

	Remarks / Explanations
<p style="text-align: center;">DIRECTIVE XXXX/XX/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of XX.XX.XXXX</p> <p>on the provision of planning services in architecture, interior design, landscape architecture, urban planning and civil engineering</p> <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION –</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) TFEU, Article 114(1) TFEU and Article 192 TFEU thereof</p> <p>Having regard to the proposal from the Commission,</p> <p>Having forwarded the draft legislative act to the national Parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee,</p> <p>Acting in accordance with the ordinary legislative procedure,</p>	<p></p> <p></p> <p></p> <p>Cf. Dr. Mathias Kottmann (Redeker/Sellner/Dahs), expert report on competences under Union Law for the enactment of a legal act on planning services of 11.3.2021¹</p> <p></p> <p>Art. 294 TFEU</p>
<p>Whereas:</p> <p>(1) For many years there have been various measures in Europe highlighting the importance of planning the built</p>	

¹ **A. Summary**

1 In principle, the EU has the competence to issue a legal act on planning services, which, for example, places certain requirements on the content of such services and - connected to this - qualification requirements on their providers. In this context, certain reserved tasks could also be regulated - explicitly or implicitly.

2 In addition to consumer protection and ensuring the quality of planning services, the aim of such a measure could also be climate and environmental protection, sustainability and building culture. In this respect, a political link to the "new European Bauhaus" initiative would be appropriate.

3 The legal basis is primarily Article 53 (1) TFEU, which has already been used as the basis for several Union legal acts relating to the regulation of liberal professions. In addition, the general internal market competence pursuant to Article 114 (1) TFEU can also be used. The environmental competence from Art. 192 TFEU can also be considered in part. If necessary, the so-called rounding-off competence according to Art. 352 TFEU could also be used.

environment as a key element in the quality of people's lives and well-being and establishing the public interest in it. In February 2001, the Council of the EU adopted a text recognising the specificity of architecture as a discipline with aims and effects both as a component of culture and of economic life. In this resolution, the EU has already recognised the necessary interdisciplinary cooperation, the expansion of knowledge about architecture, its socialisation and architectural quality as an essential criterion to be protected in public procurement. Recital 5 of Directive 85/384/EEC already stated that architectural creation is in the public interest. Recital 27 of Directive 2005/36/EC confirms this once again.

The EU Council of Ministers noted in May 2007 that cultural activities, including architecture, are essential for stimulating innovation and technology as well as for sustainable growth and social cohesion. Also highly relevant are the issues raised by the Council of Ministers in 2008: “The challenges facing cities due to urban sprawl, climate change, social cohesion and the protection of cultural heritage require sustainable urban development with an integrated approach; attention should be paid to architectural quality; architecture plays a synthesising and innovative role; economic development of architecture should be contributed to; education in architecture should be promoted; lifelong learning should be supported.”

Paragraph 15 of the Davos Declaration 2018 includes the proposal to make the quality of building culture part of the legal instruments of a mandatory nature: “High building culture must be taken into account in the relevant legal norms. The central objective of high quality for the entire built environment, including cultural heritage, must be

Architects Directive 1985

Professional Qualification Directive 2005, amended by Directive 2013/55/EU of 20.11.2013

<p>mandatory for any spatially effective activity. This quality requirement must be on an equal footing with economic or technical interests. Applicable norms and standards must also be compatible with the goal of high quality.”</p> <p>In its judgment of 4.7.2019 (C-377/17), the European Court of Justice recognised the quality of planning services, consumer protection, environmental protection and building culture in connection with planning as overriding reasons in the general interest.</p> <p>With the New European Bauhaus, the EU Commission 2021 has also politically emphasised the importance of planning for sustainability and climate protection, while at the same time linking it with the demand for aesthetics and inclusion.</p> <p>Planning services may also be performed by engineers who have received special training in the field of civil engineering or architecture. Engineering specialisations include, in particular, technical, technical-scientific and technical-economic consulting, development, planning, supervision, control and inspection (project development, project control and property maintenance) as well as expert activities and research tasks. This also includes, in particular, planning services for the safety-relevant areas of civil engineering such as stability, fire protection, earthworks and foundation engineering.</p>	<p>Addition BIngK</p>
<p>(2) As one of the main sources of climate-damaging greenhouse gas emissions and one of the main drivers of the consumption of energy, material and land resources, the building sector can and must make a significant contribution to reducing emissions and conserving finite resources. Urban planning, urban construction, landscape planning</p>	

