

Regulation Of Liberal Property Surveyors Profession Versus Society Deregulation Requirements For Growth And Competition

Henning ELMSTRØM and Torben JUULSAGER, Denmark

Key words: Profession, Cadastre, cadastral process, professional requirements, disciplinary requirements, code of conduct, European Union, regulation, legislation, competition

SUMMARY

The Surveying profession is regulated in many countries in the European Union (EU). The regulation is in particular distinctly in relation to the private practicing surveyors performing cadastral work, since the nature of the work is not only important for the direct requestor but also includes a societal responsibility in the communities where property registration and cadastre is a fundamental foundation for land administration, assessment and taxation – part of societies economic infrastructure.

For the sake of the protection of property, the rights of property and the quality of the authoritative property basic data, there is a societal need for a high level of professional qualifications, both legal and technical, and a high level of ethics in relation to the practicing chartered surveyors task performance. The cadastral process must be trustworthy and transparent with a high degree of legal certainty and consumer protection

To support workers' free movement and access to exercise a profession across borders, to stimulate the growth potential of European economies and to promote competition in order to reduce consumer prices, the European Parliament and the European Commission "*stressed the importance of in this relationship to ensure that the regulatory framework for professional services remain fit for purpose*". Regulation must match the underlying purposes and not just be a restriction on access to a profession. The mindset and philosophy behind this initiative is that the regulation of liberal professions and professional services can be a potential barrier that restricts access to the profession and to practice regulated tasks, and thus the regulation becomes an obstacle to growth, free competition and market based pricing.

EU defines a regulated profession as a profession where access to the professional activities or the use of a professional title is subject to legislative or administrative controls to ensure that the professional possesses specific and sufficient professional qualifications.

The central question in this paper is whether it is possible to combine the two key requirements

- Regulation safeguarding legal certainty and consumer protection
- Deregulation requirements for creating growth and competition

in a cadastral process carried out in a business model around a private practicing chartered surveyor.

This paper will describe the regulation including self-regulation, the necessary requirements for professional qualifications and required business and disciplinary requirements for the provision of cadastral work in the private sector on the one side.

On the other side the paper will describe current initiatives concerning deregulation of the professions and the balance between the general requirements of society to maintain a trustworthy property formation process and authoritative basic data and the requirement for free competition and lower consumer prices.

The paper will illustrate the topic in a general European context and more specific in the Danish cadastral model and, from a Danish point of view.

SUMMARY (DK)

Landinspektørprofessionen er lovreguleret i mange lande i den Europæiske Union (EU). Reguleringen er især udpræget i forhold til de privat praktiserende landinspektører, der beskæftiger sig med matrikulært arbejde, idet karakteren af arbejdet ikke bare er af betydning for den direkte rekvirent men også omfatter en samfundsmæssig opgavevaretagelse i de samfund, hvor ejendomsregistrering og matriklen udgør et grundlæggende fundament for offentlig arealforvaltning, vurdering og beskatning – en del af samfundets økonomiske infrastruktur.

Af hensyn til både beskyttelse af ejendomsretten og rettigheder i ejendomme samt til kvalitetssikring af de autoritative grunddata, er der et samfundsmæssigt behov for et højt niveau af professionelle kvalifikationer, både juridiske og tekniske, og et højt niveau af etiske regler i forhold til de praktiserende landinspektørers opgavevaretagelse. Den matrikulære proces skal være troværdig og transparent med en høj grad af retssikkerhed og forbrugerbeskyttelse.

For at understøtte arbejdskraftens frie bevægelighed og adgang til erhvervsudøvelse, stimulere vækstpotentialer i de europæiske økonomier og fremme konkurrencen med henblik på at reducere forbrugerpriserne, har Europa-Parlamentet og Europa-Kommissionen "*understreget vigtigheden af i denne sammenhæng at sikre, at de lovgivningsmæssige rammer for professionelle tjenester forbliver egnede til formålet.*" – altså at reguleringen matcher det bagvedliggende formål og ikke bare er en rigid begrænsning i adgangen til et erhverv eller en erhvervsudøvelse. Tankegangen og filosofien bag dette initiativ er, at regulering af liberale erhverv kan være en potentiel barriere, der begrænser adgangen til erhvervet og til udøvelse af lovregulerede opgaver, og dermed bliver reguleringen en forhindring for vækst, fri konkurrence og markedsbaseret prisdannelse.

EU definerer et lovreguleret erhverv som et erhverv, hvor adgang til erhvervsmæssig virksomhed eller brug af en faglig titel er underlagt, lovgivningsmæssige eller administrative reguleringer til sikring af, at den professionelle er i besiddelse af bestemte og tilstrækkelige professionelle kvalifikationer.

Det centrale spørgsmål i denne præsentation er, hvorvidt det er muligt at kombinere disse to centrale krav

- Regulering af hensyn til retssikkerhed og forbrugerbeskyttelse
- Deregulering af hensyn til at skabe vækst og konkurrence

i en matrikulær proces, der udføres i en forretningsmodel omkring en privat praktiserende landinspektør og branche.

Præsentationen vil beskrive reguleringen, de nødvendige krav til faglige kvalifikationer samt nødvendige forretningsmæssige og disciplinære krav for udøvelse af matrikulære arbejder i privat regi på den ene side.

Og på den anden side beskrive igangværende initiativer vedrørende deregulering af liberale erhverv og balancen mellem de generelle krav i samfundet til at opretholde en troværdig ejendoms dannelsesproces og autoritative grunddata og kravet om fri konkurrence og lavere forbruger priser.

Præsentationen vil illustrere emnet i en generel europæisk kontekst og mere konkret med udgangspunkt i den danske matrikulære model og ud fra et dansk synspunkt.

Regulation of liberal property surveyors profession versus society deregulation requirements for growth and competition

Henning ELMSTRØM, Denmark
Torben JUULSAGER, Denmark

1. INTRODUCTION

By the “Communication of 2nd October 2013 from the Commission to the European Parliament, the Council and the European Economic and Social and Committee” COM(2013)676 the European Commission stresses the importance of ensuring that the regulatory framework for professional services remains fit for purpose.

For this issue the member states are required to perform a review and to modernise their regulations on qualifications governing access to professions or professional titles. The reviewing at national level shall begin with the qualifications requirements imposed on regulated professions and the scope of reserved or regulated activities. The following possible initiatives and action plans shall be based on analysis of the barriers to access a profession and of the possible alternative regulatory mechanisms and with actions to remove unjustified barriers.

The overall strategic goal is to stimulate employment creation and restore economic growth in the European Union (EU).

EU defines a regulated profession as a profession where access to the professional activities or the use of a professional title is subject to legislative or administrative controls to ensure that the professional possesses specific and sufficient professional qualifications.

The liberal property surveyors performing cadastral works¹ are basically entrusted with official authority. They have the professional authority to perform a number of special tasks concerning private property and property rights either representing a public authority, or acting on behalf of a public authority or in cooperation with a public authority.

Due to the economic and social significance and value of a secure and trustworthy cadastral system, the surveying profession is subject of a societal regulation and / or self-regulation on access, task performance and professional requirements. There are various levels of regulation of the liberal surveying professions performing cadastral works in Europe, depending on different cultural, organizational, political and constitutional frameworks in the European countries.

