rules of Professional Examination and the rules for updating and improving the knowledge of persons performing expert land surveying works (*Official Gazette* no. 30/10 and 65/13). An important assumption for valid surveying work for official use is also to speak Croatian at least at the C1 level, due to the fact that the administrative proceedings and other legal proceedings in Croatia are lead in Croatian and in Latin alphabet. Individuals are entitled to participate in such proceedings in order to protect their rights and legal interests.

Finally, as permanent training is a guarantee for the latest scientific and professional knowledge, as well as the most modern techniques and methods, in order to provide additional authorization to chartered geodetic engineers to perform their expert surveying works for official purposes, we find that it is necessary for them to attend various forms of professional training, lifelong learning programmes, courses, seminars or workshops.

Chartered geodetic engineers who meet these conditions should be granted the authorization for expert surveying works for official purposes. The authorization should be issued by the authorized state body to the chartered geodetic engineer as a natural person, due to his knowledge, skills and competencies. Such authorization should be issued on request of the chartered geodetic engineer, for the purpose of proper legal protection of the applicant, but also the public interest that the state protects. The authorization or license should be issued as part of an administrative procedure.

Licenses should be issued with a time limit in order to continuously monitor the quality performance of the expert surveying works for official use. The most appropriate time limit seems to be a period of five years, which allows a complete picture on the legality and regularity of the work of that person, what would be one of the preconditions for the re-issuance of the license after the expiry of its validity to the same person. This check would be particularly facilitated if an obligation would be stipulated to chartered geodesy engineers to keep record of their expert surveying works for business needs and to deliver an annual report to the SGA by 31 January of the current year for the previous one-year period. In order to allow chartered geodetic engineers free and full performance of their land surveying works for official purposes, the engineers should be entitled to initiate proceedings for the renewal of the licenses six months before the expiration of the period for which a prior permission was issued. The license validation should terminate after the period for which it was issued, and in case if the licensee retires, dies, if he is no longer a member in the Chamber, if he is punished for certain criminal offenses or if he is no longer capable of performing a chartered geodetic engineers work.

The system of additional authorization of chartered geodetic engineers to perform expert surveying works for official purposes with a licence would properly protect the rights and legal interests of citizens and entrepreneurs, as well as the interests of the public community in Croatia. It would further guarantee that surveying activities, as activities of interest to the Republic of Croatia, are performed only by professionals, who daily improve their knowledge, skills and competences and know not only the rules of their surveying profession, but also the relevant legal regulations that directly or indirectly affect the outcomes of their activities.

Finally, in the preamble of the Law (II. Situation Assessment) it is stated that the new law, among other things, complies with the new directive of the European Union - Directive 2013/55/EC amending the Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) on administrative cooperation through the internal market Information system (IMI). Below is stated that the new law removes administrative barriers in order to perform the professional surveying activities freely and to coordinate with legal provisions and practices of the Member States of the European Union. To this end it is proposed to repeal the consent required to perform surveying activities. A comparative method was applied, by which it was noticed that in most countries there is no such consent order issued by the competent state authority, but the contractor is exclusively classified pursuant to the procedures and regulations governing the issues of public procurement.

The surveying profession is not directly regulated by European Union legislation neither we found a relevant case law of the Court of Justice of the European Union (hereinafter: CJEU) that is more closely regulated, and fills the legislative gap. Consequently, the surveying profession should be seen as any other economic activity, through the prism of free movement of workers (the Treaty on the Functioning of the European Union - Art. 45 TFEU), the freedom to provide services (Art. 56 TFEU) and the freedom of establishment (Art. 49 TFEU).² This means that to the geodetic profession should be applied the relevant provisions of primary and secondary EU legislation governing the two freedoms. A common feature of all market freedoms is the prohibition of discrimination, and in this context we are particularly interested in the prohibition of discrimination against providers of surveying services from other member states. Below we shall focus on these issues.

First, different legal solutions in the Member States are a result of regulation by directives. The adoption of an EU directive does not require identical solutions in the member states. If that had been the goal of the European Union, a regulation would be adopted because regulation serves for unification of legal systems.³ The conclusion is that our law should not be necessarily the same as the solutions to which the proposer of the law refers to.

2 Under the freedom to provide services we understand: a freedom of establishment and freedom to provide services in the strict sense. In both situations it is a service provision, but with the freedom to provide services in the strict sense it is short-termed and temporary, and with the freedom of establishment it is a *"real performance of economic activity through a fixed establishment in another member state for an indeterminate period."* (See case: Gebhard, C-55/94, ECLI:EU:C:1995:411).

3 The directive is a legislative instrument of the EU, by which harmonization is achieved, rather than unification of legal systems of the member states. Directives are defined as acts, which, in terms of the results that they achieved, are binding to each member state they are directed to, but leave to the national authorities the choice of form and methods (see Art. 288 TFEU). The states are required to transfer or implement a directive in its national legal system, but the state itself chooses the form in which to do it, eg. a new law, or to modify the existing by-law (eg. a Government Regulation).