<p>and development, planning of outside areas as well as infrastructure measures lay the foundations for a climate-friendly and climate-adapted development of regions, cities and municipalities.</p>	
<p>(3) Due to the increasing responsibility of clients and thus planners for all resources used - products, substances, materials, energy - the focus of planning activities is increasingly shifting from one-off and time-limited processes of construction, conversion or demolition of a structure or building to the creation of planned overall building and life cycle concepts. In the sense of future resource conservation, current planning must already be the basis for future follow-up planning, use and utilisation.</p>	
<p>(4) In the context of increasing demands for functionality and sustainability of planning services, with simultaneous importance of aesthetics and beauty of the built environment, it is necessary to create a legislative instrument to consolidate a new model of economic, energetic and ecological planning with this Directive and to provide a binding framework through a minimum harmonisation of requirements on planning and planners, thereby facilitating sustainable, inclusive and aesthetic planning. Member States may impose more stringent requirements.</p>	
<p>(5) Planning services should be considered as a public interest asset that requires the recognition of public bodies, which are obliged to promote their protection, development and dissemination and to take exemplary public action to achieve these objectives.</p>	<p>Adapted from the Explanatory Memorandum of the Spanish Bill on the Quality of Architecture of 16.6.2022.</p>
<p>(6) In its judgment of 4.7.2019 (C-377/17), the European Court of Justice recognised the importance of quality assurance</p>	

<p>in planning services in principle. The basic prerequisite for this is that those who provide planning services have sufficient professional qualifications to do so. This Directive therefore sets out, among other things, the corresponding minimum requirements.</p>	
<p>(7) When using artificial intelligence systems, for example, to optimise floor plans, to record the existing situation or as dimensioning tools, precautions must be taken to ensure that they do not replace planning services in a way that planners themselves can no longer provide information on the origin and genesis of their planning results. Therefore, planners must be able to stop the applied programme if necessary and to reset it to the initial status in order to specify a different path indicated by planning on the basis of their own competence. Otherwise, the planners would be reduced to the role of mere users of planning decisions for which they are no longer personally responsible.</p>	<p>If necessary, (supplementary) reference to the AI Directive currently in preparation.</p>
<p>(8) A consistently high quality should be guaranteed for all planning services. Planners should therefore be obliged to undergo continuous training.</p>	
<p>(9) The European Court of Justice has established that binding minimum fees within a coherent quality assurance system can help to ensure quality. Therefore, Member States should be obliged to set reasonable and adequate minimum fees for planning services.</p>	
<p>(10) Planners are held responsible if their work results in financial damage. Therefore, especially for reasons of consumer protection, planners should be obliged to insure themselves sufficiently against liability claims.</p>	
<p>(11) With regard to the placing of orders for planning services, it should be avoided that planning services have</p>	<p>In line with the Single Market Strategy of 2015, this should</p>

<p>to be tendered EU-wide even in cases where the construction project itself does not reach the relevant thresholds according to Directive 2014/24/EU. This should prevent the award of planning services to companies that offer planning and construction from a single source and, in case of doubt, belong to larger corporate units. In order to promote small and medium-sized enterprises, start-ups and young entrepreneurs in the sense of the Single Market Strategy of 2015, only planning services that are similar should be taken into account when determining the contract value. In particular, object planning and associated specialised planning are not of the same kind.</p>	<p>serve in particular to promote small and medium-sized enterprises, start-ups and young entrepreneurs. These contribute significantly to a resilient EU economy and are an essential part of the implementation of the European Green Deal.</p>
<p>(12) The protected interests of sustainability, quality, building culture, consumer protection and the integrity of taxonomically structured financial markets, which are in the interest of society, can only be achieved with high-quality planning. Design services should therefore be awarded predominantly under the aspect of quality and performance competition.</p>	<p>On the integrity of taxonomically structured financial markets: The shift in the financial market sector to "green loans", "green funds", etc. can only succeed for the building sector if the new, climate protection-related valuation of the building portfolio, in which the market value is derived very strongly from the GHG balances of a building, is carried out expertly by planners in a completely new way. This means that real estate valuers must master the materiality and the associated GHG balancing to a much greater extent than before. However, since real estate is an important collateral basis for the financial sector, which always works with high leverage effects, and the real estate crisis in the USA has shown how much the stability of the financial market sector</p>