¹ Conducting procedures, preparation and provision of documents to change the property registration in the cadastre

Regulation may be beneficial to

- Help the consumer judge on the quality of a service
- Protecting consumers and the public good
- Take proper account of the impact of their activities effects for third parties

The Danish practicing chartered surveyors² (property surveyors) are private professionals with professional qualifications and technical and juridical expertise to undertake a wide range of cadastral, surveying and legal tasks such as:

- Determining property boundaries and conducting property formation and changes to be registered in the cadastre
- Acting with public authority in solving boundary disputes as a prior judicial body
- Attestation on behalf of public authority that the public law restrictions and regulation is in compliance with changes in land use and property change
- Gathering and managing authoritative basic property and geographical data, needed for land administration systems and for the spatial data infrastructure

The Danish profession of chartered licensed surveyors also is subject to various public regulations and self-regulation that ensure the above mentioned underlying considerations in the cadastral system.

The regulation of the practicing chartered surveyors in Denmark are put on the political agenda, and the current regulation is challenged by a policy document on deregulation. The political purpose is growth by

- Reducing administrative burdens
- Increasing productivity
- Increasing competition - lower prices.

The underlying theses of this deregulation is that the current ownership restrictions regarding private chartered surveying companies are barriers for access to the profession, which can potentially limit competition in the area.

The central question in this paper is whether it is possible to combine the two key requirements

- Regulation safeguarding legal certainty and consumer protection
- Deregulation requirements for creating growth and competition in a cadastral process carried out in a business model around a private practicing chartered surveyor.

This paper will describe the regulation including self-regulation, the necessary requirements for professional qualifications and required business and disciplinary requirements for the provision of cadastral work in the private sector on the one side.

² Practicing chartered surveyor (private / liberal property surveyor): A licensed chartered surveyor, who is owner or co-owner of a private chartered surveying company

On the other side the paper will describe current initiatives concerning deregulation of the profession and the balance between the general requirements of society to maintain a trustworthy property formation process and authoritative basic data and the requirement for free competition and lower consumer prices.

The paper will illustrate the topic in a general European context, from a CLGE (the Council of European Geodetic Surveyors) opinion and more specific in the Danish cadastral model and, from a Danish point of view

2. REGULATION OF THE PROPERTY SURVEYING PROFESSION IN A EUROPEAN PERSPECTIVE

Amongst European property surveyors there is a considerable attention to new initiatives on regulation or deregulation of the profession. The interests performance are gathered around CLGE, which is an interest organization for the surveying profession in Europe and represents surveyors in 36 member states.

To be committed to represent the interests of the surveying profession in Europe, CLGE has among other main objectives

- Defining and promoting professional qualifications and prerequisites as well as business and disciplinary requirements for the surveying profession – “Code of professional qualifications for Property Surveyors” ready for CLGE ratification spring 2015
- Defining codes of conduct for the surveying profession – “Code of conduct for European surveyors” issued by CLGE in 2009

The aims of these recommendations is to assure a common European professional level and a high level of protection of ownership rights in legal issues related to land and property and work executed by the profession in public or private service.

2.1 Characteristics of the profession

Due to different national organization of legal systems of cadastre, property and land management (consisting of legislation, state structures, roles and responsibilities, data structure and actors involved) in the European countries it is not possible to give an exact description of a property surveyor covering the profession. But there are common overall characteristics of the property surveyors entrusted with technical and cadastral work concerning legal systems of cadastre, property and land management. The common professional identity of the property surveyors can in general be characterized by the following profile paradigm (Fig. 1):



Fig. 1 The common professional profile of property surveyors

The professional work of property surveyors is fundamentally associated to property development and based on legal and geospatial knowledge about “the location”. “The location” must be interpreted very broadly from the exact fixed point, to the boundary mark, to the land parcel and to larger geographic areas.

The surveyors work unfolds in a variety of technical, legal, planning, economic and design disciplines. They are all primarily based on handling specific legislation and managing localized geospatial data (geodata). The competence to locate property and handle property rights, as the basis for change, development and maintaining perspective in a spatial geometric concept requires the combination of knowledge, which surveyors possess.

Depending on the professional role and function of the surveyors, the value-added activity, to varying degrees, consists of land management, development, advisory functions and government in relation to the professional and business core areas – property, location, geodata.

This broad professional profile also provides excellent skills for handling interdisciplinary problems.

2.2 The public function and professional role

The property surveyors acting in the cadastral process, are basically entrusted with official authority. They have the professional authority to perform a number of special tasks either representing a public authority, or acting on behalf of a public authority or in cooperation with a public authority.

Given that their professional activities normally combine those of publicly appointed property surveyors and those of regulated property surveyors, the property surveyors, acting in the cadastral process, can be characterized as follows:

- The publicly appointed property surveyors represent the state in the cadastral process or act “on behalf of the state” in the cadastral process.
- The regulated property surveyors act under a more or less restrictive public legal regulation in the cadastral process.

In the EU context, the public functions, professional roles of the surveyors and the overall market regulation can be described in headings by the following illustration:

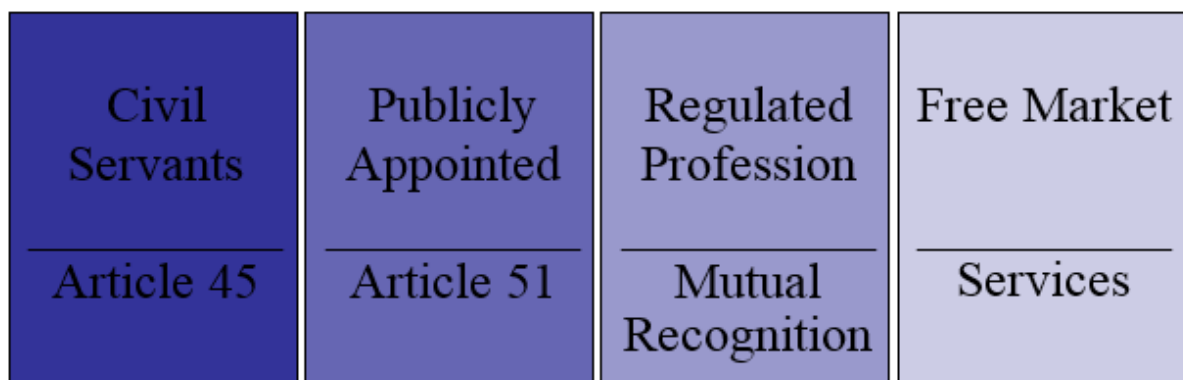


Fig. 2 The overall market EU-regulation of professions that provide services

The activities vary according to different European countries but generally including fundamental registration and changes in the cadastral register, property register and land register based on determination of boundaries of property as well as management of property and land rights.

When the property surveyors represent public authority through their activities, society must set requirements for the professional practice. High quality requirements and standards for the profession must be assured through academic education, disciplinary regulations, ethical codes established by national associations, legal authorizations and national regulations. They exercise their activities under their personal responsibility and in a context of economic independence.

2.3 Professional qualifications and prerequisites

The CLGE recommendations on professional requirements and prerequisites to the property surveyors to be implemented as legal regulation or as self-regulation by the national associations of surveyors can be listed as follows:

Professional qualifications and prerequisites – CLGE		
Issues	Requirements	Purposes
Education	5 years on university level consisting of a bachelor (3/4 years) and master (1/2 years) in surveying and cadastral science	To ensure the academic level and the research options in the areas of - Surveying and mapping - Cadastre and land management - Spatial planning - Property design and development - Cadastral and real estate law - GIS (Geographic Information Systems) - etc.
Practice	Min. 2-3 years of practice in a licensed property surveyors office or in a cadastral administration doing cadastral work, undergoing further education	To establish the necessary experience and knowledge to the requirements in practice
Approval	Approval of professional skills, generally based on an examination, by state/federal board or commission, professional state recognized commission, second state examinations commission etc.	To secure professional skills and knowledge in practice
CPD	Continuing professional development (CPD). The requirements are at least 20 hours per year.	To maintain professional development and quality. The CPD shall be controlled by the local organizations or by the State.

