

OGE-France - Regulatory and Compliance Law, Expression of the Missions of a Professional Order

Séverine VERNET, France

1 INTRODUCTION

Competition law views professional orders and chambers as exceptions, since according to this branch of the law, we would be obstacles to competition, whereas this is not the case. A more modern and dynamic approach is possible, in line with the more general evolution of economic law. Thus, the professional Order or Chamber is the expression of a profession over which it exercises the function of "second-level regulator", with public authorities exercising the function of "first-level regulator".

The primary function of professional bodies is to disseminate a "Compliance culture" among the professionals they supervise, and beyond them to customers and stakeholders. This Compliance culture is built around the missions carried out by the professionals themselves.

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2 INJECT COMPLIANCE INTO THE PROFESSION AND CHANGE OUR APPROACH

This is why it is essential to examine the legal evolution of the notion of "mission", which has become central to the law, particularly through the technique of the mission-driven company.

There are many points of contact between the "*Raison d'être*", the mission-driven company and Compliance Law, from the moment we define the latter by the concrete and highly ambitious goals it pursues: the Monumental Goals.

The Ordre des géomètres-experts, for example, is entitled to define the Monumental Goals it pursues and inculcates, in particular the territory and the living environment, in line with what unites all the Monumental Goals of Compliance: concern for others.

By instilling this in professionals, the professional Order develops an "ex ante responsibility" on the part of the practitioner, which is a pillar of Compliance Law, constituting both a charge

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and a power that the professor exercises and for which the professional Order must be the supervisor.

The Ordre des géomètres-experts has set up a brand-new Compliance Committee, whose roadmap includes two major projects: the development and adoption of a “*Raison d'être*”, the production of guidelines and the creation of a body of flexible rights.

3 DEFINING THE RAISON D'ETRE OF THE PROFESSION AND THEN OF THE INSTITUTION: THE COMPLIANCE COMMISSION'S MAJOR PROJECT

The adoption of the “*Raison d'être*” of the profession, then that of the Ordre, the definition of the monumental goals that will guide us // for example, the fight against global warming, the preservation of human rights or the regulation of data // and finally the drafting of a body of rules, a code of "soft law" that will irrigate the profession and the industry to which we belong.

The adoption of a “*Raison d'être*” by the profession reflects the purpose for which the profession of géomètres-experts was created and functions, notably in contrast to topographers, a distinction which refers to obligations and behaviours of which the Ordre itself is the guardian, the mission of the Ordre being the effectiveness of this “*Raison d'être*” of the profession and its efficiency for the benefit of stakeholders.

In this way, a firm of géomètres-experts could include a “*Raison d'être*” in the articles of association of its corporate structure, corresponding not only to the *raison d'être* of the profession, but also to its own identity.

The first ambition is therefore to express the “*Raison d'être*” common to all professionals, which they would be encouraged to include in their company bylaws, or even to refer to in their contracts with third parties.

1. To this end, in phase 1, a written questionnaire was sent to all géomètres-experts between June 16 and July 30, 2023. This written consultation mobilized 25% of us, i.e. over 500 géomètres-experts! This first essential phase enabled us to identify the main headings of the chapters based on the sustainability of data, private property, the proper functioning of the land tenure system and the prevention of the risk of collapse, urban planning and the territory, and the quality of our relationship with others (internal and external stakeholders). These very rich lessons will help lead the discussions opened in Phase 2.
2. Phase 2 was opened this morning with all members of the OGE Higher Council, through semi-open interviews with stakeholders organized into panels.
3. Phase 3 will consist of defining the *raison d'être* of the institution.

4. At the end of the work, once the “*Raison d’être*” of the profession and that of the Order have been defined, it is planned to organize a “*Raison d’être Day*”, which will constitute phase 4. Such an event will provide an opportunity to present the results of the process. It will also provide an opportunity to educate surveyors.
The *raison d’être* remains a statutory provision, and is therefore partly the result of an approach specific to the company concerned. Lastly, this day would enable us to look to the future, by linking *raison d’être* and mission-driven companies. We would need to explain the difference between the two concepts, with the mission-driven company being more cumbersome and restrictive.
5. The French Supreme Court defines a professional order as a regulatory authority. The Ordre des géomètres-experts should act as such. It will therefore have to issue "guidelines" in phase 5, the final stage of this highly structured process. It is this final phase that gives the profession its full credibility, and the Order its full legitimacy as its umbrella body.



4 IMPLEMENTATION OF A PROCESS TO PRODUCE GUIDELINES AND SOFT LAWS

This “*guidelines*” terminology, used in particular by regulatory authorities, enables them to express both their general conception, present and future, of the system over which they have control, and to illustrate this conception by the technical way in which they will make use of it on a case-by-case basis, how they will use their power in the future.

This is aimed at both professionals and stakeholders.

In addition, the Ordre des géomètres-experts is keen to build up a body of soft law, because soft law has a central place in Regulatory and Compliance Law.

In theory, soft law is not binding on professionals, but in practice, given that the same body issues soft law and binding professional standards, the non-compliance of which it also sanctions, professionals respect soft law.

What's more, while professionals are not strictly speaking bound by the flexible law, if they comply with what the Order says through these standards, they have a kind of guarantee that they will not be condemned later: this is the "comply or explain" evidential rule: if they do not follow this standard, they will have to justify why they deviated from it.

The Order must ensure the overall consistency of the standards it issues, since flexible law provides a representation of what is done and/or will be done by the Order, a representation which third parties must be able to rely on. This is what gives credibility to the profession and to the Order, its umbrella structure.

BIOGRAPHICAL NOTES

Séverine Vernet is graduated from the CNAM in 1996, and has been a géomètre-expert since 2000. Keen to ensure that the profession runs smoothly, and always in a spirit of service, Séverine VERNET plays an active role in the professional bodies of the Ordre des Géomètres-Experts, first at regional level (Ile-de-France) and then at national level. Since 2021, Séverine VERNET has been First Vice-President of the Higher Council of OGE.

CONTACTS

Ms Séverine VERNET
Ordre des géomètres-experts
49, avenue Hoche
75008 Paris
FRANCE
Tel. +33 1 53 83 88 18
Email: severine.vernet@geometre-expert.fr
Web site: www.geometre-expert.fr

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