	depends on reliable real estate valuation, this shows the growing extent to which architects and engineers are assuming joint responsibility for this sector of the economy. In this non-technical, economic sense, they are trustees of the sustainable value of an important asset class.
HAVE ISSUED THE FOLLOWING GUIDELINE:	
CHAPTER I PURPOSE, SUBJECT AND DEFINITIONS	
Article 1 Objective	
<p>The objective of this Directive is to protect, promote and disseminate the quality of planning services in architecture, interior design, landscape architecture, urban planning and civil engineering as a good of public interest.</p> <p>In its condition of a good of public interest, quality in planning services must be object of protection, promotion and dissemination by all public authorities, including the national legislator, state, regional and local administrations and Courts of Justice, within their respective competences.</p>	<p>Adapted from Art. 1 para. 1 of the Spanish Bill on the Quality of Architecture of 16.6.2022.</p> <p>Consejo superior de los colegios de arquitectos de españa:</p>
Article 2 Subject matter	
This Directive regulates the provision of planning services in the fields referred to in Article 1.	
Article 3	

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. 'planning services' shall mean services which have as their object the design, planning, renovation, alteration and maintenance in the fields referred to in Article 1, including all the administrative processes connected therewith and the data management procedures required by binding acts of European Union law.
2. 'architecture' shall mean, in particular, the design, technical, economic, environmental and social planning of buildings, taking into account the aspects relating to the safety of users and the public.
3. 'interior design' shall mean, in particular, the design, technical, economic, environmentally sound and social planning of interiors.
4. 'landscape architecture' shall mean in particular the design, technical, economic, environmentally sound and social planning of landscape, open spaces and gardens.
5. 'urban planning' shall mean, in particular, the design, technical, economic, environmentally sound and social urban and spatial planning.
6. 'civil engineering' shall mean, in particular, the technical planning of construction work. The specialisations of civil engineering include technical, technical-scientific and technical-economic consulting, development, planning, supervision, control and testing (project development, project control and property maintenance) as well as expert activities and research tasks. This also includes, in particular, the safety-relevant areas of civil engineering such as stability, fire protection, earthwork and foundation engineering.
7. "planners" shall mean natural persons providing planning services.
8. "sustainability or sustainable planning" is the life-cycle-based

(amended) Building Energy Directive; Ecodesign Directive; Construction Products Regulation. If applicable, it would then be possible to dispense with a separate definition of building data management?

Definitions for architecture to urban planning taken from the description of professional tasks in § 3 "Model Architects Act" (Musterarchitektengesetz).

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Waivable if reference is

planning assessment, compliance and creation of ecological, economic, socio-cultural, functional, technical and process-related qualities with the aim of conserving resources, protecting the climate and increasing the energy efficiency of objects. Resource management for buildings, facilities and open spaces is the planning decision for resource control with the purpose, in particular, of reusing and re-using as well as recycling all substances, materials and products that are important for the circular economy.

9. Building data management is the planning management of object data, information and data collection, e.g. database structuring in building information models (BIM) for contractually and/or publicly defined use cases and to meet project organization requirements, as well as the use, processing and evaluation, validation and verification of all relevant data.

10. "minor or technically simple building projects" are:

- a) free-standing buildings with a floor area of up to 100 square metres and no more than two storeys,
- b) buildings without living quarters up to 150 square metres in area and with no more than two storeys, such as outbuildings, garages and carports,
- c) buildings used for agriculture and forestry with up to two storeys above ground and up to 250 square metres of floor area,
- d) simple alterations to other buildings, such as the addition of conservatories and terrace and balcony roofs with a floor area of up to 50 square metres,
- e) in the case of buildings with a height of up to 7 metres and no more than two units of use with a total floor area of no more than 400 square metres, as well as in the case of detached buildings used for agricultural or forestry purposes, the erection of dormer windows, changes to the roof structure as part of renovation and maintenance

made in No. 1 to (all) relevant EU legal acts?