Fig. 3 CLGE recommendations on professional requirements and prerequisites to property surveyors

2.4 Professional business and disciplinary requirements

The CLGE recommendations on professional business and disciplinary requirements to the professional business task performance by the property surveyors and the surveying companies to be implemented as legal regulation or as self-regulation by the national associations of surveyors can be listed as follows:

Professional business and disciplinary requirements – CLGE		
Issues	Requirements	Purposes
Appointment	Awarded according to State law, for instance supplemented by oath	To ensure the necessary professional qualifications of the surveyor
Insurance	An obligatory insurance system defined by the State authorities	To show responsibility and support customer protection
Penalty board	A penalty board independent from the surveyor's organization to settle complaints about the surveyor's work. It must have the power to temporarily or permanently revoke appointment or license.	To maintain trust and quality by applying the state requirements and support customer protection.
Quality control body	A committee defined by the surveyors' association, or by the State, providing advisory opinions and guidelines on professional matters and defining the "Bonus Pate" professional.	To ensure the permanent high professional quality of the surveyor's work and to support customers who have questions or complaints about the surveyor's work.
Ethical code	An ethical code as guideline for the surveyor's work - national codes and/or CLGE "Code of Conduct for European surveyors".	To have high ethical principles for surveying services and support customer protection.

Fig. 4 CLGE recommendations on professional business and disciplinary requirements to property surveyors

2.5 CLGE opinion on regulation

In relation to the EU requirements stated by COM(2013)676, that member states have to perform a review and to modernise their regulations on qualifications governing access to professions or professional titles, the CLGE General Assembly has in 2014 approved an opinion on the topic – "CLGE Position Paper in favor of the regulation of the surveying profession".

The central statement is: *"The regulation of the surveying profession in the areas of property delimitation, registration and cadastre, is essential to protect both the vital interests of consumers and the state. It places no restriction whatsoever on mobility of practitioners, volume of available work, consumer choice, or price levels"*.

The statement and the opinion is based on a more detailed argumentation about regulation's impact and influence on the free labor movement, increase in productivity and improvement

on competition and pricing.

“Where regulation is in force, professional activity is controlled, either directly by a state authority or by national competent authorities and this latter form of regulation is particularly necessary in the case of liberal or self-employed professionals, to ensure independent and disinterested professionalism in their activities and also to put in place adequate ethical and disciplinary controls.

Regulation does not affect mobility of surveying professionals between member states. Such professionals are free to establish themselves permanently in any member state and operate on a cross-border basis temporarily. Any restrictions which apply are as a result of certain states reserving to themselves certain functions to be performed solely by their own civil servants, or else as a result of regulations which apply with equal effect to nationals of the host state, and thus are not obstacle to mobility.

The volume of work, related to property delimitation and cadastral functions, which depend on economic and development activities, is, by its nature, limited. Deregulation would not increase the availability of such work in any way. Despite such limitation there is no evidence of restrictive practices or of the operation of a closed shop, within the profession in Europe.

Consumer choice for services, as opposed to products, involves assessing the value of the offer, both in terms of price and quality. Quality of services, however, can only be guaranteed by the existence of enforceable standards and levels of quality. Regulation is a means of providing such a guarantee. Deregulation would remove this guarantee and leave both the consumer and the state with no means of assessing the value of the service being offered at a given price. Within the necessary limitations of regulation for quality control purposes, consumers are free to compare surveyors’ prices for services, both in-state and cross-border” (CLGE Position Paper in favour of the regulation of the surveying profession).

3. THE DANISH STUDY CASE

To put the key issue of the paper “Regulation of liberal property surveyors profession versus society deregulation requirements for growth and competition” in a more concrete Danish perspective it will be helpful to give a short presentation of the Danish cadastral system and the role of the practicing chartered surveyor in the cadastral process.

When the practicing chartered surveyors represent public authority through their activities, society must set requirements for the professional practice. High professional, business and disciplinary requirements and standards for the profession must be assured through education, consumer protection and claim systems and ethical codes of conduct established by law under national authorities or by self-regulation by national surveying associations. The existing regulation of the practicing chartered surveyors and the underlying considerations will be listed and described and will be related to the ongoing Danish initiatives on deregulation of access and requirements for the performing cadastral work.

3.1 The cadastral system

The Danish cadastral system is based on a title system, “a register of properties presenting “what is owned by whom”” (Enemark 2010). Titles are based on the cadastral identification, and the cadastral registration is prior to land registration. The cadastre plays a central role as basis for land and property identification and registration in Denmark, based on registration of property boundaries determined by practicing chartered surveyors or their employed licensed chartered surveyors.

The Danish cadastral system itself “provide a basic land information infrastructure for running the interrelated systems within the areas of Land Tenure, Land Value and Land Use” (Enemark 2010) (fig. 5) – land administration and land governance.

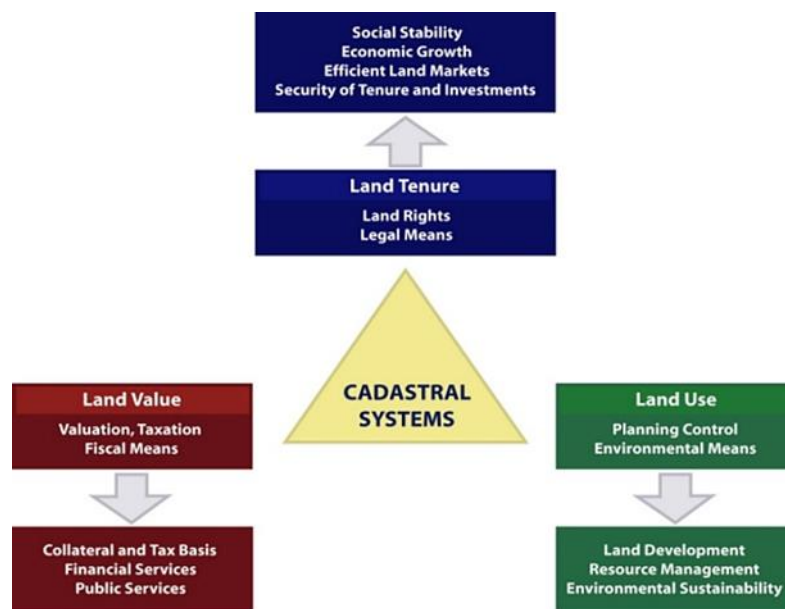


Fig. 5. Cadastral system – a basic land information infrastructure (Enemark 2004)

Maintenance, updating and development of the Danish property cadastre³ has for more than 250 years been organized in a public-private cooperation model consisting of a central state cadastral authority (today The Danish Geodata Agency) and private practicing chartered surveyors. The practicing chartered surveyors perform the cadastral tasks in the field, prepare the cadastral documents and submit the changes to the central authority that controls, approves and records property changes in the cadastre.

