28 February 2018: The Surveyor profession

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The Autorité has found that, despite recent legal decisions, the scope of services covered by the legal monopoly of surveyors remains vague.

The Autorité recommends to the legislator to resolve this uncertainty and to re-examine the merits of services that fall within the legal monopoly of building surveyors.

Background

Today, the *Autorité de la concurrence* issues an opinion at the request of the Chambre Syndicale Nationale des Géomètres-Topographes (CSNGT) on matters of competition concerning the respective activities of building surveyors and land surveyors, particularly with regard to the definition of the scope of the monopoly granted to the former in application of the Law of 7 May 1946.

The *Autorité* considers that the definition of this monopoly by the combination of two criteria – one material: the preparation of drawings and topographical documents; the other finalist: real estate boundaries – is the source of great confusion and prevents the harmonious exercise of business activities in this competitive sector.

The uncertainty that surrounds the current definition, as well as the variations of its interpretation over time, have produced legal insecurity that harms the sector's economic efficiency. The *Autorité* thus recommends to the legislator to re-examine the scope of services that fall under the legal monopoly of building surveyors.

The issues examined in the opinion

The complainant requested the opinion of the *Autorité* on four subjects. For two of them, the conditions for georeferencing certification and the conditions of access to public contracts, the Autorité has not identified competitive concerns that would require modification of current regulations. An educational effort may nevertheless prove useful on a case-by-case basis.

The two other subjects, which are essentially the focus of the Autorité's recommendations, concern the extent of the monopoly that benefits the building surveyors.

The legal monopoly of building surveyors

The core business of surveyors consists in ascertaining the configurations of sites and mapping them on 2D and 3D media. The profession is made up of land surveyors, a non-regulated profession represented by CSNGT, and building surveyors, a profession regulated by the Law of 7 May 1946, which grants it a monopoly for studies and topographical work determining real estate boundaries.

Clarifying the scope of the monopoly of building surveyors

The complainant considers that by including land surveying documents[1] that are likely to "have the effect of setting new real estate boundaries and creating real rights that would be attached to them" in the monopoly of building surveyors, the French Supreme Court (*Cour de cassation*) and tax authority have extended the legal monopoly of building surveyors without justification.

The *Autorité* has taken note of the recent rulings of the French Supreme Court and the French Supreme Adminitrative Court (*Conseil d'État*), which have clarified the categories of land surveying documents included in the monopoly of building surveyors by specifying the conditions in which preparation of a land surveying document may fall within the scope of the legal monopoly of building surveyors.

Nevertheless, the numerous referrals of complaints or consultations to the *Conseil*, and then to the *Autorité de la concurrence* on the subject, as well as the long history of administrative and judicial decisions testify to the recurring difficulties involving interpretation of the legal definition of the monopoly of building surveyors.

Proposal 1: Given the need to assure economic stakeholders a level of legal security that is compatible with a serene exercise of their competitive activities, the *Autorité* thus recommends to the legislator to redefine precisely the legal monopoly of building surveyors.

Proposal 2: Taking into account the changes that have occurred in this sector since the end of the Second World War, the *Autorité* suggests that on this occasion the technical, legal and economic justifications that were the basis for granting services exclusively to building surveyors be re-examined.

By excluding land surveyors, even when certified by the tax authorities for cadastral work on certain land surveying documents, the current regulation corresponds, in the estimation of the *Autorité*, to a reduction in the supply of services by at least 5%, which is far from negligible in terms of the buying power of consumers who use the services of a surveyor

Excluding the drawings and sketches appended to the descriptive schedules for co-ownership partition from the monopoly of building surveyors

The complainant alleges that building surveyors are attempting to extend the scope of their monopoly to drawings that are appended to the descriptive schedules for co-ownership partition in an unjustified manner.

The descriptive schedules for co-ownership partition are the documents that designate, in co-ownerships, the parts of the building and land. The descriptive schedules may include a drawing.

The *Autorité* notes that, given the lack the law and regulations and in the absence of any specific legal information on this point, no exclusive right appears to have been granted to building surveyors concerning preparing drawings or sketches appended to descriptive schedules for co-ownership partition.

Reserving these drawings exclusively for building surveyors would be tantamount to granting them an unjustified guaranteed income. With more than ten million co-ownerships in France, this would be the same, on average, as giving each surveyor a monopoly on the drawings of more than 5,000 co-ownerships.

Proposal 3: As part of the legislative reform that it recommends, the *Autorité* suggests clearly stating in the law that such drawings and sketches do not fall within the scope of the monopoly of the building surveyors.

The purpose of the Autorité's recommendations is to make the law clearer for professionals

Ultimately, the subjects covered in this opinion result directly from a problem of interpreting the legal monopoly of building surveyors. In addition to its negative effects on the economy, this uncertainty has significant consequences for the professionals concerned, as the illegal exercise of the profession of building surveyor is subject to criminal prosecution. The legislative clarification recommended by the *Autorité* would respond to a certain number of basic issues for surveyors as well as public officials: improving the accessibility and intelligibility of the law, limiting litigation, and strengthening the legal security and economic efficiency of the survey sector.

The *Autorité* notes that in submitting an amendment to the Senate in 2015 as part of the examination of the draft Law for growth, activity, and equal economic opportunities, the government had already sought to "*clarify the definition of activities that could also be performed by land surveyors to create greater competition for these business activities which, legally, do not fall under the exclusive monopoly of the building surveyors*"[2]. Despite two favourable opinions from the Government and the Senate commission, this amendment was finally not adopted, with the parliamentary debate stressing the need first for an exchange with all of the stakeholders concerned. It is precisely this wide consultation that this opinion seeks to encourage, with the *Autorité* ready, at the request of the legislator, to participate in the effort to redefine this legal monopoly.

[1]*A land surveying document is used to identify a parcel by giving it a cadastral reference and to list the contents and surface area of built-up and non-built-up properties.*

[2]*https://www.senat.fr/amendements/2014-2015/371/Amdt_1502.html*

> See the full Opinion 18-A-02 of 28 February 2018 relating to the surveyor profession

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