Based on § 65 para. 1 sentence 2 Building Code of the State of Brandenburg of 9.2.2021

measures.	
<p>CHAPTER II</p> <p>QUALIFICATION REQUIREMENTS FOR THE PROVISION OF PLANNING SERVICES</p>	
<p style="text-align: center;">Article 4</p> <p style="text-align: center;">Principle</p> <p>(1) Planning services shall only be carried out by planners who fulfil at least the requirements of one of the specialisations mentioned in Article 5. Planning services in the origin area of responsibility of a Member State or another state or municipal institution may only be entrusted to a third party if the third party fulfils the requirements of sentence 1. In addition to the first sentence, the member states may link the execution of planning services to the fulfilment of the requirements of a specific discipline.</p> <p>(2) Paragraph 1 shall not apply to planning services</p> <ol style="list-style-type: none"> 1. for minor or technically simple construction projects, 2. which have as their object the design or construction of the interior of a dwelling intended for the personal use of a natural person, provided that the load-bearing structures of the building are not affected and the façade and the roof are not impaired. 	<p>The aim is to prescribe certain minimum qualification requirements. Models in this respect are Art. 10 para. 2 of the Spanish Building Act (Act 38/1999 of 5 November 1999) and Art. 4 of the Luxembourg Memorial A n°82 of 13 December 1989. However, there is deliberately no differentiation between different specialisations. In this respect, however, sentence 3 is important, which explicitly allows Member States to provide for reserved tasks for individual specialisations.</p> <p>Para. 2 No. 1: Based on § 65 Para. 1 No. 2 of the German Model Building Code.</p> <p>Para. 2 No. 2: Based on Art. 5 Para. 1 of the Luxembourg Memorial A n°82 of 13 December 1989.</p>
<p style="text-align: center;">Article 5</p> <p style="text-align: center;">Requirements of the specialisations</p> <p>(1) In the field of architecture, the requirements of Article 46 of Directive 2005/36/EC of 7 September 2005 as amended by Directive 2013/55/EU of 20 November 2013 must be met.</p>	<p>Requirements taken out of § 20 Baukammergesetz Nordrhein-Westfalen</p>

(2) In the field of interior design, a course of study must have been successfully completed at a higher education institution or a comparable educational institution which focuses on interior design, has a standard period of study of at least three years of full-time study and with which at least 240 points can be acquired when applying the ECTS system.

(3) In the field of landscape architecture, a course of study must have been successfully completed at a university or a comparable educational institution which is oriented towards landscape architecture, has a standard period of study of at least three years in full-time study and with which at least 240 points can be acquired when applying the ECTS system.

(4) In the field of urban planning, students must have successfully completed a course of study at a higher education institution or a comparable educational institution which focuses on urban planning, has a standard period of study of at least three years in full-time study and with which at least 240 points can be acquired when applying the ECTS system.

(5) In the field of civil engineering, an undergraduate degree programme in a technical-engineering subject with at least six theoretical semesters of study at a state or state-recognised higher education institution or university of cooperative education must have been successfully completed with at least 240 points using the ECTS system. In addition, this course of study must predominantly include and be characterised by engineering-specific subjects. This is the case if the total share of STEM subjects relevant to engineering studies amounts to 70% of the total course content.

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(6) At least two years of practical experience in the respective field.

<p style="text-align: center;">CHAPTER III</p> <p style="text-align: center;">REQUIREMENTS FOR PLANNING SERVICES, PROFESSIONAL PRINCIPLES AND ARTIFICIAL INTELLIGENCE</p>	
<p style="text-align: center;">Article 6</p> <p style="text-align: center;">General requirements</p> <p>Within the framework of the legal requirements, planning services must be oriented towards the principles of sustainability, protection of the environment and the urban environment, public health, inclusion, animal welfare, functionality and beauty within the framework of legal requirements. In addition, planning services serve to preserve the national historical and artistic heritage.</p> <p>.</p>	<p>Objectives of the NEB and orientation towards Art. 4 No. 8 of the Services Directive</p>
<p style="text-align: center;">Artikel 7</p> <p style="text-align: center;">Diligence and professional independence</p> <p>Planning services must be provided conscientiously and professionally independently. A professionally independent activity is not exercised by anyone who, as an employee of a natural or legal person who is not himself a planner, has to comply with instructions that oblige him to provide planning services in a manner that is not consistent with his professional assessment. Instructions containing such obligations are inadmissible.</p>	<p>Diligence: Based on § 25 para. 1 of the German "Model Architects Act" (MusterarchitektenG).</p> <p>Professional independence: Adapted from § 43 Para. 1, § 44 Para. 1 Auditors' Code, there referred to as self-responsibility (term, however, already defined by MArchG ("Model Architects Act" - Musterarchitektengesetz) as independent activity).</p>
<p style="text-align: center;">Article 8</p> <p style="text-align: center;">Artificial intelligence</p> <p>Artificial intelligence systems are to be used in a way that all essential decisions in the planning process can be made by the planner.</p>	<p>If necessary, supplementary reference to the AI Regulation currently in preparation.</p>