³ The Danish cadastre is the basis for all land registration in Denmark. Consisting of a country-wide digital cadastral map, an official register of property information and a cadastral archive including measuring sheets with field surveys of boundaries

The Danish cadastre has during time evolved to be a multipurpose cadastre, so in addition to support land administration and land governance the cadastral geo-related authoritative basic data including, not least, the digital cadastral maps is the entrance to eGovernance and digital solutions in the Danish Society.

There is a high focus in the Danish society on managing property rights in a both trustworthy and a transparent process to meet the need for legal certainty on real property and consumer protection.

The underlying philosophy in the Danish cadastral model is to find holistic and balanced solutions that will pave the way for sustainable development of change of property and land use, taking into account “to third parties” – understood broadly as neighbors, the boundary, public regulation, rightsholders in property, the cadastre, the cadastral map etc..

3.2 The cadastral process

Cadastral work reflects a change in the property division and often a change in the use of the physical environment. In Denmark the use and development of land / real property is, for natural reasons, a matter not only for private interests but also for public and rightholders interests. Consequently today’s legislation on land management in Denmark is trying to find a reasonable regulatory framework for management of the balance between public and private interests.

The consideration for third parties in the property formation and changes process is reflected in the cadastral process. It is set out in the rules of boundary determination, compliance with other laws, mortgagee consultation and allocating easements.

In Denmark the cadastral process is the formal and legal acts and agreements that ensure the implementation of a sustainable and holistic process of project realization. As responsible for the case preparation the licensed chartered surveyor ensures and drives the entire process.

The practicing chartered surveyors is acting in the intersection between public and private interests and as an objective advisor the surveyor has to represent and manage all the interests related to property change and the future use (Fig 5). The practicing chartered surveyors is popularly said “the ambassador of the boundary”. The role as private advisor gives the surveyor a significant legitimacy to be able to handle the balance between private and public interests around the property formation and use, and gives the surveyor the opportunity to take part in both an advisory and design stage.

The Danish cadastral process and the task performance of the practicing chartered surveyors is described in the following paradigm (Fig. 6) which also illustrates potentially involved parties, phases and information flow.

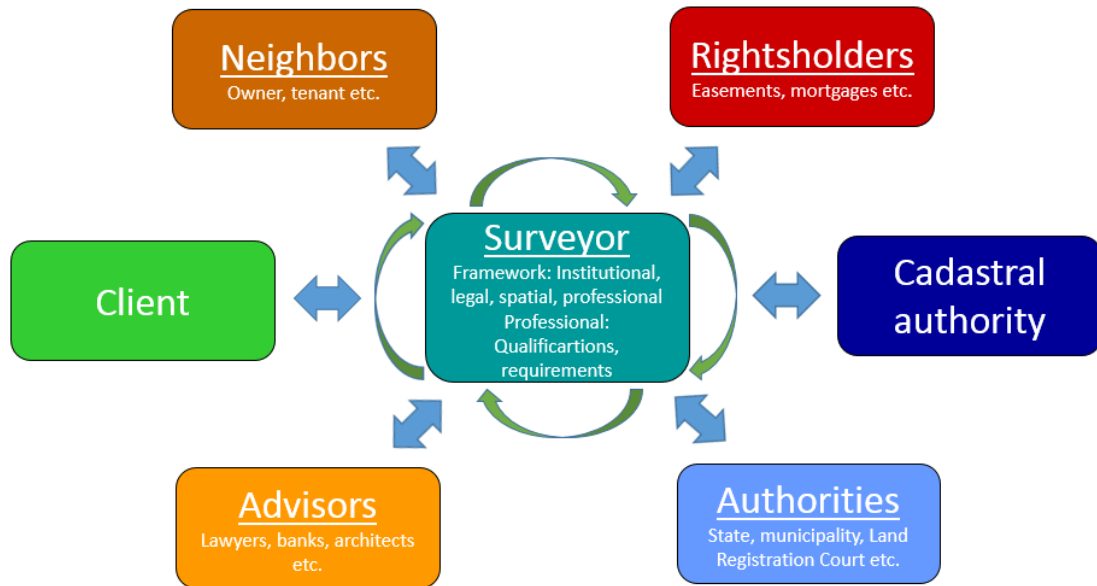


Fig. 5. The practicing chartered surveyor – a central objective advisor conducting the cadastral process

The Danish cadastral process and the task performance of the practicing chartered surveyors is described in the following paradigm (Fig. 6) which also illustrates potentially involved parties, phases and information flow.

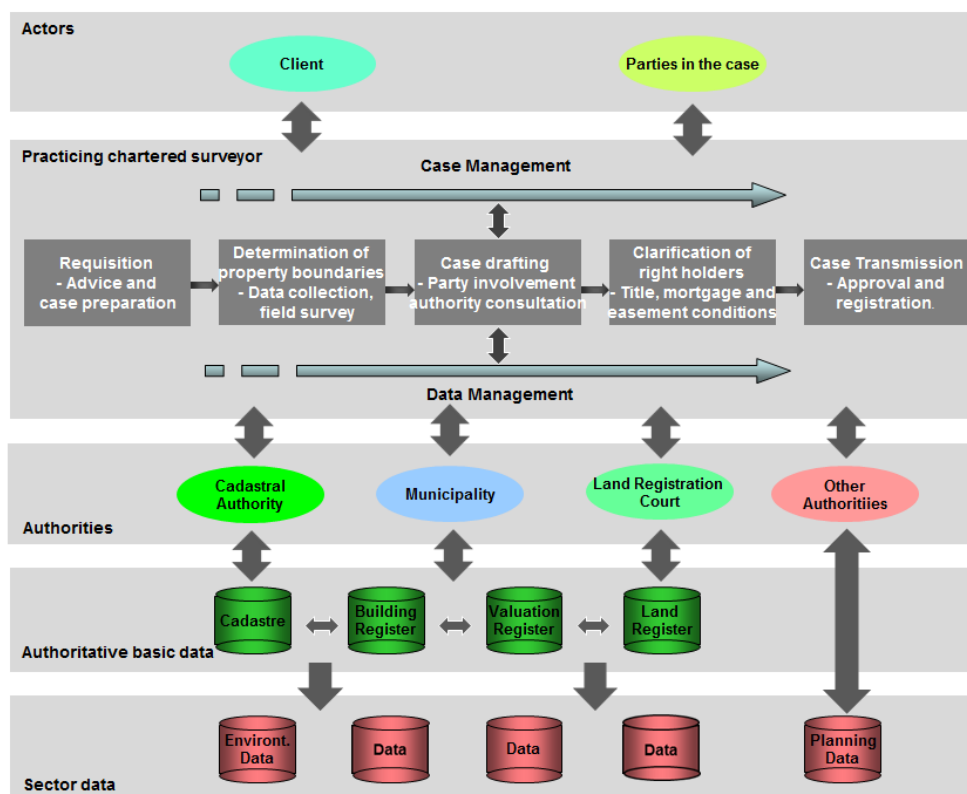


Fig. 6. The Danish cadastral process - parties, phases, tasks and information flow

Three pillars of the cadastral process illustrating the surveyor's role in the cadastral process shall be highlighted.

3.2.1 Boundary determination

The basis for determining existing boundaries are information from the cadastre – measuring sheets or in case of none or insufficient field measuring the cadastral map.

The boundary may under Danish law change through prescriptive acquisition. Therefore, when determining and marking the boundary, the practicing chartered surveyor has to investigate whether the property boundary in the field agrees with the information in the cadastre.