Secondly, if we look at the geodetic profession in terms of free movement of workers⁴, Art. 45 para. 4 of the TFEU provides that: *The provisions of this Article shall not apply to employment in the public service.* But, if we look at the geodetic profession in terms of the freedom to provide services in a broad sense (services and establishment), Art. 51 TFEU states: *The provisions of this section shall not apply in a particular member state to activities, which are in that member state, even occasionally, connected with the exercise of public authority.*

In practice this means that member states are allowed to reserve certain categories of jobs exclusively for their own nationals, if these jobs even occasionally are associated with the implementation of public authority. We have already mentioned the proposal that expert land surveying works performed by chartered geodetic engineers are classified into two main groups. One of these groups should be related to the expert land surveying works for official purposes - activities whose results become part of the public and official records and activities that are performed in the framework of official procedures in the original jurisdiction of the state authorities. Such work can be regarded as activities of special importance and the law should reserve activities for Croatian citizens. It would be no discrimination, nor is it contrary to European Union law, as such solutions are already known in other Member States in relation to the surveying profession (for example, Germany, the Netherlands and Poland).⁵

As for the practice of the CJEU, we have already pointed out that we did not find any relevant case law that would more closely regulate the surveying profession at EU level. There is a case from 2002, when the Commission launched the first (non-judicial) phase of the infringement procedure against Germany. The Commission stated that the German law institute of *publicly appointed surveyors* (German: Öffentlich bestellter Vermessungsingenieur) is contrary to EU law because these activities are exclusively reserved for German citizens. The question is whether the geodetic activities fall under the exception of public service, that is implementation of public authority. However, the Commission never initiated the judicial phase of the proceedings and filed a formal complaint with the CJEU, but at the end of 2005 they ended the proceedings against Germany, noting that the "case" could always be reopened.⁶ This has not been done until today. It would have been helpful, if the Court of Justice of the European Union had decided on that matter and clearly said whether the geodetic activities fall under the exception of public authorities, as this would definitely contribute to the legal clarity and address outstanding issues. In our opinion the entire geodetic activity cannot be classified under this exception, but certain categories of activities or works (as we have proposed it) may and should be exempted from the absolute freedom of movement.

As for the claims of the proponents of the Law, that the authorization for surveying activities is repealed, because no other member states have no such consent, that is not a very strong argument. None of the directives of the European Union to which the Law refers to requires the abolition of

4 This freedom of movement understands the abolition of any discrimination based on nationality between workers of the member states relating to employment, their income from work and other conditions of work and employment. See Art. 45. c. 2.

5 See Hojnik, J., Surveying activity in the EU single market - friend or enemy? *Surveying Journal*, 57/1 (2013), p. 55. See also: *Knowledge Exchange Network "Cadastral and Land Registry," Impact of EU Legislation on Cadastral Surveying*, 2010, p. 14-22, available at <http://www.clge.eu/documents/reports/ImpactEULegislation-OnCadastralSurveying2010.pdf> (accessed on 7/10/ 2016)

6 See more in Hojnik, op. cit., n. 5, p. 63

such approval. The exchange of good practices and the adoption of legislative solutions from other member states can be helpful, but is not binding.

In order to fully establish the internal market of the European Union, it was necessary to facilitate the transfer of qualifications and professional skills from one EU member state to another. The biggest problem are the so-called regulated professions, which includes the geodetic profession, too, which can be an obstacle to the free movement. The challenge for the EU legislators was to reconcile the application of a host member state that highly qualified personnel and qualified personnel with the requirements of the internal market on which perform these activities. The result of the effort is the Directive 2005/36/EC, which has consolidated 15 previous directives and standardized rules on the recognition of qualifications. Pursuant to this directive, the service provider from one member state is free to provide the same service in another member state; there is no need for them to become engaged in a process of recognition of their formal qualifications. But, as the host state wishes to retain some kind of control over the providers of such services, it may require some prior approval, submission of certain documents (for example an extract from the register, proof of the acquired qualifications, etc.) and memberships in professional associations. In this sense, it is reasonable to propose the introduction of an *approval* or *licence*, which would be issued on equal terms and without discrimination to either domestic or foreign nationals.