<p>CHAPTER IV</p> <p>QUALITY ASSURANCE AND CONSUMER PROTECTION</p>	
<p style="text-align: center;">Article 9</p> <p style="text-align: center;">Continuous training</p> <p>Member States shall ensure that planners are required to undergo continuous training under appropriate programmes in order to maintain their theoretical knowledge and professional skills at a sufficiently high level and that failure to comply with this requirement shall result in appropriate sanctions.</p>	
<p style="text-align: center;">Article 10</p> <p style="text-align: center;">Planning fees</p> <p>Member States shall provide for a system which ensures that fees for planning services guarantee an appropriate quality of planning by setting minimum prices.</p>	
<p style="text-align: center;">Article 11</p> <p style="text-align: center;">Professional liability insurance</p> <p>Member States shall ensure that self-employed designers and design firms have adequate professional indemnity insurance.</p>	
<p>CHAPTER V</p> <p>PUBLIC PROCUREMENT OF PLANNING SERVICES</p>	
<p style="text-align: center;">Article 12</p> <p style="text-align: center;">Separate award of planning and execution</p> <p>Orders for the planning and execution of construction works shall be awarded separately. Deviations from sentence 1 shall be justified and the justification shall be documented in the notice.</p>	<p>Proposal to strengthen SME-friendly procurement and to strengthen the principle of independence of planning and execution.</p>
<p style="text-align: center;">Article 13</p> <p style="text-align: center;">Calculation of the procurement</p>	

<p>By way of derogation from the first subparagraph of Article 5(8) of Directive 2014/24/EU, the total estimated value of the lots shall be taken into account only insofar as the planning services are of the same type.</p>	
<p style="text-align: center;">Article 14</p> <p style="text-align: center;">Performance competition</p> <p>Planning services shall be awarded in a performance competition. The fee may not be taken into account by more than 10 per cent in the evaluation of the tender.</p>	
<p style="text-align: center;">Article 15</p> <p style="text-align: center;">References</p> <p>By way of derogation from Annex XII Part II a) iii) of Directive 2014/24/EU, in order to ensure sufficient competition, the contracting authority shall take into account references from at least the last 10 years in order to ensure sufficient competition.</p>	
<p style="text-align: center;">Article 16</p> <p style="text-align: center;">Planning competitions</p> <p>By way of derogation from Article 32(4) of Directive 2014/24/EU, in addition to the winner, the other prize-winners of the design contest need only be invited to participate in the negotiations if the negotiations with the winner do not lead to the conclusion of a contract.</p>	
<p style="text-align: center;">CHAPTER VI</p> <p style="text-align: center;">TRANSITIONAL AND FINAL PROVISIONS</p>	
<p style="text-align: center;">Article 17</p> <p style="text-align: center;">Minimum harmonisation</p> <p>Member States may impose more stringent requirements.</p>	

<p style="text-align: center;">Article 18</p> <p style="text-align: center;">Implementation</p> <p>(1) Member States shall adopt and publish, by XX.XX.XXXX at the latest, the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.</p> <p>(2) When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.</p> <p>(3) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	
<p style="text-align: center;">Article 19</p> <p style="text-align: center;">Entry into force</p> <p>This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	
<p style="text-align: center;">Article 20</p> <p style="text-align: center;">Addressees</p> <p>This Directive is addressed to the Member States.</p>	