If there is no deviation the practicing chartered surveyor can mark the boundary in accordance with the cadastral information. At the same time the surveyor is required to inform neighbors about the boundary marking. It must give neighbors the opportunity to submit any comments to the marking for providing a fully informed process and to prevent later boundary disputes.

However, if there is a discrepancy, the practicing chartered surveyor must allow the parties to make a statement before marking the boundary. After this, the licensed chartered surveyor must decide whether the boundary can be fixed in accordance with the cadastre or whether the matter has to be settled in accordance with the rules on rectification of boundaries, transfer of part of property or technical changes. If there shows to exist an irreconcilable disagreement between two neighbors about the property boundary it may be necessary for the party wanting to set the boundary to ask the surveyor to hold legal determination of boundary.

Legal determination of boundary is a formal process conducted by a practicing chartered surveyor given public authority as first instance. It consists of a local inquiry meeting involving the parties to clarify the boundary issue and the licensed chartered surveyor must try to get the parties to agree on the location of the boundary. In that case the surveyor will set the boundary, and it will be binding on parties when they have approved in writing. If the parties do not reach an agreement, on the basis of the information available, the surveyor will set a preliminary boundary and draw up a statement on the legal determination of boundary. The boundary set is binding for the owners of the properties affected, if none of them bring the case before the district court, with a claim that the boundary lies in a different position.

When new boundaries are determined and marked, they shall be approved in writing by the owners of the affected properties, before they can be registered in the cadastre.

The general process for boundary determination is conflict preventing which finds concrete expression by performing only about 65 legal determination of boundary are held per year and under 5 of these are brought to court.

3.2.2 Subdivision control

Centrally in the Danish holistic and sustainable cadastral model is that the Subdivision Act

states that there must be no subdivision, land transfer or merger if the cadastral change or the intended land use according to the information will result in violation with another legislation or planning or with other public law restrictions or private rights on the affected properties.

When the cadastral changes are finally decided and the boundaries are determined the practicing chartered surveyor prepares the formal and the technical documents as the basis for approval by the authorities, party involvement, right holders involvement and registration in the cadastre.

The consultation process by the authorities is called “the subdivision control”, and this process has to clarify and document that the cadastral changes and the future use of the property is legal with respect legislation and public regulations. In certain situations, the surveyor has public authority to attest that the cadastral changes do not conflict with public regulations without submitting the case to the authority.

If there is a need for a permission or a dispensation of laws or public restrictions the practicing chartered surveyor applies for the necessary permission, which can be done in cooperation with the owner or other advisors.

3.2.3 Clarification and consulting rightsholders

The Land Registration Act and the Subdivision Act ensures protection of mortgages and easement rights by cadastral change of private property.

The Land Registration Act states, that in connection with a land transfer there must be permissions / accept from the mortgagees to the change, as in ordinary cases must be registered as an endorsement of the mortgage in the land register. In special cases when the value of transferred land is insignificant and below a certain threshold value (approximately € 17.000), the practicing chartered surveyor has authority to certify, that the land transfer can be done without risk of mortgagee and that the property after the change are still capable of carrying security for the mortgage. This so-called “harmlessness certificate” replaces the registration of mortgages release in the land register, and shall be submitted by the case documents for approval and registration of the cadastral changes.

In relation to rightholders of easements on affected properties, the practicing chartered surveyor must locate the rights and ensure that the easement in future they are registered on the right properties after the cadastral change. The requirement applies to both subdivision and land transfer. The land register will be updated by the new registration of location of easements by a so-called “easement statement” from the practicing chartered surveyor.

The Subdivision Act prescribes that land transfer only can only be registered in the cadastre, if it is established that the provisions of securing mortgages and easements is observed, which must be documented by a judge certificate.

3.3 “Constitutional” regulation of cadastral performance

The legislation in Denmark confirms and consolidates the economic and social significance and value of a secure and trustworthy cadastral system, by setting out a clear framework for responsibility, conduct and performance of cadastral work

The cadastral system and model in Denmark is basically governed by two main laws the Subdivision Act and the Chartered Surveyors Act. A series of statutory orders and guidelines sets out more detailed framework for the specific execution of the cadastral work

The Subdivision Act provides the legal basis for the Danish cadastral model and the subdivision requirement.

The Chartered Surveyors Act contains professional and ethic requirements and regulations of the practicing chartered surveyors and the chartered surveying companies conducting cadastral

work, to ensure legal certainty and consumer protection on defining property boundaries, property creation by an independent, impartial and objective professional surveyor

Professional business and disciplinary requirements – Denmark		
Issues	Regulation	Purposes
Public-private cadastral model (legislation)	The Danish Geodata Agency is the responsible state authority for the cadastral system, registration of real property and maintaining the cadastre. Is responsible for processing and approval of cadastral changes Cadastral work must be performed by practicing chartered surveyors in private chartered surveying companies and their assistants who are appointed chartered surveyors.	Founding the Danish public-private cooperation cadastral model. Ensures legal certainty and consumers protection by delegating responsibility for cadastral task performance to an independent, impartial and objective practicing chartered surveyor, acting at the intersection of private and public interests related to use of land and property development with consideration to third parties rights and interests.

Sole purpose (legislation)	A chartered surveying company must have the sole purpose of performing surveying and cadastral work.	To secure consumer protection by ensuring that costumers meets qualified and professional advisors when seeking advice on cadastral performance.
Personal responsibility (legislation)	The practicing chartered surveyor is together with the company personal responsible for performing surveying and cadastral work	To ensure consumer protection and to protect rights of third parties by strict liability for task performance and elimination of volatilization of responsibility. The practicing chartered surveyors are entrusted with a bonus pater liability.
Ownership regulations (legislation)	In a chartered surveying company at least 51 percent of share capital and voting rights shall be owned by practicing chartered surveyors who actively are carrying surveying business in the company.	To ensure surveyor's independence of material and economical interest in relation to the provision of professional responsibility by performing the societal task that lies in performing cadastral work and thereby an objective consideration to third parties rights and interests. To ensure licensed chartered surveyors of influence in the company's tasks.
Management regulations (legislation)	In a chartered surveying company the majority of members in the supervisory board and in the executive board must be practicing chartered surveyors who actively are carrying surveying business in the company.	To ensure licensed chartered surveyors of influence in the company's management and thereby an objective consideration to third parties interests in task performance.
Impartialty (legislation)	The practicing chartered surveyor may not perform cadastral work concerning a property in cases where the licensed chartered surveyor has a material or any other kind of interests in the property and in the outcome of the case.	To secure consumer protection by the impartiality of the practicing chartered surveyor conducting cadastral work. To avoid fraud.

Fig. 7 Basic legal regulations setting out the core of the Danish cadastral model

3.4 Professional qualifications and prerequisites

In order to fulfill societal and consumers expectations regarding the qualifications in exercise of cadastral work, there is a need for a continuous high level of knowledge and professional skills regarding the licensed chartered surveyor performing cadastral work. The professional framework is given by a legislative regulation and self-regulation by the profession.