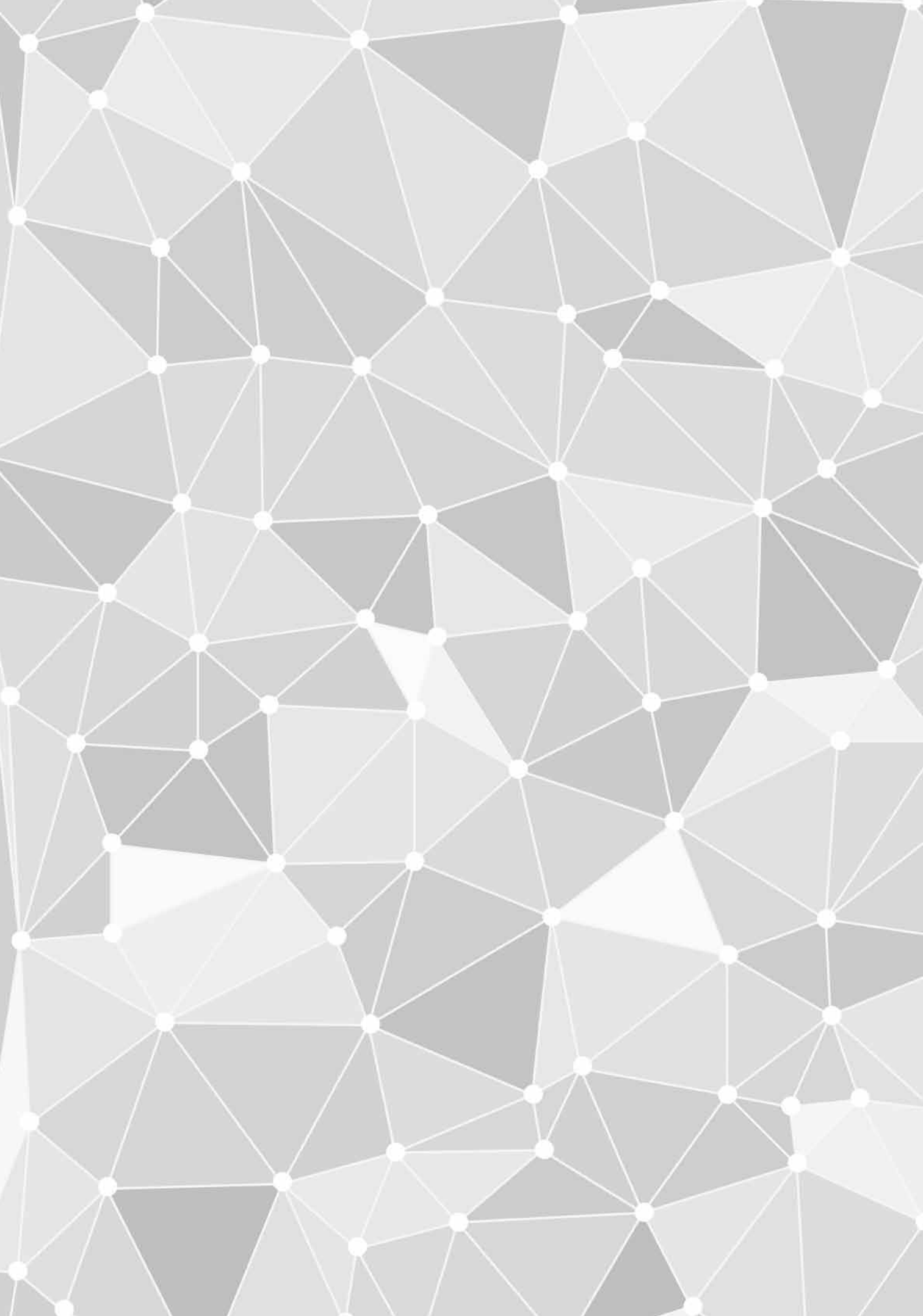
As a role model for our new law on the provision of surveying services, in certain issues the Slovenian law of surveying activities (ZGeoD-1)⁷ could serve as an example. Although it is in principle a very liberal law, which does not foresee the citizenship as a condition for performing any kind of surveying activities, the condition that a geodetic engineer needs to know the Slovenian language protects the Slovenian geodetic engineers from any competition from other member states of the European Union, as well as from third countries.⁸

By proposing the above solutions, on no account do we wish to discriminate geodetic engineers from other member states of the European Union, as well as from other countries. On the contrary, we aim at ensuring that the surveying activities are performed by skilled and qualified personnel, under the same formal and real conditions.

We believe that this article clearly points out how necessary it is to separate the expert surveying work of interest to the state (for official purposes) from other expert surveying works. Further, it is of utmost importance that the state takes special care when it comes to carrying out such activities to ensure high quality, reliable and available official spatial information for the development of the state and society as a whole.

⁷ See: *Uradni list RS*, no. 77/10

⁸ According to available data, since Slovenia's entry into the membership in 2004 until the end of 2012, the directory of licensed surveyors, kept by the Chamber of Engineers Slovenia, there was no foreign surveyors entered into the register. In 2012, they received a single application, but it was rejected due to inadequate education and lack of professional qualifications. See more in Hojnik, op. cit., n. 5, p. 63





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