Report on meeting with representatives of the Niedersächsische Architektenkammer 5 December 2019

The representatives of the Niedersachsen Architektenkammer (Chamber of architects of Lower Saxony) requested an exchange on the legal situation of architectural planning services in public procurement. They had raised concerns about the consequences that the transposition of the 2014/24/EU into German national legislation may have on architectural planning services.

They made the following main points:

- Organisation of the German construction planning industry differs significantly from that in other MS. The sector is dominated by small enterprises, there is a strict distinction between the various sub disciplines and there is no separation between planning and execution; German architects remain responsible during the entire construction phase rather than only delivering design.

- European wide PP bids are time consuming and require a significant investment of easily 5,000-10,000 EUR per bid on the side of agencies. The 2014 Directive requires public procurers to combine the sum of the various planning services to measure whether European threshold is met. This will result in relatively small projects having to be procured European wide. The contested transposition of the Directive would allow not combining the planning services if the German provisions did not have to be interpreted in the light of the Directives.

- A larger part of the PP market will therefore lose attractiveness for smaller architects offices, due to the administrative burden of bidding for European wide PP projects. Furthermore, the administrative burden may trigger public procurers to contract bigger companies that provide a full and comprehensive planning service offer rather than having to administer a range of PP procedures for the various, independent services involved in the planning process.

In addition, the representatives of the Architektenkammer made the point that it was important for the quality of planning services that quality criteria are used for procuring planning services.

emphasised that the Commission was aware of these challenges, but indicated that the Directive is quite clear on this point and that there is little room for interpretation. They stressed that the Commission considers protection of SMEs a key priority of policy, but also emphasised that a wide range of interests needs to be considered and that no guarantees on the outcome of any bilateral dialogue between the Commission and Germany could be given at this point.

They furthermore pointed out that the Commission advocates the use of quality and sustainability criteria and that the Commission supports efforts by Member States to professionalize public buyers, inter alia, by developing a European Competency Framework (ECF).