Professional qualifications and prerequisites – Denmark		
Issues	Requirements / regulations	Purposes
Education (legal)	5 years on University level consisting of a bachelor degree (3 years) and master degree (2 years) in surveying and cadastral science (Surveying & Mapping, Geoinformatics, Land Management)	To ensure an academic level and the research options in the areas of - Surveying and mapping - Cadastre and land management - Spatial planning - Property design and development - Geoinformatics Acquiring knowledge and skills in working analytically and according to interdisciplinary and problem and result oriented methods.
Practice (legislation)	3 years of practical supervised experience in performing general cadastral work in a private chartered surveying company or in a cadastral administration doing cadastral work, undergoing further education.	To establish the necessary experience, knowledge and skills to exercise cadastral work.
License (legislation)	License to conduct cadastral work achieved on an application to the Danish Geodata Agency with documentation of necessary requirements – the bachelor and master degree in surveying and cadastral science plus three years of professional practice	To secure professional skills and knowledge in practice. The license is personal and can only be used for performing cadastral work in a private chartered surveying company

CPD (selfregulation)	Not compulsory but de facto - The Danish Association of Chartered Surveyors (DdL) recommends 37 hours professional training, knowledge and dissemination per year	To maintain professional development and quality.
-------------------------	--	--

Fig. 8 Danish requirements on professional qualifications and prerequisites to practicing chartered surveyors

3.5 Professional business and disciplinary requirements

In order to fulfill societal and consumers confidence to the practicing chartered surveyor in conducting the professional tasks regarding business performance there is a need for professional liability insurance, claim systems and ethical codes of conduct, with aim of securing legal certainty high consumer protection

Professional business and disciplinary requirements – Denmark		
Issues	Requirements / regulations	Purposes
Insurance (legislation)	Mandatory professional indemnity insurance for the practicing chartered surveyor, which must be personal. The insurance must cover at least 5 years after the surveyor permanently ceased company	To protect customers against financial loss that may rise from performance of the cadastral work and other chartered surveying works carried out by practicing chartered surveyors and their employees
State board of appeal (legislation)	The Chartered Surveying Committee – a state board of appeal handling claims raised against a practicing chartered surveyor in performing cadastral or surveying works Have the power to impose fines and to revoke license.	To maintain trust and quality by applying the state requirements and support customer protection. To define good surveyors practice through judgments.
Disciplinary committee (selfregulation)	A disciplinary committee by The Danish Association of Chartered Surveyors (DdL) given advisory opinion on claims of all types of work carried out by chartered surveyors. The committee has no judicial power, but has the opportunity to recommend to the surveyor to carry out rectification of work performed.	To ensure the permanent high professional quality of the surveyor's work and to support customers who have questions or complaints about the surveyor's work. Setting out guidelines on professional matters and defining the “Bonus Pater” professional.

Remuneration committee (selfregulation)	A remuneration committee by The Danish Association of Licensed Surveyors (PLF) given advisory opinion on fees calculated by the practicing chartered surveyor for any work performance. The committee have no judicial power, but statements from the committee will be complied by the surveyor and will be basis for any court decision.	To secure consumers protection and a fair pricing
Ethical code (selfregulation)	“Stautes of Surveyance”, a national code of conduct of work carried out by practicing chartered surveyors. Developed and enforced by the Danish Association of Chartered Surveyors (DdL). It concerns rules for customer contact and contractual work, including information on the work progress and cost overruns. DdL and PLF has joined “Code of Conduct for European surveyors”.	To ensure high ethical standards in the execution of work carried out by practicing chartered surveyors and their employees and to support customer protection.

Fig. 9 Danish professional business and disciplinary requirements to practicing chartered surveyors

3.6 Business profile

To put the discussion in the right perspective and proportionality it is necessary to pay attention to the actual business profile in the practicing chartered surveying profession. How is the business structure and the portfolio, how is the actual competition and turnover and how do the profession handle the responsibility of the two shared role in the cadastral process including regulatory responsibilities.

3.6.1 Business structure and portfolio

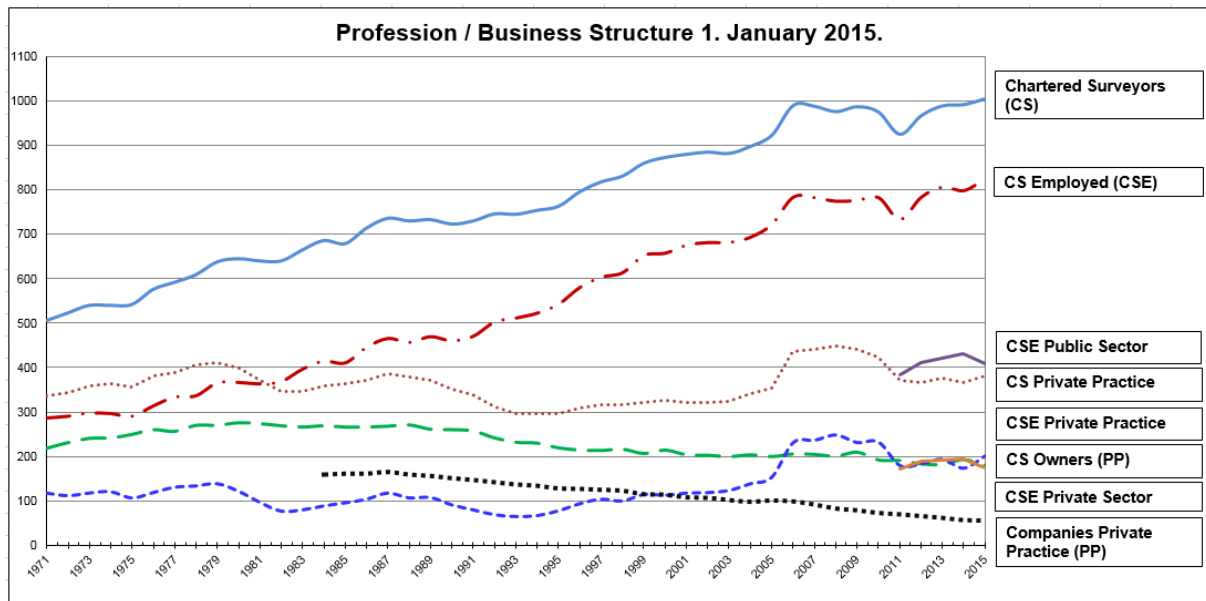


Fig. 10 Danish surveying profession and business structure

The statistics per. 1st January 2015 of a more than 40 years development in the complete surveying profession in Denmark (total number of employed surveyors, distribution in places of employment and number of surveying companies) shows that the number of chartered surveying companies is decreasing from 164 companies in 1984 to 55 companies in 2015.

The company structure has from being dominated by one or two persons owned small companies, changed to a more diversified business structure – consisting of 17 small companies, a broad middle segment and 4 large companies. Newer the less there exists a branch structure with 140 office locations spread throughout the country. All offices are according to the law led by a licensed chartered surveyor. The profession continue to live up to provide citizens a local professional service in relation to the societal task companies responsible.

The business employees approximately 900 persons – 375 surveyors, 150 technicians and 250-300 other professionals.

	Comp.	Pers.
- Companies without employees		
- 1-5 owners	17	19
- Companies with employees		
- 1-5 owners	31	149
- 6-10 owners	4	56
- > 10 owners	4	302
Total	56	526
(Pers. = surveyors and technical personnel)		

Fig. 11 Company structure 2015 – the Danish chartered surveying companies

The development in business structure of the chartered surveying companies is due to more complex and comprehensive legal regulation of application and use of buildings and land as well as the technological development as regards measurement methods and data handling. The surveyors role has changed from being a data collector to be data manager. These changes makes greater demands on knowledge and skills development and to major ongoing investments in new technology and knowledge generation and it calls for consolidation to continue to provide professional services as both communities and customers expect.

