ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

The Architects' Council of Europe welcomes some interesting aspects in the ruling of the European Court of Justice on the German fee scale (HOAI)

On 4 July 2019, the Court of Justice of the EU (CJEU) issued its ruling in the case opposing the EU Commission to the Federal Republic of Germany regarding the German fixed tariffs for the planning of architects services and engineers services (HOAI), deciding that by maintaining the HOAI, Germany infringes the Services Directive. While the Architects' Council of Europe regrets the decision of the Court, it welcomes some elements of the CJEU ruling which provides new possibilities of justification for professional regulation.

In June 2015, the EU Commission launched an infringement procedure against Germany on the grounds that the German minimum compulsory tariffs for architects and engineers (Honorarordnung für Architekten und Ingenieure – HOAI) would allegedly violate the Services Directive by preventing professionals from other Member States from establishing and providing their services freely in Germany.

The Federal Government of Germany, German associations of architects and engineers and ACE argued that there is no evidence that cross border activities are negatively affected by the presence of fee-scales. Conversely, they advocated that they help to serve the common interest by protecting customer's rights through transparency of fees and certainty of design costs and supporting cross-border activities by providing helpful descriptions of services and guidelines for providing these services.

In its ruling of 4 July, the CJEU follows the Advocate General conclusions – it came to the conclusion that "*the Federal Republic of Germany has failed to establish that the minimum tariffs laid down by the HOAI are suitable for securing the attainment of the objective of guaranteeing a high level of quality of planning services and ensuring the protection of consumers"* and that "*maximum tariffs cannot be regarded as being proportionate*" to that objective either.

However, the ACE welcomes the following points in the reasoning of the judgment – the CJEU:

- acknowledges that the preservation of the quality of the built environment, in short "Baukultur", as well as ecological building directly linked to the quality of planning work, are of public interest and therefore constitute overriding reasons relating to the public interest as defined by the Services Directive 2006/123/EC;
- underlines that the imposition of minimum tariffs may be suitable to secure the quality of the built environment and the environment itself in line with consumer protection and the public interest.
- emphasises that in this case, a consistent and coherent system is required in which certain tasks may only be provided by persons with the relevant, high quality qualifications including quantitative and qualitative training requirements.
- stresses that, in the absence of a fee scale, particular market situations may lead to price competition between planning service providers, resulting in a decrease in quality and, ultimately, in the elimination of operators offering high quality services.
- underlines that Member States solely need to demonstrate that their regulation is capable of making a significant contribution to the objectives pursued. However, they do not need to produce such evidence.

Download the resolution of the ACE General Assembly

Read the full judgment of the Court of Justice of the EU.