This development in business structure has naturally also led to a development in surveying business portfolio - a portfolio mostly located in the knowledge of property rights and rights and restrictions in property in a geospatial perspective (Fig. 12).

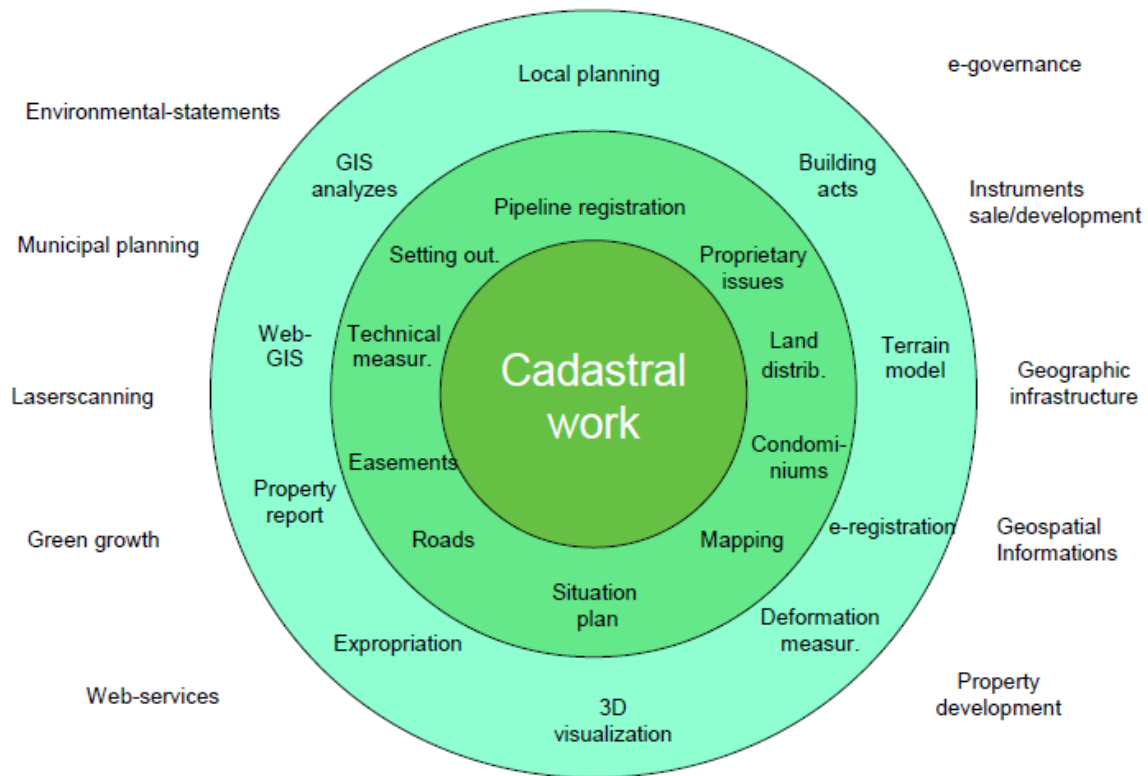


Fig. 11 Company structure 2015 – the Danish practicing chartered surveying companies

Cadastral work is by nature and legislation the basic business area for chartered surveying companies and represents in terms of volume between 30-100 percent of their turnover. The estimated total annual turnover in surveying industry (by fee income) is approximately euro € 120 million of which revenues from cadastral work is between € 35-45 million.

Consolidation of companies has also led to increased competition. A recent study from 2014 of the competitive situation in chartered surveying companies on cadastral work has shown, that approximately 75 percent of the cadastral work is settled on a competition proven price (tender, approved cost estimate etc.). The survey also showed a significantly fall in prices of exclusive cadastral works. Currently 2015 prices on standard cadastral services compared to projected prices on the same services from public approved Fees Rules on cadastral works (abolished by the competition authority in 1994) has decreased between 25-75 percent on standard tasks. Other portfolio of tasks is performed in a truly free, competitive market.

3.6.2 Organization structure

In Denmark there are two organizations that represents and handles the professional interests of the surveyors. Working to develop and strengthen the surveying profession for the benefit of its members and society.

The Danish Association of Chartered Surveyors (DdL) is responsible for the professional,

economic and social interests of the surveying profession as well as member's personal work and professional interests including not least the salary and employment conditions and educational interests. Membership is personal.

General professional orientation communication and knowledge communication is achieved through the association's journal and web site, professional forums and workshops. The association is also responsible for the development and provision of continuing education activities, just as the association is represented in the advisory board for surveyor educational program at Aalborg University.

DdL also takes a responsibility in the appeal system of the professional performance of the surveying profession by being responsible for the operation of the disciplinary committee.

The Danish Association of Licensed Surveyors (PLF) is a professional association for chartered surveying companies performing surveying business under the Chartered Surveyors Act. PLF is a political, professional and employers association carrying out business interests by creating the best possible conditions for exercise of the cadastral work and related business and promoting professional developments.

PLF is included as an active party in legislative development partnerships with various ministries within cadastral work, land management and surveying. PLF also takes a responsibility in the appeal system on cadastral work and other surveying works by being responsible for the operation of the remuneration committee.

PLF contributes to knowledge transfer and knowledge sharing by conferences, workshops and training activities aimed cadastral work. PLF is represented in the advisory board for surveyor educational program at Aalborg University.

Approximately 95 percent of all chartered surveying companies is organized in PLF and the organization constitutes a single representative of the profession and forms together with the Danish Geodata Agency the Danish cadastral sector.

The work in PLF is structure around the Board, as the central driver in all business areas and representation of interests. The Board establish internal committees, working groups and task forces on special work and areas of interest and is represented in relevant external committees and working groups (Fig. 12).

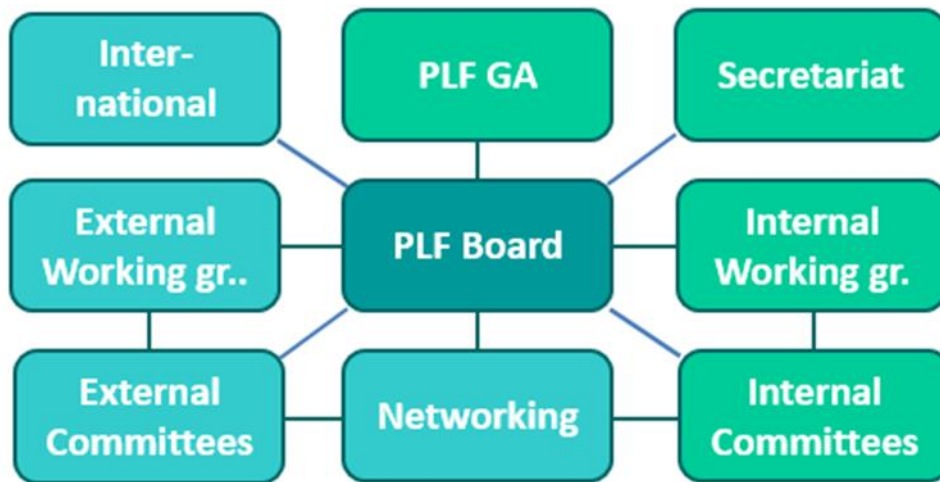


Fig. 12 The Danish Association for Licensed Surveyors (PLF) – representation of interest

3.7 The Danish deregulation initiatives

Nearly simultaneously with EU initiatives on the evaluation of national regulation of professional businesses the Danish Government has launched growth initiatives to kick-start the Danish economy. Among 89 initiatives the Government launched Growth Initiative no. 49 (GI49) – "Launching a study of ownership restrictions for chartered surveying companies".

The thesis is that the current ownership restrictions in the Chartered Surveyors Act is a barrier to the access to the profession and thus potentially a limitation of competition in the area. The political purposes with the growth package and thereby with GI49 is to create growth by reducing administrative burdens, increasing productivity and increasing competition - lower prices. Concrete actions was setting up an inter-ministerial committee which should submit proposals to amend the ownership restrictions for chartered surveying companies.

3.7.1 Potential purposes of GI49 initiatives – PLF opinion

In relation to the political purposes of GI49 it is hard to see any clear societal potentials with the actual growth initiative proposals on deregulation and regulation.

From the point of view of PLF the premises of GI49s purposes - less administrative burdens, increased productivity and increased competition – is absent or difficult to detect under the existing regulation and in the existing market.

Existing administrative burdens: Reporting to the Danish Geodata Agency by change in the company - ownership, board and management. There is currently no measurable workload neither in the Danish Geodata Agency or in chartered surveying companies.

Productivity growth: Property formation and changes and thereby cadastral works depends 100 percent on societal economic conditions. The business area can not increase on pricing or

increased competition. The subdivision fee for practicing chartered surveyors represents for example about 1 percent of the selling price of an ordinary plot of land for residential purposes.

Increased competition or lower prices: Competition on cadastral works is intact - the potential for competition is limited to a total turnover € 35-45 million of which 75 percent already is settled on a competition proven price.

3.7.2 Content of concrete deregulation initiative

The final outcome of the work in the committee, is a new (May 2015) growth initiative proposal from the Danish Government, which contents six proposals on deregulation and new regulation:

- The sole purpose requirement for chartered surveying companies to be abolished
- Ownership and management restrictions for chartered surveying companies to be abolished
- Personal responsibility requirements for licensed chartered surveyors who owns or co-owns a chartered surveying company to be abolished
- Companies wishing to perform cadastral work will have a notification duty to the Danish Geodata Agency, among other things the company's quality procedures
- The Danish Geodata Agency will introduce a risk-based supervision on companies performing cadastral work

According to the supporting explanations to the initiatives the changes will serve the purposes of GI49, increased competition, increased productivity and will also help to promote innovation.

3.7.3 Consequences and risks by initiatives – PLF opinion

The actual initiative and the proposed rules will cause some challenges to the considerations behind the existing regulation of performance of cadastral work.

Factually a significant consequence of the initiative will be that all licensed chartered surveyors can perform cadastral work in any notified company without any personal responsibility. Which of course also is a natural consequence when surveyor as a result of the abolition of ownership restrictions can have no influence on the company's operations, management and task priorities.

Legal certainty: Deregulation of ownership and management regulations can make the role of the licensed chartered surveyor unclear and representation of interests can challenge the consideration of third party and the independence of other economic and other interests in relation to the licensed chartered surveyors task performance.

Consumer protection: Opening access for other companies with other main purpose than cadastral work to perform cadastral work can create uncertainty about the competent and

appropriate professional advisor regarding the cadastral task performance - a trust-based task that is unknown to most citizens. The link between task performance and professional identity loses some of its importance.

Bureaucracy: There will be a need for a larger "control task" for the cadastral authority if the task performance is "released" - ensuring a form of impartiality, professionalism in task performance, liability insurance and maintaining an intact appeal system.

Maintaining of 'good surveying practices' may be left to the State Board of Appeal or the National Consumer Agency

Service: If large centralized players taking over the area, a number of "small tasks" will be unattractive. It can result in service degradation, higher prices of small tasks, centralized office locations and problems in peripheral districts by concentrating on fewer suppliers. In the end less competition.

The cadastral sector: Promoting the initiative can create a collapse of the current united cadastral sector. There is a potential risk of the existence of PLF and PLFs role and mission as a resource and competence party in the development quality assurance of the cadastral process. The coherence among companies performing cadastral work disappear in the long term. The idea of training new surveyors to obtain license and join the ownership group loses its meaning.

4. FINAL REMARKS – PLF OPINION

The Danish Association of Licensed Surveyors (PLF) has the opinion, that the premises for growth initiative no. 49 are wrong and promoting growth initiative no. 49 can weaken both legal certainty and consumer protection.

A prerequisite for the legal certainty of the total property formation process are "citizens" access to independent surveyors free of special interests that are the chartered surveying company irrelevant, and as only handles ownership and boundary interests for the benefit of the whole society and taking account of third parties.

The existing ownership and management restrictions, which states that licensed chartered surveyors have a controlling influence in the group of owners in the company and in the business management, ensures the independency and impartiality of the practising chartered company.

Putting liberalization higher than legal certainty and consumer protection at an economical infrastructure task as the cadastral work relating to property, property formation and property registration – it is a challenge.

WHY FIX IT IF IT AIN'T BROKEN. Denmark has an efficient and reliable cadastral system, with a high degree of legal certainty and consumer protection, which is based on the

practicing chartered surveyor's legitimacy in a competitive market. Denmark has a united cadastral sector built on a cadastral public-private cooperation model between the public cadastral authority the Danish Geodata Agency and the practicing chartered surveyors conducting the task performance in chartered surveying companies anchored in a commercial primary purpose - cadastral work. This anchoring is exactly guaranteed by the requirement that the majority of the company's owners, members of board and executive supervisory board management must be practicing chartered surveyors who actively are carrying out surveying business in the company.

REFERENCES

The Danish Geodata Agency: "Statutory order concerning the Chartered Surveyors Act". Consolidation Act no. 680 of 17 June 2013.

<http://eng.gst.dk/media/gst/2438580/StatutoryorderconcerningtheCharteredSurveyorsActlo.pdf>

The Danish Geodata Agency: <http://eng.gst.dk/danish-cadastre/#.VS-YI8kcS70> (2015.04.16)

Enemark, S (2010): "From Cadastre to Land Governance in Support of the Global Agenda – The Role of Land Professionals and FIG". FIG Article of the Month – December 2010. 23 pages.

http://fig.net/pub/monthly_articles/december_2010/december_2010_enemark.html

Williamson, I.P., Enemark, S., Wallace, J. and Rajabifard, A. (2010): "Land Administration for Sustainable Development". ESRI Press Academic, Redlands, California. USA. 497 pages. ISBN 978-1-58948-041-4.

For information, see: http://www.fig.net/news/news_shortstories.htm

BIOGRAPHICAL NOTES

Henning Elmstrøm

President

The Danish Association of Chartered Surveyors (PLF)

Kalvebod Brygge 31-33

1780 København V

DENMARK

Tel. +45 40 54 10 06

Email: elmstroem@plf.dk

Torben Juulsager

President

The Danish Association of Licensed Surveyors (PLF)

Kalvebod Brygge 31-33

1780 København V

DENMARK

Henning Elmstrøm and Torben Juulsager

29/30

Regulation of liberal property surveyors profession versus society deregulation requirements for growth and competition. (7647)

FIG Congress 2015

From the wisdom of the ages to the challenges of modern world

Sofia, Bulgaria, 17 – 21 May 2015

Tel. +45 61 62 83 21

Email: tgj@geopartner.dk